

Texas Register

Volume 17, Number 75, October 2, 1992

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Information Available: The ten sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

- Governor - Appointments, executive orders, and proclamations
- Attorney General - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State - opinions based on the election laws
- Texas Ethics Commission - summaries of requests for opinions and opinions
- Emergency Sections - sections adopted by state agencies on an emergency basis
- Proposed Sections - sections proposed for adoption
- Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Sections - sections adopted following a 30-day public comment period
- Open Meetings - notices of open meetings
- In Addition - miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

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How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows: 17 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 TexReg 3"

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

Texas Register Publications



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**The Texas Register Readers Choice Award
continues with this issue!**

You will be able to continue to VOTE into the fall on what you think is the best of the 1991-1992 school art project submissions. In this issue, we continue republishing the artwork from the students. This will allow you one final chance to make your vote count. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "7-1" will indicate that the picture is the first submission in the seventh through ninth grade group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.

The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.

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1991 - 1992 Texas Register Readers Choice Award.

Please enter my vote for the "best of the best"

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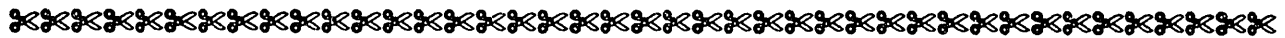
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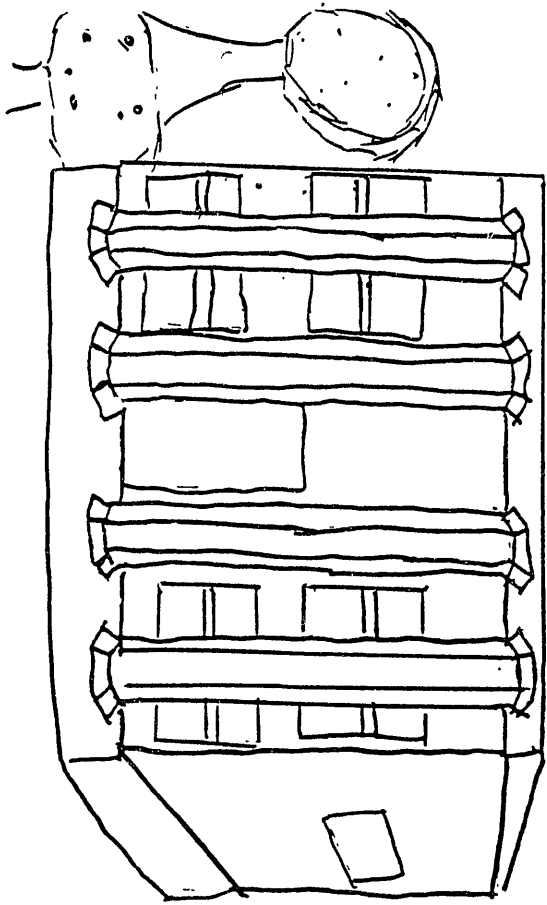
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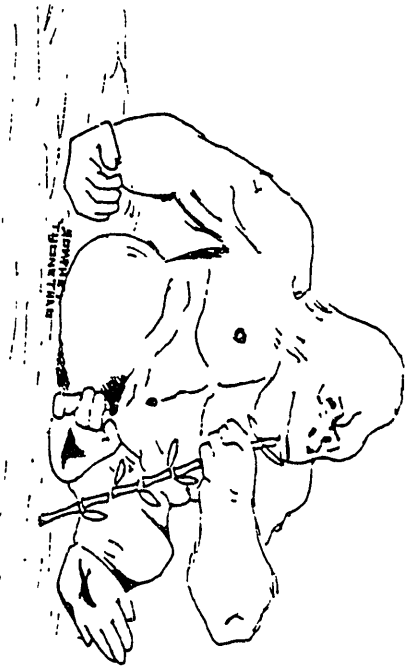


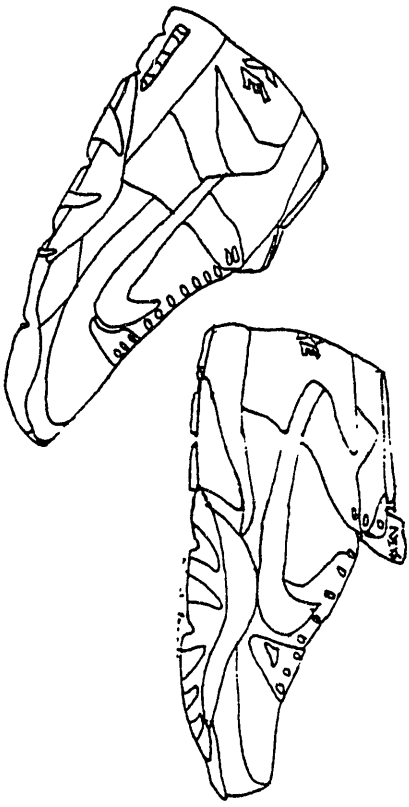
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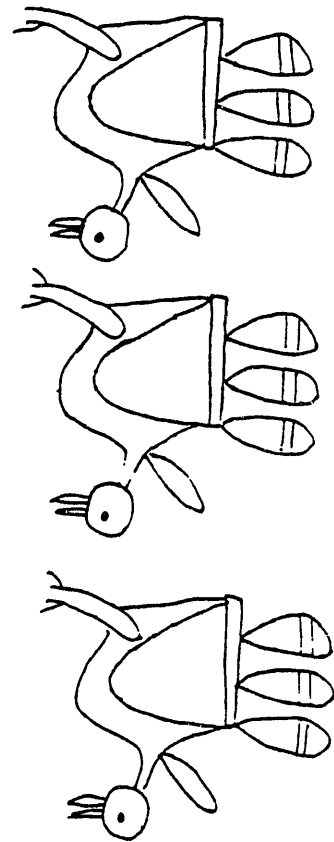
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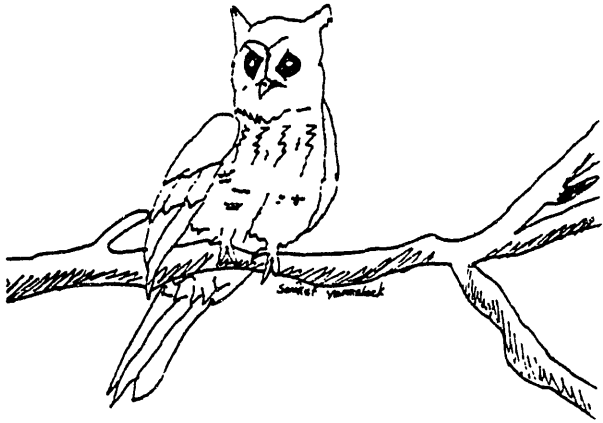
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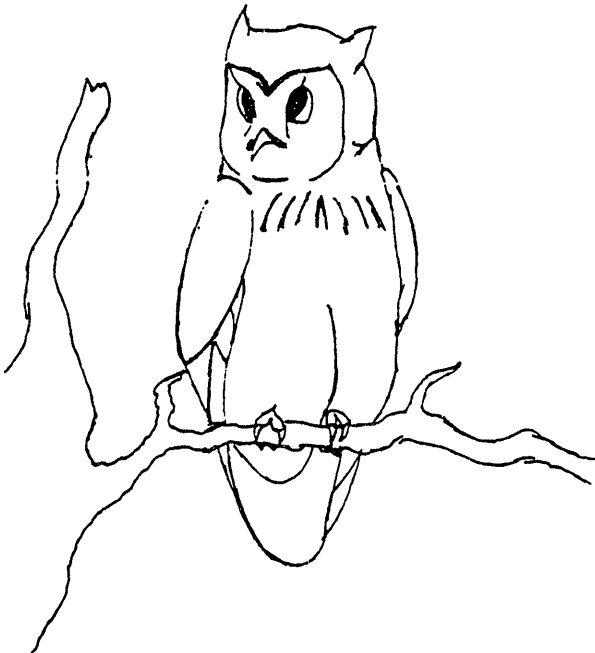


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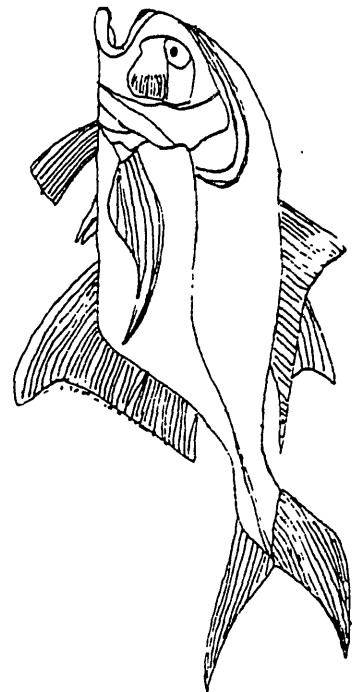


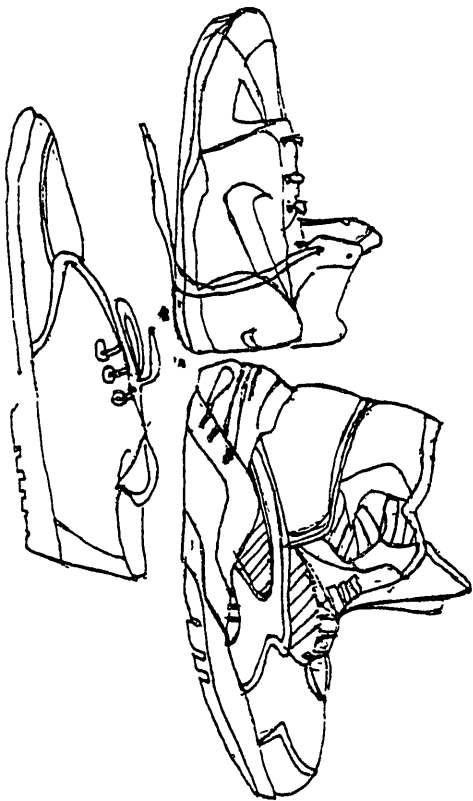
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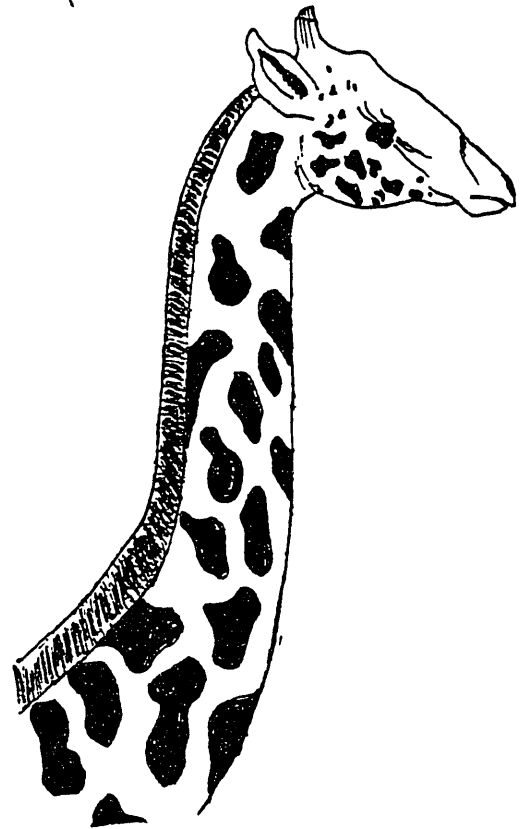


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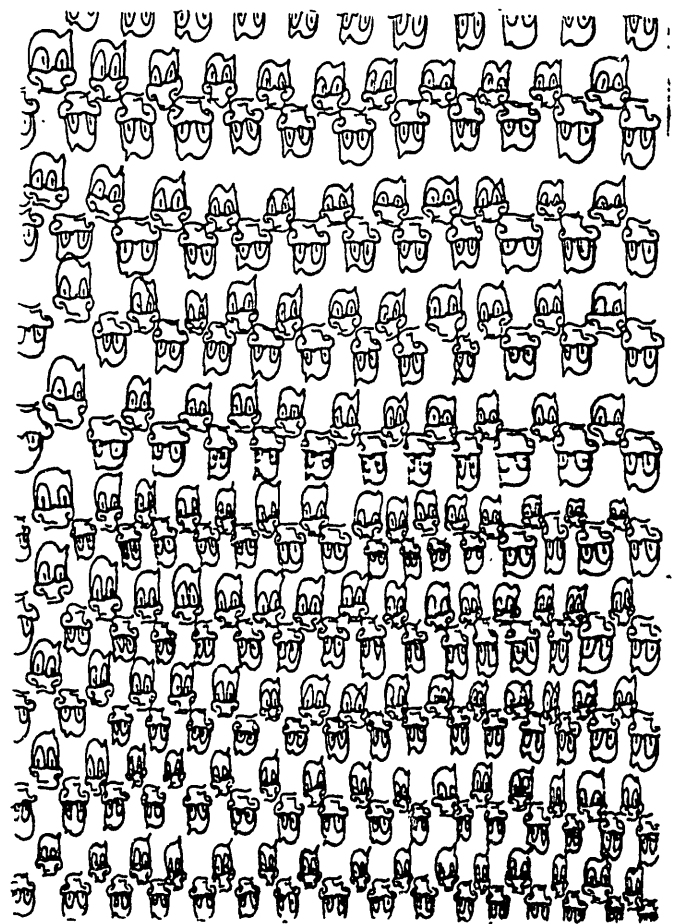
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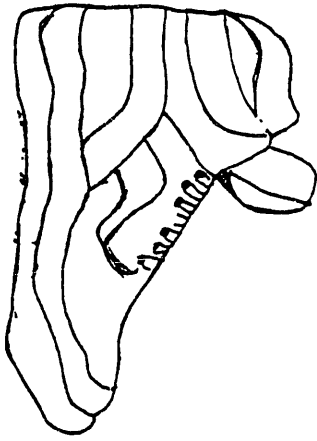


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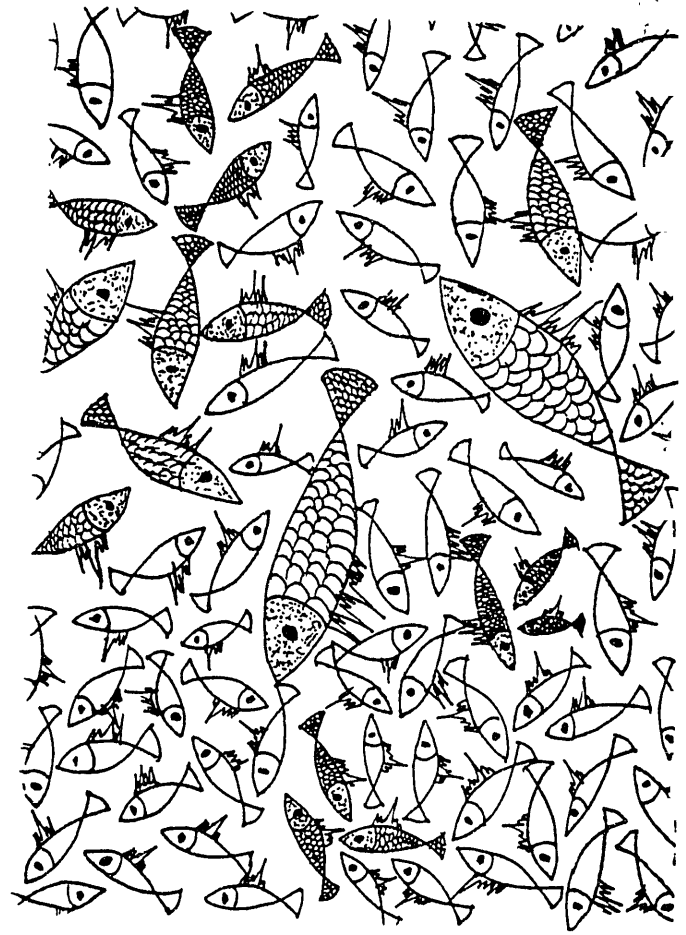


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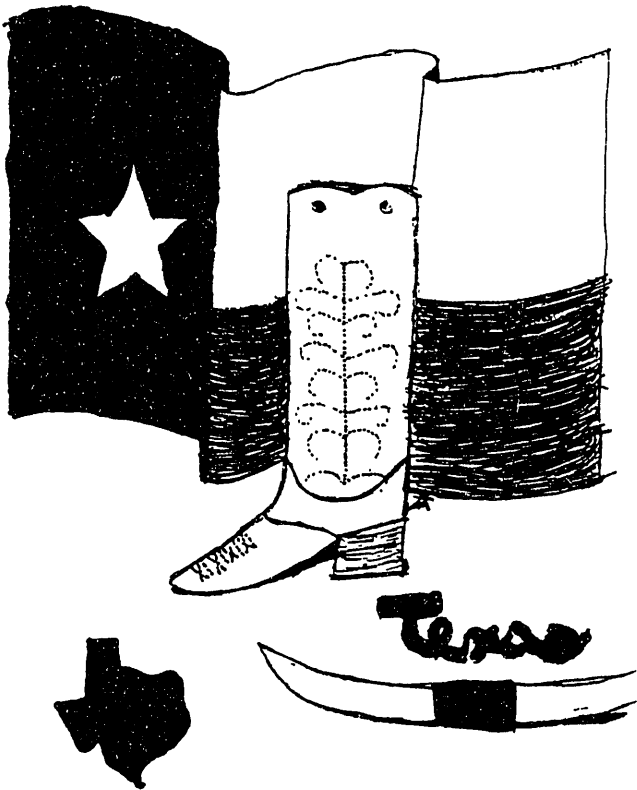


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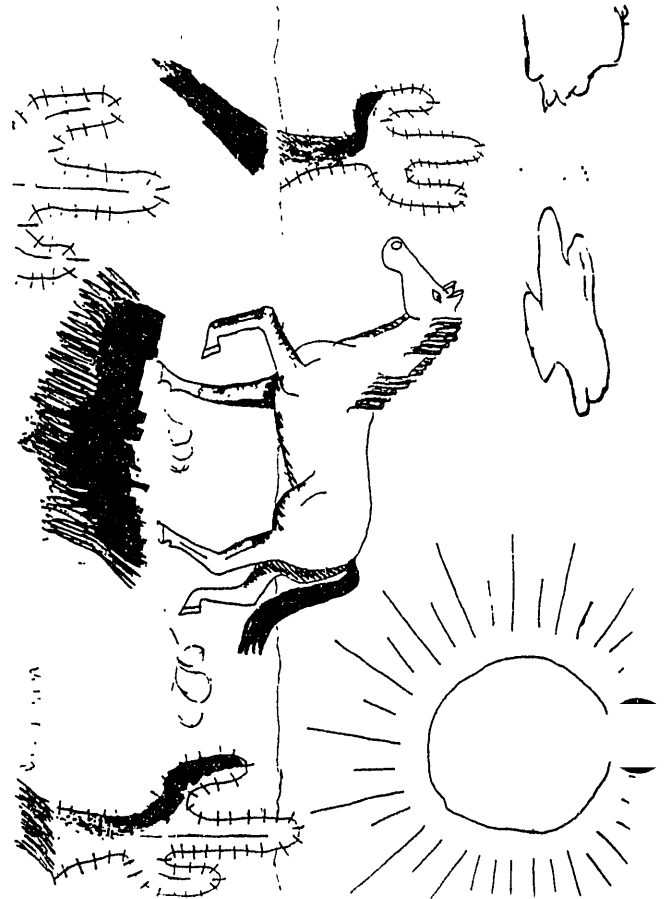


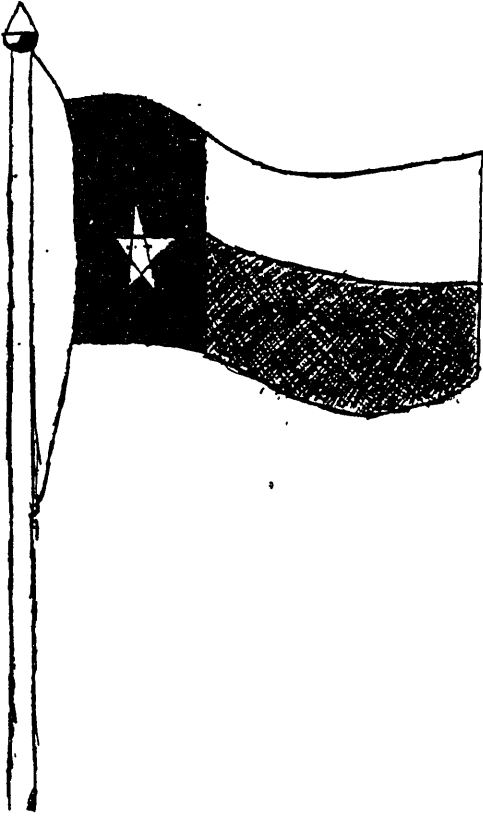
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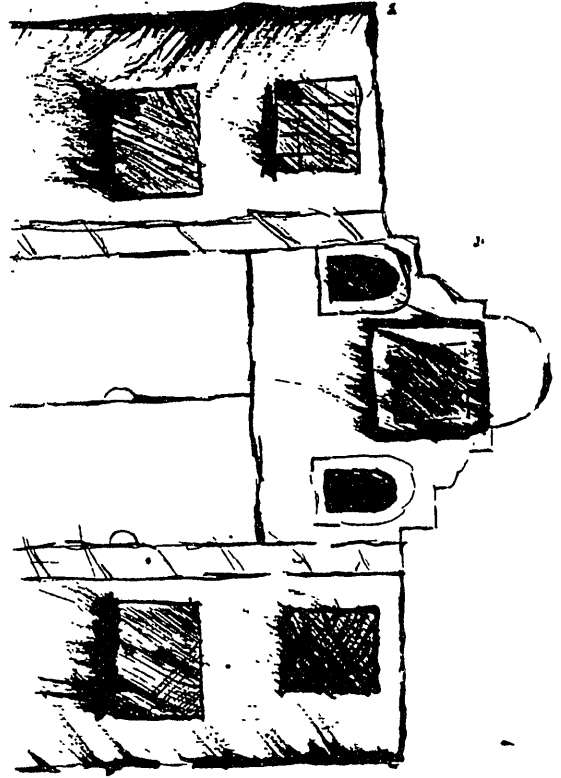


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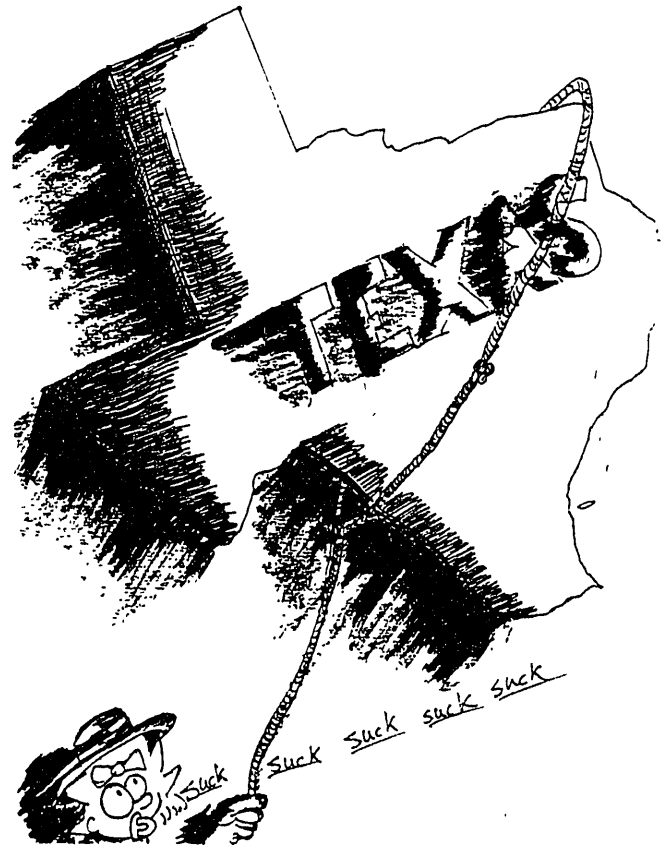
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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made September 21, 1992

The reappointment of Bill B. Cobb of Wimberley to the Texas Incentive and Productivity Commission on July 6, 1992, is hereby withdrawn.

The appointment of Raymond Weaver McClure II of Dental to the Home Health Services Advisory Council on July 9, 1992, is hereby withdrawn. Mr. McClure is not eligible to serve as a representative of a regional home health care department.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1995: Dorothy Anne Conn, 1240 Wilchester Circle, Beaumont, Texas 77706. Ms. Conn

will be filling the unexpired term of George Ann Carter of Fort Worth, who resigned.

To be a member of the Educational Economic Policy Center Committee for a term to expire June 1, 1994: Ellen Clarke Temple, 2012 Champions Drive, Lufkin, Texas 75901. Ms. Temple is being reappointed.

To be a member of the Educational Economic Policy Center Committee for a term to expire June 1, 1994: Jamey Lack, 2107 Commercial, Victoria, Texas 77901. Ms. Lack will be replacing Jack Ladd of Midland, whose term expired.

To be a member of the Educational Economic Policy Center Committee for a term to expire June 1, 1993: Charles Miller,

1700 Main, #7A, Houston, Texas 77002-8133. Ms. Miller is being reappointed.

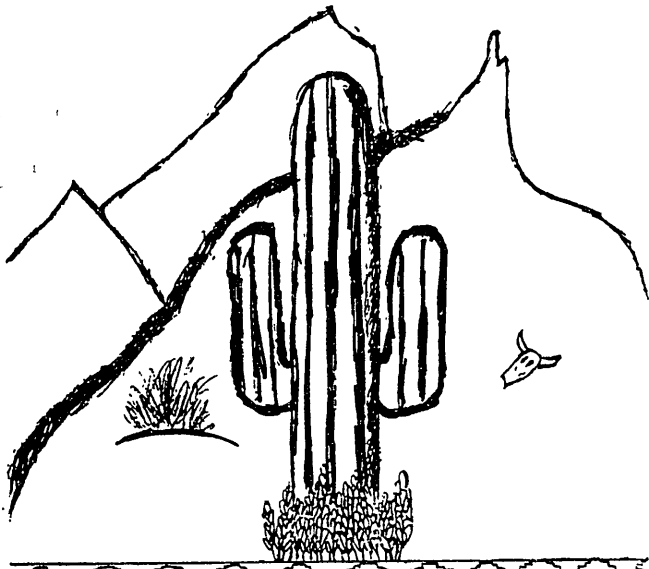
To be a member of the Educational Economic Policy Center Committee for a term to expire June 1, 1994: Alison Leland Brisco, 1600 Vassar, Houston, Texas 77006. Ms. Leland will be replacing William A. McKenzie of Dallas, whose term expired.

To be a member of the Educational Economic Policy Center Committee for a term to expire June 1, 1994: John T. Carter, 2001 Kirby, Houston, Texas 77019. Ms. Carter is being reappointed.

Issued in Austin, Texas, on September 23, 1992.

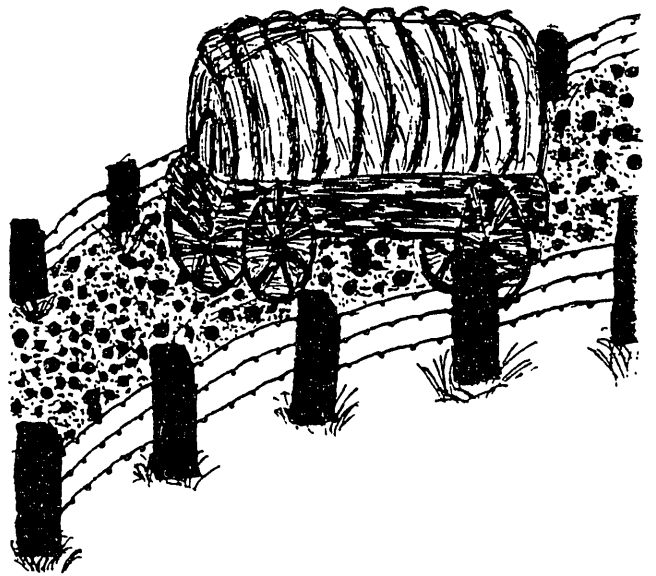
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Ann W. Richards
Governor of Texas



TEXAS

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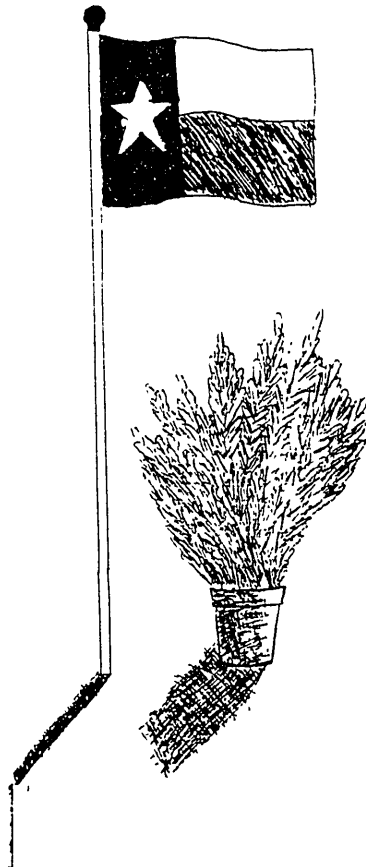


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TEXAS

Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Opinion Requests

AOR-107. The Texas Ethics Commission has been asked to consider whether a member of the Texas Veterans Land Board is required to file a financial statement under Texas Civil Statutes, Article 6252-9b.

AOR-108. The Texas Ethics Commission has been asked to consider the following questions: May a corporation make a donation from its own property to a general-purpose committee for the purpose of financing the administrative expenses of the committee? Or is the corporation limited to making only a direct expenditure to finance such expenses instead of a donation?

AOR-109. The Ethics Commission has been asked to consider whether a member of a board of regents who is also an employee of a firm would violate Texas Civil Statutes, Article 6252-9b, §7C if his firm does business with state agencies other than ones governed by the board of regents of which he is a member.

AOR-110. The Texas Ethics Commission has been asked to consider whether a proposed postcard that lists the result of a local bar pool is a nonpartisan communication and whether corporate funds may be used for printing and mailing the card. If corporate funds may not be used, the requestor asks whether individuals may contribute money to cover the costs without having to be identified on the postcard.

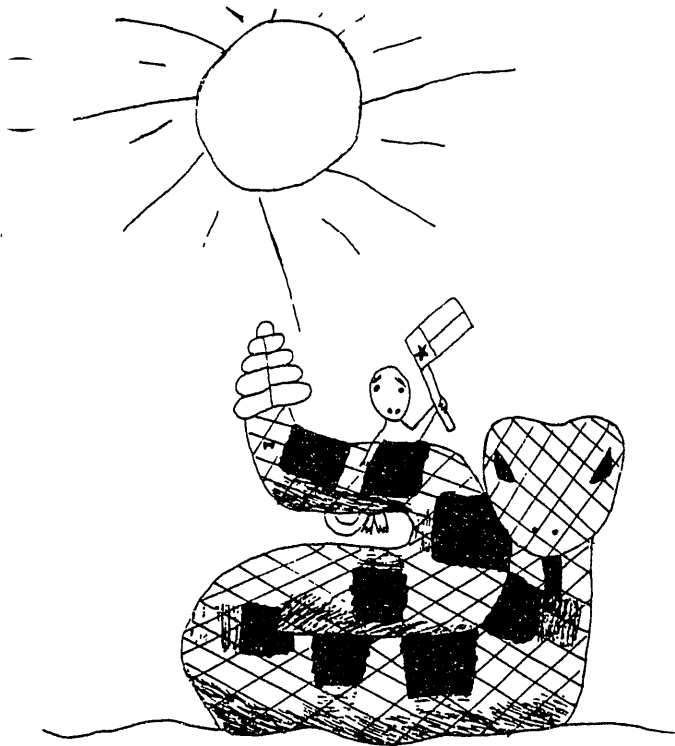
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TRD-9212973 Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

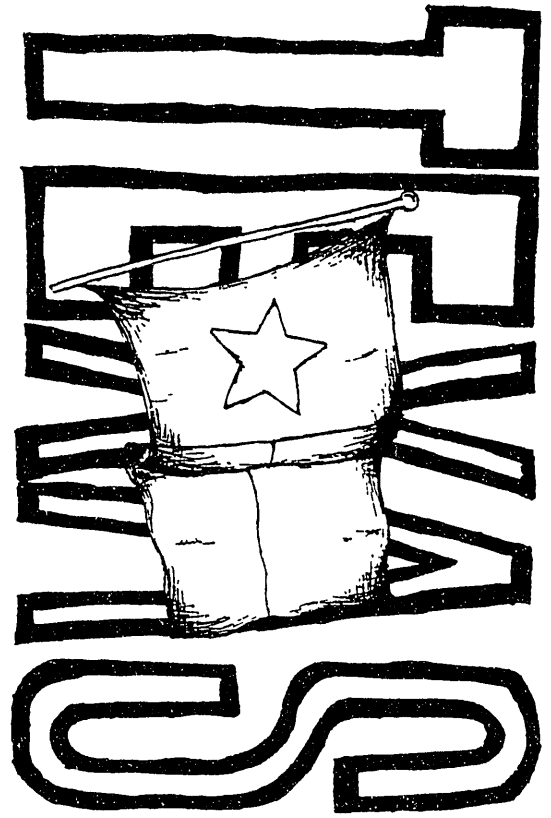
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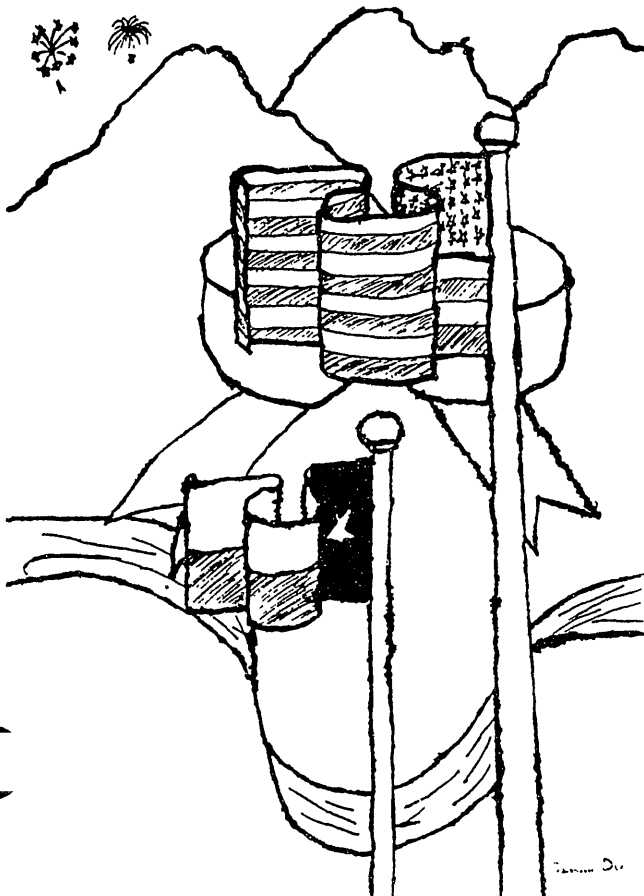


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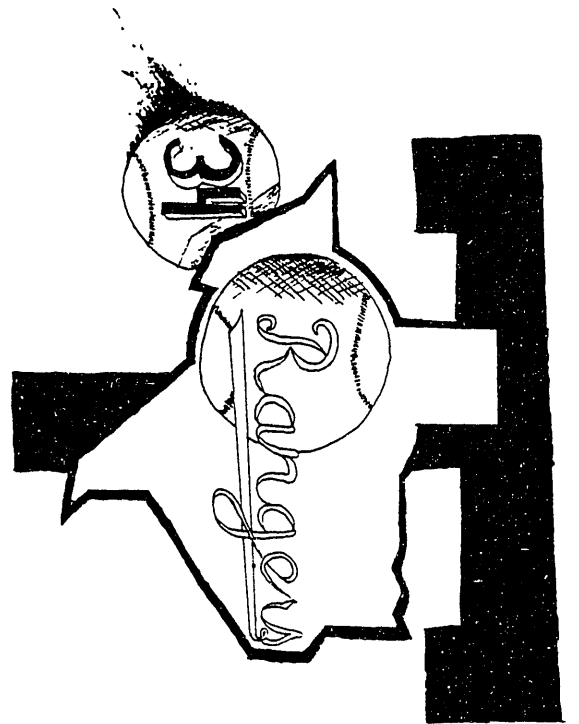


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Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a section.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 334. Underground and Aboveground Storage Tanks

Subchapter H. Interim Reimbursement Program

- 31 TAC §§334.302, 334.306, 334.308, 334.310, 334.313, 334.314, 334.19, 334.322

The Texas Water Commission adopts on an emergency basis amendments to §§334.302, 334.306, 334.308, 334.310, 334.313, 334.314, 334.19 and 334.322, concerning interim reimbursement program. The sections are adopted on an emergency basis to implement changes in the reimbursement program including limitations and requirements for eligibility, form and contents of applications, review of applications, fund payment reports, and allowable costs. The reason for the adoption of the sections on an emergency basis is the depletion of the petroleum storage tank remediation fund which ultimately can result in an imminent peril to public health, safety, and welfare.

Section 334.302 has been amended to: change the current general conditions and limitations for eligibility for reimbursement from stating that a release must penetrate beyond the excavation zone of a tank system and the resulting contamination must be above "background" levels to state contamination must be above "action" levels as established by the executive director; eliminate sites deemed eligible for reimbursement with only minor amounts of contamination from being eligible for reimbursement, thus protecting the petroleum storage tank remediation (PSTR) fund for sites with more serious environmental problems that will require corrective action; require the application preparer, prime contractor, and/or prime corrective action specialist (consultant), and the owner and/or operator sign each application submitted for reimbursement; eliminate inadvertent, inappropriate claims and commit the legitimacy of each claim on both the owner and/or operator and their consultant/contractor; allow a person other than the owner or operator payment of funds who holds a security interest in a personal property or in a fixture that is not attached to the real estate or lienhold interest on the real

estate or fixture that is attached to the real estate; and require the execution of a contract of subrogation prior to the disbursement of payment.

Section 334.306 has been amended to state that an application for reimbursement must contain the signature of all of the following: the applicant, the application preparer, and the prime contractor and/or prime corrective action specialist, unless otherwise approved by the executive director.

Section 334.308 has been amended to: allow for reimbursement the cost to remove associated piping, pumps, and dispensers in accordance with applicable law when connected with a corrective action measure and conducted on or after October 1, 1992; not allow for reimbursement costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common carrier railroad; and specify that a spent oil tank and/or hydraulic lift system must have been used in conjunction with and contemporaneously with a vehicle service and fueling facility to be eligible for reimbursement.

Section 334.310 has been amended to require corrective plans to be preapproved in writing by the executive director prior to implementation of the plan to be eligible for reimbursement.

Section 334.313 has been amended to state that an application for reimbursement or supplemental application shall be subject to an audit by the executive director.

Section 334.314 has been amended to state that the applicant's consent form for the executive director's fund payment report may include the submission of a signed subrogation contract.

Section 334.319 has been amended to state a lender is not liable as an owner or operator if the lender has a security interest in a personal property or in a fixture that is not attached to the real estate or a lienhold interest on the real estate or fixture that is attached to the real estate.

Section 334.322 has been amended to define application preparer, contract of subrogation, corrective action plan, initial abatement measures, prime contractor, and prime corrective action specialist.

The amendments are adopted on an emergency basis under House Bill 1588 (71st Legislature, 1989) and House Bill 1214 (72nd Legislature, 1991), which require TWC to establish a groundwater protection program, and to implement a reimbursement program to responsible parties who clean-up sites on their own initiative; and the Texas Water Code, §§5.103 and §5.105, which provides

TWC with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§334.302. General Conditions and Limitations Regarding Reimbursement-Interim Period.

(a) In order to be considered for reimbursement under this subchapter, corrective action must be performed either as provided in subsection (b) of this section or in response to a release which:

(1) results in contamination which penetrates beyond the excavation zone of the tank system and which is above action levels established by the executive director [background levels]; and

(2) (No change.)

(b)-(c) (No change.)

(d) No expenses for which reimbursement is claimed under this subchapter and no expenses which are to be applied to the owner/operator contribution shall be subject to reimbursement or applied to the owner/operator contribution unless the following conditions have been met.

(1) (No change.)

(2) Unless otherwise approved by the executive director, a certification affidavit as provided in the application for reimbursement must be signed by all of the following: owner or operator of a petroleum storage tank, the application preparer, and the prime contractor and/or the prime corrective action specialist, as defined in §334.322 of this title (relating to Subchapter H Definitions).

(3)[(2)] The application has been filed within the time prescribed in §334.303 of this title (relating to Time to File Application-Interim Period).

(4)[(3)] the person seeking reimbursement must be an eligible owner or operator, as defined in §334.322 and §334.310 of this title (relating to Subchapter H Definitions and Requirements for Eligibility-Interim Period) or they must be authorized by an eligible owner or eligible operator to receive such payment pursuant to subsections (i), (j), and (k) of this section.

(5)[(4)] the expenses for which reimbursement is sought, and those which are to be applied to the owner/operator contribution must be allowable costs, as defined in §334.308 of this title (relating to Allowable Costs-Interim Period).

(6)[(5)] The allowable costs for which reimbursement is sought and those which are to be applied to the owner/operator contribution must be reasonable, as defined in §334.309 of this title (relating to Reasonable Costs-Interim Period).

(7)[(6)] An application for reimbursement has been filed in accordance with this subchapter which contains the information required by this subchapter.

(e)-(j) (No change.)

(k) No payment of funds will be made to any person other than the owner or operator under this subchapter except as follows:

(1) the person authorized to accept payment on behalf of an owner or operator is:

(A) (No change.)

(B) a person who holds a security interest in personal property or in fixture that is not attached to the real estate or lienhold interest on the real estate or fixture that is attached to the real estate [security interest in the property] where the release occurred and on which the claim for payment is based;

(C)-(D) (No change.)

(2) (No change.)

(1) The executive director may require the execution of a contract of subrogation prior to the disbursement of payment.

§334.306. Form and Contents of Application-Interim Period.

(a) (No change.)

(b) The application shall contain the following:

(1) the name, address, [and] telephone number, and signature of all of the following: the applicant, the application preparer, and the prime contractor and/or prime corrective action specialist required by §334.302, of this title (relating to General Conditions and Limitations Regarding Reimbursement-Interim Period), unless otherwise approved by the executive director;

(2)-(9) (No change.)

(c)-(f) (No change.)

§334.308. Allowable Costs-Interim Period.

(a)-(b) (No change.)

(c) Allowable costs shall include, but not be limited to, the following:

(1)-(11) (No change.)

(12) removal, transport, and disposal of the components of the underground or aboveground tank, excluding associated piping, pumps, and dispensers, in accordance with applicable law when connected with a corrective action measure and conducted prior to October 1, 1992;

(13) removal, transport, and disposal of the underground or aboveground tank, including associated piping, pumps, and dispensers, in accordance with applicable law when connected with a corrective action measure and conducted on or after October 1, 1992;

(14)[(13)] permanent abandonment in place of a tank system where abandonment in place rather than tank system removal is deemed by the executive director to be necessary to avoid destruction of substantial or significant surface improvements;

(15)[(14)] temporary relocation of utility structures when necessary to the performance of corrective action;

(16)[(15)] preparation of technical reports required pursuant to the requirements of Subchapter D of this chapter (relating to Reporting of Releases and Corrective Action);

(17)[(16)] the fair market value of access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;

(18)[(17)] the reasonable value of necessary time spent by the applicant in planning and administering his own corrective action plan;

(19)[(18)] performance of any corrective action measure which is specifically required by an order of the commission or a written request or confirmation of the executive director on or after September 1, 1987;

(20)[(19)] state and federal sales taxes applicable to items which are otherwise allowable costs under this section;

(21)[(20)] interest on the monies expended for an item of corrective action, provided that:

(A) the interest costs were incurred on expenses which themselves are allowable costs under this section;

(B) the interest costs were incurred on expenses which themselves are reasonable costs under §334.309 of this title

(relating to Reasonable Costs-Interim Period);

(C) the rate of interest which may be reimbursed shall be the lesser of:

(i) the actual rate of interest incurred; or

(ii) a rate which does not exceed an amount that is 2.0% higher than the New York prime rate on the date which the corrective action item for which interest is claimed is approved for payment under §334.314 of this title (relating to Executive Director's Fund Payment Report-Interim Period);

(D) the only interest allowable is the interest which accrues on a corrective action item on or after the day on which the item itself is approved for payment under §334.314 of this title (relating to Executive Director's Fund Payment Report-Interim Period); and

(E) any interest claim for an item under this subsection shall be in lieu of all interest which may be claimed under the Texas Water Code, §26.3573, and Texas Civil Statutes, Article 601f on that same item; and

(22)[(21)] any other costs determined by the executive director to be allowable in accordance with the provisions of this subchapter.

(d) The following types of costs are those which will not be considered allowable costs under this subchapter:

(1)-(2) (No change.)

(3) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when removed prior to October 1, 1992;

(4)[(3)] loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under this subchapter;

(5)[(4)] decreased property values;

(6)[(5)] bodily injury or property damage;

(7) [(6)] attorney's fees;

(8)[(7)] any costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this subchapter;

(9)[(8)] the costs of making improvements to the facility beyond those that are required for corrective action;

(10)[(9)] costs associated with contamination assessments performed for

any purpose where no release of petroleum is discovered, except when the contamination assessment has been ordered by the commission;

(11)[(10)] costs of compiling and storing records relating to costs of corrective action;

(12) [(11)] costs of corrective action taken in response to the release of a substance which is not a petroleum product as defined in §334.322 of this title (relating to Subchapter H Definitions);

(13)[(12)] costs of tank integrity testing when it is not specifically required by this chapter, requested by the executive director, or ordered by the commission;

(14)[(13)] costs of any corrective action incurred by an owner or operator on or after the date that the executive director commences corrective action at the owner's or the operator's facility pursuant to §334.321 of this title (relating to Corrective Action by the Commission-Interim Period); unless authorized in writing by the executive director; [and]

(15) costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common carrier railroad; and

(16)[(14)] any activities, including those required by this chapter, which are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste.

(e)-(f) (No change.)

(g) The costs of abating the release from the spent oil tank and the costs of removal, transport, and disposal of the tank, including (on or after October 1, 1992) [excluding] associated piping and equipment, are the only allowable costs in situations where:

(1)-(2) (No change.)

(h) In addition to other requirements, no corrective action costs connected with the release of spent oil shall be allowable unless the spent oil was released from a tank located at a vehicle service and fueling facility, nor shall any costs connected with the release of hydraulic fluid be allowable unless the hydraulic fluid was released from a hydraulic lift system located at a vehicle service and fueling facility. The spent oil tank and/or hydraulic lift system must have been used in conjunction with and contemporaneously with a vehicle service and fueling facility.

§334.310. Requirements for Eligibility-Interim Period.

(a) In order for a person to be an eligible owner or operator under this

subchapter the following requirements must be met.

(1) He/she [The Person] must meet the other requirements of this chapter and must be:

(A) -(F) (No change.)

(2)-(4) (No change.)

(b)-(e) (No change.)

(f) Unless otherwise approved by the executive director, all remedial activities proposed in corrective action plans must be approved in writing by the executive director prior to implementation of the plan. Reimbursement claims submitted for preapproved corrective action plans will receive priority over reimbursement claims submitted for corrective action plans which were implemented without preapproval. For reimbursement of emergency, initial abatement measures and free-product recovery as required by §334.77 of this title (relating to Initial Abatement Measures and Site Check), approval by the executive director is not required prior to implementation, unless the emergency action extends beyond 48 hours, then written approval will be required for all activities with the exception of continuous free-product recovery.

§334.313. Review of Application by Executive Director-Interim Period.

(a)-(d) (No change.)

(e) An application for reimbursement or supplemental application filed under this subchapter shall be subject to audit by the executive director.

§334.314. Executive Director's Fund Payment Report-Interim Period.

(a) (No change.)

(b) The applicant shall review the fund payment report and shall file a written response with the executive director within 45 days of receipt of the report. The response shall be on a form provided or approved by the executive director. The applicant may consent or object to all or any part of the report. If the executive director has not received a response from the applicant within 45 days from the date on which the applicant received the report, the following shall occur:

(1) all claims approved for reimbursement in the fund payment report shall be eligible for payment, provided a signed subrogation contract is submitted, when required;

(2)-(3) (No change.)

(c) (No change.)

(d) Any item recommended for payment in the fund payment report to which the applicant consents by filing a timely response to the fund payment report shall be eligible for reimbursement when the executive director receives the applicant's consent form, which may include the submission of a signed subrogation contract. The consent of the applicant to any item recommended for payment shall mean that any claim covered by that item is considered satisfied in full.

(e)-(f) (No change.)

§334.319. Administrative Penalties and Other Actions-Initial Period.

(a) (No change.)

(b) Notwithstanding subsection (a) of this section, a lender, as defined in §334.322 of this title (relating to Subchapter H Definitions), is not liable as an owner or operator under this subchapter solely because the lender holds indicia of ownership to protect a security or lienhold interest in property. A lender is not liable under this subsection if:

(1) the lender has a security interest in a personal property or in a fixture that is not attached to the real estate or a lienhold interest on the real estate or fixture that is attached to the real estate [or lienhold interest] as security for a loan to finance the acquisition or development of property, to finance the removal, repair, replacement, or upgrading of a regulated tank, or to finance the performance of corrective action in response to a release of a regulated substance from a tank, and the security or lienhold interest is in:

(A)-(C) (No change.)

(2) (No change.)

(c)-(g) (No change.)

§334.322. Subchapter H Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Application preparer-As used in this subchapter means any person responsible for preparing the application for reimbursement.

Contract of subrogation-As used in this subchapter means a document of agreement between the executive director and the eligible tank owner and operator which authorizes the executive director to recover costs reimbursed from persons who performed corrective action activities at LPST sites.

Corrective action plan (remedial action plan)-As used in this subchapter means a detailed plan developed to ad-

dress site remediation of soil and/or groundwater contamination that provides for adequate protection of human health, safety, and the environment. The selection of the most effective and efficient remedial method will be dictated by the nature and location of the release, the site soils, hydrogeological conditions, and the required degree of remediation. The remedial method selection should take into consideration such factors as cost, time, liabilities, and state compliance requirements with each method. The title of any report which contains a corrective action plan must include the designation "remedial action plan."

Initial abatement measures—As used in this subchapter means the mitigation of all existing or potential fire, explosion, or vapor hazards including the removal of free product to provide adequate protection of human health, safety, and the environment in emergency situations or other situations where emergency actions must be implemented to prevent further impacts to the environment.

Prime contractor—As used in this subchapter means any natural person, firm, or any entity responsible for the contracting of any corrective action services.

Prime corrective action specialist—As used in this subchapter means a natural person, consulting firm, or any entity engaging in corrective action services, or acting as coordinator of others engaged in corrective action services.

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Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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For further information, please call: (512) 463-8069

Subchapter K. Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Media

• 31 TAC §§334.481-334.506

The Texas Water Commission adopts on an emergency basis the repeal of §§334.481-334.482 and new §§334.481-334.506, concerning storage, treatment and reuse procedures for petroleum-substance contaminated soils. This amended subchapter is adopted on an emergency basis; in the near future the TWC intends to propose the permanent adoption of these rules.

The new rules will replace the present Subchapter K. Their purpose is to enhance the implementation of House Bills 1588,

adopted by the 71st Legislature in 1989, and 1214, adopted by the 72nd Legislature in 1991. Pursuant to House Bill 1588 and House Bill 1214, the Texas Water Commission established a program to regulate underground and aboveground storage tanks. The new rules will provide guidance for persons responsible for contamination resulting from underground and aboveground storage tanks, as well as for persons who are in the business of operating soil treatment, storage, and recycling facilities. Subchapter K establishes criteria for the registration of such facilities, and prescribes minimum operating standards for the facilities.

Today's new rules are written under authority of the Texas Water Code, Chapter 26 et seq (Vernon Pamphlet 1992) (Code). They were prompted by three concerns. First, there is a growing problem statewide concerning the ultimate disposition of the contaminated soils left behind when a responsible party performs corrective action at a leaking petroleum storage tank site. The soil left in the ground after an underground tank or aboveground tank is removed is almost always contaminated. TWC rules normally require cleanup of contaminated soils. If cleanup cannot be accomplished by treating the contaminated soil in place, then the soil is usually hauled to a landfill. But merely taking the problem from point A to point B is no solution. Not only are the costs of hauling soil to landfills increasing (and further draining an already depleted Petroleum Storage Tank Remediation Fund), once at the landfill, the contaminated soil is not treated. Thus the environmental hazard remains. Subchapter K, provides a mechanism for eliminating the environmental hazard by allowing responsible parties to clean the contaminated soil. With the adoption of these rules, thousands of tons of heretofore harmful waste will be converted into nearly harmless dirt.

Second, at present there are very few standards in place to govern the operation of soil treatment, storage, and recycling facilities. Because so many individuals and organizations conduct treatment, storage and recycling operations without substantial guidance from the agency, wide variations in treatment techniques, treatment effectiveness, and facility standards exist. Tank owners and operators often find it difficult to locate responsible, competent soil treatment services. With the adoption of these rules, the staff of the TWC hopes to provide the mechanism that will allow owners and operators to evaluate the many treatment, storage, and recycling facilities on the market, for the benefit not only of the owners/operators, but for all Texans and the environment.

Third, this subchapter is intended to allow public input into the process by which soil treatment, storage and recycling facilities are registered. Members of the public have legitimate concerns about the location of soil treatment facilities and the standards to which such facilities must adhere. The new Subchapter K rules require persons who apply for registration certificates for soil treatment facilities to hold public meetings prior to commission consideration of their applications. The purpose of the public meeting is twofold: it is informational, intending to give

interested individuals background on the nature of the problem associated with petroleum contaminated soils, and a description of the proposed solution; and, the public meeting is also an open forum, where citizens may voice their concerns about the applicant's facility, including the treatment standards, and the impact of the facility on their community.

Because there are few standards in place to govern the operations of soil treatment and storage facilities, an imminent threat or peril to human health and the environment exists from facilities that are not operated safely and efficiently. As of this writing there are approximately 85 facilities registered under commission rules to treat petroleum-substance contaminated waste. The staff regularly receives new applications.

These facilities present an imminent threat to the environment not only because there are no standards to regulate their storage and treatment processes; but also because the TWC currently has no mechanism for tracking the origin or transportation of soils received and treated by facilities in Texas. In other words, there is currently no provision for the cradle to grave tracking of potentially harmful and sometimes ineligible wastes that are received by soil treatment facilities. It must be stressed that this subchapter is intended to regulate facilities that are authorized only to treat petroleum-substance contaminated soils. These facilities are prohibited from receiving and treating hazardous wastes.

As more and more landfills close their doors to PST waste, and the need for alternative means of disposing and remediating contaminated soils becomes apparent, the staff anticipates that the number of applications for registration under this subchapter will increase dramatically. These new rules are necessary to implement a viable, efficient, and environmentally safe program for treating and recycling petroleum contaminated soils. Consequently, the commission has decided to adopt these rules on an emergency basis.

The new sections are adopted on an emergency basis under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, and House Bill 1214, 72nd Legislature, 1991, which provides the Texas Water Commission with the authority to establish a program to regulate underground and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund, and under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve any general policy of the commission.

§334.481. *Definitions.*

§334.482. *General Prohibitions.*

§334.483. *Disposal by Generator.*

§334.484. *Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.*

§334.485. *Authorization for Class C and Class D Facilities.*

§334.486. *Exemptions.*

§334.487. *Notification and Mobilization Requirements for Class B Facilities.*

§334.488. *Effect on Existing Facilities.*

§334.489. *Public Notice.*

§334.490. *Public Meetings.*

§334.491. *Closure and Facility Expansion.*

§334.492. *Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities.*

§334.493. *Shipping Procedures Applicable to Generators of Petroleum-Substance Waste.*

§334.494. *Recordkeeping and Reporting Procedures Applicable to Generators.*

§334.495. *Shipping Requirements for Transporters of Petroleum-Substance Waste.*

§334.496. *Shipping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities.*

§334.497. *Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities.*

§334.498. *Additional Reports.*

§334.499. *Design and Operating Requirements of Stockpiles and Land Surface Treatment Units.*

§334.500. *Reuse of Petroleum-Substance Waste.*

§334.501. *Contaminant Assessment Program and Corrective Action.*

§334.502. *Security.*

§334.503. *Contingency Plan.*

§334.504. *Emergency Procedures.*

§334.505. *Closure for Class A and Class B Facilities.*

§334.506. *Financial Assurance.*

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§334.481. *Definitions.* Except as provided in this subsection, the words and terms used in this subchapter, shall have the meanings prescribed in §334.2 of this title (relating to Definitions), unless the word or term is redefined in this subchapter, or unless the context clearly indicates otherwise.

Aboveground storage tank—A nonvehicular device (including any associated piping) that is made of nonearthen materials: located on or above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of petroleum products.

Active life—The period from the initial receipt of waste at the facility until the executive director receives certification of final closure.

Active portion—That portion of a facility where treatment, or storage operations are being or have been conducted and which is not a closed portion. (See also "closed portion" and "inactive portion.")

Activities associated with the exploration, development, and production of oil or gas or geothermal resources—Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Texas Railroad Commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United State Environmental Protection Agency pursuant to the Federal Solid Waste Disposal Act, as amended (42 United State Code, §6901 et seq)

Active geologic processes—Any natural process which alters the surface and/or subsurface of the earth, including, but not

limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.

Affidavit—The petroleum-substance waste affidavit form furnished by the executive director to accompany shipments of petroleum-substance waste in order to track the movement and transference of petroleum-substance waste.

Application—Commission forms or other commission-approved writing on which an executive director registration is requested.

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding groundwater to wells or springs.

Area subject to active shoreline erosion—A coastal area where shoreline erosion has been documented within historic time.

Areal expansion of an existing facility—The enlargement of a land surface area of an existing petroleum-substance waste management facility from that described in a petroleum-substance waste registration.

Areas of direct drainage—Those land areas from which surface water runoff could flow into a lake or other surface water used to supply public drinking water.

Authorized—Allowed in writing, by executive director registration, by order, by permit, by license, or by rule.

Authorized Representative—The person designated by the owner or operator to represent the facility or the person designated by the waste generator as the generator's representative.

Class A facility—A facility which will at any time store or treat petroleum-substance contaminated soils generated from more than one LPST site.

Class B facility—A mobile treatment unit which will treat petroleum-substance waste from only one LPST site at a time at that LPST site. The petroleum-substance wastes treated at that site shall have originated from that site.

Class C facility—A facility located elsewhere than the LPST site but which will store or treat petroleum-substance waste generated from only that one LPST site.

Class D facility—A facility located at the LPST site which will store or treat the petroleum-substance waste generated from only that site.

Closed portion—That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

Contingency plan—A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of waste or waste constituents which could threaten human health and safety or the environment.

Critical habitat of an endangered species—An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

Designated facility—The authorized storage, treatment, or disposal facility that has been designated on the petroleum-substance waste affidavit by the generator.

Discharge—The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste (whether containerized or noncontainerized) into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwater.

Disposal facility—A facility or part of a facility at which waste is intentionally placed into or on any land or water or adjacent to any water, and at which such wastelremain.

Effective substitute—A substance which may be used in the place of another substance for the same purpose without creating adverse environmental conditions.

Erosion—The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

Existing portion—That land surface area of an existing waste management unit, on which wastes have been placed prior to the issuance of a registration.

Existing petroleum—Substance waste management facility—Any facility used for the storage or treatment of petroleum-substance waste and which is subject to authorization by a TWC registration prior to the effective date of this subchapter.

Facility—Includes structures, other appurtenances, and improvements on the land for storing or treating petroleum-substance waste. A facility may consist of several storage or treatment operational units. A facility may also be a mobile treatment unit.

Facility Operator—The person responsible for the overall operation of a facility or an operation unit (i.e., part of facility), e.g., the plant manager, superintendent, or person of equivalent responsibility for the regulated activity.

Facility owner—The person who owns a facility or part of a facility.

Final closure—The closure of all waste management units at the facility in accordance with all applicable closure requirements so that waste management activ-

ities are no longer conducted at the facility unless subject to the provisions of this title.

Generator—Any person who produces petroleum-substance waste; any person who stores or treats petroleum-substance waste; any person who possesses petroleum-substance waste to be shipped to any other person; or any person whose act first causes the petroleum-substance waste to become subject to regulation under this subchapter.

Groundwater—Water below the land surface in a zone of saturation.

Hazardous waste—Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq, as amended.

Inactive portion—That portion of a facility which is not operated. (See also "active portion" and "closed portion".)

In operation—Refers to a facility which is treating or storing petroleum-substance waste.

In-situ treatment—The reduction of contaminant levels in soil or groundwater which is conducted without removing the contaminated media from the ground.

Interim registration—Authorization for a storage or treatment facility received by the facility up to the effective date of this subchapter.

Land disposal facility—Any landfill, surface impoundment, waste pile, injection well, or other facility at which waste is finally disposed.

Land surface treatment facility—A facility, unit, or part of a facility at which waste is applied onto a liner on the soil surface during treatment.

Leaking petroleum storage tank (LPST) site—A site at which a confirmed release of a petroleum substance from an underground or aboveground storage tank has occurred. Petroleum-substance contamination which results from multiple sources may be deemed as one LPST site by the executive director.

Liner—A continuous layer of man-made materials, beneath and on the sides of a surface area which restricts the downward and lateral escape of waste, waste constituents, or leachate.

Management—The systematic control of the collection, storage, transportation, processing, reuse, treatment, recovery, and disposal of waste.

New petroleum-substance waste management facility—Any facility to be used for the storage or treatment of petroleum-substance waste and which is not an existing petroleum substance waste management facility.

One hundred-year floodplain—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

On-site—The same or geographically contiguous property which may be divided by public or private rights-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access, is also considered on-site property.

Operator—Any person in control of or having responsibility for, the daily operation of an underground or aboveground storage tank system.

Owner—Any person who currently holds legal possession or ownership of a total or partial interest in the underground storage tank system. For the purposes of this chapter, where the actual ownership of an UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the UST is located shall be considered the UST system owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the UST system is owned by others. "Owner" does not include a person who holds an interest in an UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the UST system.

Partial closure—The closure of a petroleum-substance waste management unit in accordance with the applicable closure requirements at a facility that contains other active petroleum-substance waste management units.

Person—Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

Personnel or facility personnel—All persons who work at or oversee the operations of a waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of this subchapter.

Petroleum substance—A crude oil or any refined or unrefined fraction or derivative or crude oil which is liquid at standard conditions of temperature and pressure. For the purposes of this subchapter, a "petroleum substance" shall be limited to one or a combination of the substances or mixtures in the following list except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code, §6921, et seq):

(A) basic petroleum substances—Crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(B) motor fuels—see definition for "motor fuel" in §334.2 of this chapter (relating to Definitions);

(C) aviation gasolines—Grade 80, Grade 100, and Grade 100-LL;

(D) aviation jet fuels—Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(E) distillate fuel oils—Number 1-D, Number 1, Number 2-D, and Number 2;

(F) residual fuel oils—Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(G) gas-turbine fuel oils—Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(H) illuminating oils—Kerosene, mineral seal oil, longtime burning oils, 300 oil, and mineral colza oil;

(I) solvents—Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane;

(J) lubricants—Automotive and industrial lubricants;

(K) building materials—Liquid asphalt and dust-laying oils;

(L) insulating and waterproofing materials—Transformer oils and cable oils;

(M) used oils—See definition for "used oil" in §334.2 of this chapter (relating to Definitions);

(N) any other petroleum-based material having physical and chemical properties similar to the above materials and receiving approval by the executive director for designation as a petroleum substance.

Petroleum substance waste—Any waste, excluding hazardous waste and liquid wastes, which is generated as a result of a release of a petroleum substance from an underground storage tank or a petroleum product from an aboveground storage tank regulated by the commission pursuant to the Texas Water Code, Chapter 26, Subchapter I.

Public water system—A system for the provision to the public of piped water for human consumption, if such system has

at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year.

Registration—Written authorization issued by the executive director, which, by its conditions, may authorize the registrant to construct, install, modify, or operate a petroleum-substance waste storage or treatment facility or unit in accordance with specified limitations.

Representative sample—A sample of a universe or whole (e. g., waste pile, groundwater) which can be expected to exhibit the average properties of the universe or whole.

Reuse of petroleum-substance wastes—The process by which a petroleum-substance waste is utilized as an effective substitute for a commercial product, such as the proper use as a component of stabilized road base or use as fill for LPST tankholds.

Run-off—Any rainwater, leachate, or other liquid that drains over or into land from any part of a facility, land surface treatment unit, or stockpile.

Run-on—Any rainwater, leachate, or other liquid that drains over land onto or into any part of a facility, land surface treatment unit, or stockpile.

Saturated zone or zone of saturation—That part of the earth's crust in which all voids are filled with water.

Secondary containment—A system designed and constructed to collect rainfall run-on and to contain spills, leaks, or discharges within the facility until such waste can be removed.

Shipment—Any action involving the conveyance of petroleum-substance waste by any means off-site from the generating site.

Sole-source aquifer—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the United States Environmental Protection Agency. The Edwards Aquifer Recharge and Transition Zones are specifically those areas delineated on maps in the offices of the executive director.

Spill—The spilling, leaking, pumping, emitting, emptying, or dumping of wastes or materials which, when spilled, become wastes into or on any land or water.

Storage—The holding of petroleum-substance waste for a temporary period, prior to the final treatment, disposal, reuse, or storing of the waste elsewhere.

Stockpile—A soil storage area from which all petroleum-substance wastes are removed for treatment or final disposition and from which all wastes are removed at the time of closure of the facility.

Thermal treatment unit—An enclosed device using controlled flame combustion, microwave, UV, infrared, or other thermal treatment process.

Treatment—Methods which are designed to change, by physical, chemical, or biological means, the levels of contamination of the waste in order to render the waste suitable for reuse or disposal. The term treatment does not include the reduction of contaminant levels by dilution.

Treatment facility—A facility or unit which treats or reuses petroleum-substance wastes.

Transporter—Any person who conveys or transports petroleum-substance waste by truck, ship, pipeline, or other means.

Underground storage tank—Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is ten percent or more beneath the surface of the ground.

Unsaturated zone or zone of aeration—The zone between the land surface and the water table.

Uppermost aquifer—The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

Waste management area—Any area on which one or more waste management units resides.

Waste management unit—A contiguous area of land on or in which waste is placed, or a structure or machine used to store or treat waste. Examples of waste management units include a waste stockpile, a land surface treatment area, a thermal treatment unit, a stockpile, a tank and its associated piping and underlying containment system, and a container storage area.

Wetlands—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§334.482. General Prohibitions.

(a) No person may cause, suffer, allow, or permit the storage, treatment or disposal of petroleum-substance waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge into or adjacent to the waters in the state without obtaining specific written authorization for such discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance;

(3) unauthorized releases of contaminants to the air; or

(4) the endangerment of the public health and welfare.

(b) No person may conduct storage or treatment of contaminated media that is not a petroleum-substance waste at a Class A or Class B facility except as authorized by the executive director or by other appropriate regulations.

§334.483. *Disposal by Generator.* A generator of petroleum-substance waste may not finally dispose of petroleum-substance waste at a site or facility unless the site or facility is authorized to receive such wastes pursuant to one of the following:

(1) permit issued by the commission pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) or Chapter 330 (relating to Municipal Solid Waste Management);

(2) authorization issued jointly by the Texas Railroad Commission and the commission for a facility currently permitted by the Railroad Commission; or

(3) §334.500 (relating to Reuse of Petroleum-Substance Waste)

§334.484. *Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.*

(a) A person shall submit the required application and receive the appropriate registration issued after the effective date of these rules prior to storing or treating petroleum-substance wastes at a new Class A facility or treating soil utilizing a new Class B waste management facility.

(b) A person may not commence physical construction of a new Class A or utilize a Class B petroleum-substance waste management facility without first having submitted the required application and received the appropriate registration unless otherwise authorized by the executive director.

(c) Any person who intends to store or treat petroleum-substance waste at a Class A or Class B facility after the effective date of this subchapter shall submit an application for registration on a form approved by the executive director. Such person shall submit information to the executive director which is sufficiently detailed and complete to enable the commission to determine whether such storage or treatment is compliant with the terms of this subchapter. Such information shall include, at a minimum:

(1) information concerning the location of the facility;

(2) identification of the facility owner, facility operator, and landowner;

(3) the job descriptions of all key operating personnel;

(4) documentation on the proposed access routes to the facility, proposed daily volumes of traffic associated with the facility, and confirmation on the suitability of roads leading to the facility;

(5) waste storage, management, handling, and shipping methods;

(6) waste treatment methods;

(7) waste sampling and analytical methods;

(8) disposition or reuse documentation;

(9) recordkeeping requirements;

(10) security and emergency procedures;

(11) facility closure specifications;

(12) facility plans and specifications;

(13) site maps and vicinity maps;

(14) documentation on the land use in the vicinity of the facility;

(15) identification of all potential contaminant receptors in the vicinity;

(16) documentation on the financial assurance required;

(17) documentation on all required restrictive easements;

(18) the geology and hydrogeology where the facility is located;

(19) documentation on the effectiveness of the treatment method;

(20) documentation of the receipt of any additional authorization required by any other federal, state, or local regulatory agency; and

(21) any other information as the executive director may deem necessary to determine whether the facility and operation thereof will comply with the requirements of this subchapter.

(d) If the applicant is other than an individual, the application shall be notarized and signed by the owner or operator of the facility, the president or chief executive officer of the company, or all the partners of the company.

(e) Any person who stores or treats petroleum-substance waste shall have the continuing obligation to immediately provide written notice to the executive director

of any changes or additional information concerning the information submitted to the commission or activities authorized in any registration within fifteen days of the change or from acquiring the additional information.

(f) Any information provided under this subsection shall be submitted to the executive director's office in Austin and to the appropriate district office.

(g) The duration of a registration shall be no longer than five years.

(h) The facility owner or operator shall submit a renewal application at least sixty days prior to the end of the five-year registration period on forms approved by the executive director.

(i) The registration is not transferable to any other facility or facility owner. Any transfer of ownership shall require re-registration of the facility. However, re-registration of a facility shall not relieve the transferor of any liability.

§334.485. Authorization for Class C and Class D Facilities. Authorization for Class C and Class D facilities is issued by the executive director when the LPST site is subject to a corrective action plan involving storage and treatment activities pursuant to §334.81 of this title (relating to Corrective Action Plan). Executive director approval of the corrective action plan for the storage or treatment activities shall constitute authorization for the Class C or Class D facility. A Class C or Class D storage or treatment facility shall remain in operation only as long as is necessary to store or treat the soil from that one LPST site and it shall not accept soil from any other site at any time. The underground or aboveground storage tank owner or operator shall ensure that the approved storage and treatment activities comply with the following applicable provisions of this title: §334.482 of this title (relating to General Prohibitions); §334.483 of this title (relating to Disposal by Generator); §334.487 of this title (relating to Notification and Mobilization Requirements for Class B Facilities); §334.491 of this title (relating to Closure and Facility Expansion); §334.493 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste); §334.494 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); §334.495 of this title (relating to Shipping Requirements for Transporters of Petroleum-Substance Waste); §334.496 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); §334.497 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); §334.498 of this title (re-

lating to Additional Reports); §334.499 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units); §334.500 of this title (relating to Reuse of Petroleum-Substance Waste); §334.502 of this title (relating to Security); §334.503 of this title (relating to Contingency Plan); and §334.504 of this title (relating to Emergency Procedures).

§334.486. Exemptions. The following are exempt from the requirements of this subchapter:

(1) facilities which operate under the jurisdiction of the Texas Railroad Commission or facilities permitted or regulated by rules promulgated under the Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code (Vernon Supplement); and

(2) LPST sites which treat petroleum-substance contaminated media if the media is treated in-situ in accordance with the provisions of Subchapter D of this chapter (relating to Release Reporting and Corrective Action.) Such sites, however, are not exempt from the provisions of §334.482 of this title (relating to General Prohibitions).

§334.487. Notification and Mobilization Requirements for Class B Facilities. In addition to the required registration pursuant to §334.484 of this title (relating to Registration Required for Petroleum-Substance Waste Storage and Treatment Facilities).

(1) The owner or operator of a Class B facility shall notify the appropriate commission district field office at least 48 hours in advance of moving the treatment unit to the LPST site.

(2) The owner or operator of the Class B facility shall notify the local fire marshal or other appropriate fire official at least 48 hours in advance of moving the treatment unit to the LPST site.

(3) The owner or operator of the underground or aboveground storage tank who intends to utilize a Class B facility at a particular LPST site shall obtain executive director approval pursuant to §334.81 of this title (relating to Corrective Action Plan).

(4) The Class B facility shall remain at the LPST site for only the time period necessary to complete the treatment, but no longer than thirty days unless written authorization is obtained from the executive director.

(5) The facility owner or operator shall provide notice to the public by means of posting signs at the LPST site at least fourteen days prior to moving the treatment unit onto the LPST site or within another timeframe as approved by the executive director. The signs shall be legible

from a distance of at least 25 feet and shall be posted at all entrances to the facility. The signs shall state "Public Notice of Petroleum-Substance Contaminated Soil Treatment", the name and phone number of the treatment facility owner, the name and phone number of the tank owner or operator, the registration number of the treatment facility, the type of soil treatment to be conducted, and the date(s) the treatment will be conducted.

§334.488. Effect on Existing Facilities.

(a) Any Class A or Class B facility which possesses or was required to possess an interim registration to store or treat petroleum-substance wastes shall apply for registration as specified in this subchapter within 90 days from the effective date of this subchapter. The owner or operator of a Class A facility shall comply with the provisions of providing public notice and a public meeting pursuant to §334.489 of this title (relating to Public Notice) and §334.490 of this title (relating to Public Meetings) within 90 days following the submittal of the application for registration. The owner or operator of the facility may continue the storage or treatment of petroleum-substance waste in accordance with the rules and regulations of the commission until such time as the executive director approves or denies the registration application.

(b) If in the opinion of the executive director, circumstances indicate the need for more expeditious action, the executive director may insist on submission of the application sooner than 90 days. If the applicant cannot accommodate specified compliance deadlines, a written extension request shall be filed with the executive director at least 15 days prior to the compliance deadline. The extension request shall contain the reasons for the need for additional compliance time and an estimate of the additional time needed. The executive director may either grant the requested additional time, grant an extension which is less than the requested additional time, or reject the request depending upon the severity of the deficiency and the demonstrated compliance of the applicant. If storage or treatment facilities have not met the provisions of the registration and this subchapter on or before the established compliance deadline, the facility shall not receive or treat any additional petroleum-substance wastes for storage or treatment until the stated registration provisions have been fully met.

§334.489. Public Notice. The facility owner or operator shall provide notice to the general public regarding the location, construction, operation, and potential impacts of the storage or treatment facility.

(1) The facility owner or operator shall provide notice of the facility to the general public by means of a notice by publication and a notice by mail.

(2) The notice shall contain, at a minimum, the following information in accordance with forms approved by the executive director:

(A) the name, address, phone number, and contact person for the owner of the facility;

(B) the name, address, phone number, and contact person for the operator of the facility;

(C) the name, address, phone number, and contact person for the landowner (if different from the facility owner);

(D) the address and the legal description for the location of the facility;

(E) the date, time, and location of the public meeting to be held pursuant to §334.490 of this title (relating to Public Meetings);

(F) notice that an application for registration has been filed with the Texas Water Commission and notice of the application for any necessary permits or exemptions with the Texas Air Control Board;

(G) a complete description of the activities which will be conducted at the facility, including details on the construction of the facility, the soil storage methods, the soil treatment methods, the final disposition of the treated soils, and documentation on any points of discharge;

(H) the method for obtaining additional information on the facility.

(3) The notice by publication shall be published in a newspaper published daily, if available, and generally circulated in the county or area where the proposed facility is to be located and within each county or area wherein persons reside who would be affected by the facility. The notice shall be published at least 10 calendar days prior to the public meeting utilizing the form provided by the executive director.

(4) The notice by mail shall be sent to the following persons at least 10 calendar days prior to the public meeting:

(A) all adjacent landowners and all owners of property within 1,000 feet of the facility;

(B) the mayor and health authorities of the city in which the facility will be located, if applicable;

(C) the county judge and county health authority of the county in which the facility will be located;

(D) the appropriate state senator and representative for the area encompassing the facility; and

(E) all persons or organizations who have requested the notice or expressed interest in the facility. The executive director may designate persons or organizations in addition to those specified by the facility owner or operator.

(5) The facility owner or operator shall provide copies of each notice by mail and by publication and copies of the signed affidavits for the notices to the commission's Austin office, to the appropriate commission district field office, to the Texas Air Control Board, and to any other applicable governing agencies within five calendar days of publication and mailing.

§334.490. Public Meetings. The facility owner or operator, at their expense, shall schedule and hold a public meeting at a time and place which are convenient for the general public affected by the facility. The owner or operator shall coordinate the scheduling of the meeting with commission personnel to ensure the availability of commission personnel for the meeting. The meeting shall be open to the public to provide information on the proposed facility and to allow for comments by the public. The executive director will consider all comments relating to the requirements of this subchapter when determining the outcome of the registration application. The facility owner or operator shall confirm with the executive director on the time and place of the meeting at least 10 calendar days prior to the meeting.

§334.491. Closure and Facility Expansion. A person who stores or treats petroleum-substance waste at a Class A or B facility shall notify the executive director in writing of any closure activity or facility expansion not specifically stated in the original application for registration at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this subchapter and whether additional public notice should be conducted. Any information provided under

this subsection shall be submitted to the executive director's office in Austin and to the appropriate district field office.

§334.492. Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities.

(a) The commission shall not issue a registration for a Class A petroleum-substance waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

(1) flooding or active geologic processes such as erosion, subsidence, submergence and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge and aquifer recharge or discharge conditions;

(3) soil conditions such as stratigraphic profile, stratigraphic complexity, and hydraulic conductivity of strata;

(4) separation distance from the facility to the aquifer and to points of discharge to surface water; and

(5) climatological conditions.

(b) Class A storage or treatment facilities shall not be located:

(1) in the 100-year floodplain;

(2) in wetlands;

(3) on the recharge or transition zone of a sole-source aquifer;

(4) within 1,000 feet of an established residence, church, hospital, school, licensed day-care center, or dedicated public park;

(5) within 1,000 feet of any property owned by a person other than the facility owner unless a restrictive easement is obtained by the facility owner on the adjacent property to ensure that no residences, schools, churches, hospitals, licensed day-care centers, or dedicated public parks will be constructed within the easement.

(6) in areas of direct drainage within one-half mile of any surface water if the surface water is used to supply public drinking water through a public water system, unless it is designed, constructed, operated, and maintained to prevent any releases of contaminants from the facility;

(7) in the critical habitat of an endangered species of plant or animal;

(8) in an area where the roads leading to the facility which will be utilized to transport soil are not adequate to handle the anticipated traffic volume and load; or

(9) in an area where the roads leading to the facility are not designated public roads.

(c) The executive director shall determine whether the provisions of this subsection have been met. Nothing in this subchapter shall be construed to require the executive director to issue a registration notwithstanding a finding that the proposed facility would satisfy the requirement of §334.492 of this title (relating to Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities) and notwithstanding the absence of site characteristics which would disqualify the site from registration under this section.

(d) The executive director, may in his discretion, grant a variance for existing facilities of the requirements of subsection (b) of this section, relating to location requirements for Class A facilities. Before the executive director may grant a variance under this subsection, he shall require the applicant to demonstrate that the provisions of subsection (b) of this section are not necessary to ensure adequate protection of human health and the environment.

§334.493. Shipping Procedures Applicable to Generators of Petroleum-Substance Waste.

(a) No generator shall transport petroleum-substance waste from the generating site unless the waste has been properly sampled in order to determine the levels of all possible contaminants in the waste. Necessary documentation shall, at a minimum, consist of documentation on the sampling, handling, chain-of-custody documentation and copies of signed laboratory reports on samples collected from the specified wastes that contain results of analysis for:

(1) the major components of the petroleum-substance waste such as benzene, toluene, ethylbenzene, total xylenes, and total petroleum hydrocarbons or the major components of total petroleum hydrocarbons; and

(2) any other contaminants as specified by the executive director based on specific conditions of the generating site.

(b) No generator of petroleum-substance waste shall allow the transport of such wastes to an off-site waste storage, treatment, reuse, or disposal facility or area within the United States unless the following requirements are met:

(1) a Texas Water Commission (TWC) petroleum-substance affidavit is prepared with all applicable information by the generator;

(2) the receiving state's manifest or a TWC waste affidavit if the receiving state does not provide a manifest is prepared;

(3) the generator designates on the affidavit at least one facility or area legally authorized to receive the waste. A generator may also designate one alternate facility or area which is legally authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. If the transporter is unable to deliver the waste to either the designated facility or the alternate facility, the generator shall either immediately designate another facility for receipt or instruct the transporter to immediately return the waste. Upon such redesignation by the generator, the generator shall immediately prepare an amended waste affidavit.

(c) At the time of waste transfer, the generator or generator's authorized representative shall:

(1) sign the affidavit by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the affidavit;

(3) retain one copy, in accordance with §334.494 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); and

(4) give the transporter the remaining copies of the affidavit.

§334.494. Recordkeeping and Reporting Procedures Applicable to Generators. Each generator, excluding transporters and shippers, of petroleum-substance waste shall comply with the following.

(1) The generator shall keep records of all petroleum-substance waste activities regarding the quantities generated and shipped off-site for storage, treatment, or disposal and which, at a minimum, includes the information described in subparagraphs (A)-(D) of this section. The maintained records shall be retrievable, legible, and immediately available for inspection and copying by commission personnel. The required records shall be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to the following:

(A) the description, character and classification of each waste;

(B) the quantity of waste and the date(s) it was generated;

(C) identification of the generating location and the tank owner or operator;

(D) the methods of storage, treatment, or disposal;

(E) the quantity and date(s) the waste was shipped off-site for storage, treatment, or disposal including the name, address and location of each off-site facility and transporter receiving shipments.

(2) The generator shall retain a legible copy of each waste affidavit required by §334.493 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste) for a minimum of five years from the date of shipment by the generator.

(3) A generator of petroleum-substance waste shall keep records of all test results, waste analyses, or other determinations made for at least five years from the date that the waste was last sent to an off-site storage, treatment, disposal, or reuse area or facility.

(4) A generator who does not receive a copy of the affidavit with the handwritten signature of the owner or operator of the designated facility within 35 days from the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the petroleum-substance waste.

(5) A generator shall submit an exception report to the executive director if the generator has not received a copy of the affidavit with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report shall be retained by the generator for at least five years from the date the waste was accepted by the initial transporter and shall include:

(A) a legible copy of the affidavit for which the generator does not have confirmation of delivery; and

(B) a legible copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the waste and the results of those efforts.

(6) The periods of record retention required by this subsection may be extended by the executive director during the course of any unresolved enforcement action regarding the regulated activity.

§334.495. Shipping Requirements for Transporters of Petroleum-Substance Waste.

(a) No transporter shall ship petroleum-substance waste to an off-site storage, treatment, or disposal facility, unless the transporter:

(1) obtains an affidavit completed by the generator where appropriate in accordance with §334.493 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste); and

(2) upon receipt and prior to shipment, signs and dates the affidavit acknowledging the acceptance of waste from the generator where appropriate.

(b) The transporter shall ensure that the affidavit accompanies the petroleum-substance waste.

(c) No transporter shall deliver a shipment of petroleum-substance waste to another transporter designated on the affidavit, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the affidavit; and

(2) gives the legible copies of the affidavit to the accepting transporter.

(d) No transporter shall deliver a shipment of petroleum-substance waste to a storage, treatment, or disposal facility, unless the transporter:

(1) obtains the date of delivery and the handwritten signature on the affidavit of the owner or operator of the facility designated on the affidavit; and

(2) gives the copies of the affidavit to the owner or operator of the storage or treatment facility designated on the affidavit, or for shipments to disposal facilities, returns the copies to the generator.

(e) The transporter shall deliver the entire quantity of petroleum-substance waste which the transporter has accepted from a generator or a transporter to:

(1) the designated facility listed on the affidavit;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) the next designated transporter.

(f) If the transporter cannot deliver the waste in accordance with subsection (e) of this section, the transporter shall immediately contact the generator for further directions and shall revise the affidavit according to the generator's instructions.

§334.496. Shipping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities.

(a) No owner or operator of a storage or treatment facility may accept delivery of petroleum-substance waste for storage or treatment unless:

(1) a PST-waste affidavit accompanies the shipment which designates that facility to receive the waste;

(2) the facility owner or operator signs the affidavit and immediately gives at least one copy of the signed affidavit to the transporter;

(3) retains one copy of the affidavit in accordance with §334.497 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); and

(4) within 30 days after receipt of the waste, sends a copy of the affidavit to the generator;

(b) When a facility or reuse area receives petroleum-substance waste accompanied by an affidavit, the facility owner or operator, or his agent, or the owner of the property designated for the reuse area shall note any significant discrepancies on each copy of the affidavit.

(1) Significant discrepancies are differences between the quantity or type of waste designated on the affidavit and the quantity or type of waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis.

(2) Upon discovering a significant discrepancy, the facility owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the facility owner or operator shall, within five days, submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the affidavit at issue. The facility owner or operator shall ensure that the waste is a petroleum-substance waste acceptable by the facility and shall report any unreconciled discrepancies discovered during any analyses or evaluation.

(c) No owner or operator of a storage or treatment facility shall accept wastes from an out-of-state generator or location unless the following requirements are met:

(1) the waste is accompanied by legible copies of the signed TWC waste affidavits for all wastes received pursuant to §334.493 (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Wastes) or legible copies of the signed manifests issued by the generating state which clearly document the generator, the generating facility, the waste type, the contaminant levels, and the waste classification;

(2) the facility owner or operator obtains documentation that the wastes contain only petroleum-substance contami-

nation. This documentation shall consist of documentation on the sampling methods, sample handling, chain-of-custody documents, and legible copies of signed laboratory reports on samples collected from the specified wastes. The number of samples shall be sufficient to characterize the entire quantity of wastes. The analyses shall include:

(A) Volatiles and Semi-Volatiles by EPA Methods 8240 and 8250;

(B) TC-listed constituents as specified in 40 Code of Federal Regulations, Part 261;

(C) Organichlorine Pesticides and PCBs by EPA Method 8080; and

(D) any other analyses necessary to characterize the wastes or as specified by the executive director.

(3) The facility owner or operator obtains documentation from the appropriate governing agency in the originating state that the wastes are classified as non-hazardous and meet the definition of petroleum-substance wastes.

(e) The facility owner or operator shall not accept any wastes for storage or treatment from an in-state generator or location which contain any other contaminants above natural background levels other than petroleum substances as defined in this subchapter. Documentation of the contaminants in the waste shall consist of a sufficient number of samples to characterize the waste and the samples shall be analyzed for all constituents that may occur in that waste.

§334.497. Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities.

(a) All records required by this subchapter shall be retained by the facility owner or operator for a minimum of five years from the date of receipt of the waste. The records shall be maintained in a secure location on the premises of the storage or treatment facility and shall be immediately accessible by the facility owner and operator. In the event that copies of the required records cannot reasonably be maintained on the premises of the facility, then such records may be maintained at a readily-accessible alternate site, provided that the following conditions are met:

(1) if the facility is in operation, the records shall be readily accessible for reference by the facility owner and operator;

(2) the records shall be readily accessible and available for inspection and copying upon request by commission personnel;

(3) the facility owner or operator shall provide the following information in writing to the executive director and to the commission's appropriate district office:

(A) the specific location where the required records are maintained; and

(B) the name, address, and telephone number of the authorized custodian of the records;

(4) the written information required in paragraph (3) of this subparagraph shall be submitted with the application for registration and within 15 days after the records are moved to an alternate site from that specified in the registration.

(b) For facilities which have completed the closure requirements and are no longer in service, the facility owner may submit the appropriate records required by this subchapter to the executive director in lieu of maintaining the records on the premises or at an alternate site, provided that the following conditions are met:

(1) the facility owner shall provide written justification adequate to explain why the records cannot be maintained at a readily-accessible alternate site; and

(2) the records shall be submitted at one time in one package for each facility, and the records shall be appropriately labeled with the facility identification number and location information.

(c) A facility owner or operator who initiates a shipment of petroleum-substance waste from a treatment or storage facility shall comply with the generator standards contained in §334.493 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste) and §334.494 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators) and this subsection.

(d) The periods of record retention required by this subsection may be extended by the executive director during the course of any unresolved enforcement action regarding the regulated activity.

(e) The following information, at a minimum, shall be maintained by the facility owner or operator:

(1) documentation on all shipments of contaminated media received at the facility as specified on the waste affidavit;

(2) the method(s) of storage or treatment for all media received;

(3) the method of reuse or disposal of all wastes removed from the facility including:

(A) the location of final disposition;

(B) the quantity and contaminant levels of wastes placed at any and every location;

(C) the name, work address, and work phone number of the authorized representative for the receiving facility or location. If the receiving facility cannot be identified by street address, then other specifics shall be included to adequately identify the exact location;

(D) the name, work address, and work phone number of the authorized representative for the landowner at the receiving location;

(E) documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site;

(F) a detailed description of the reuse methods;

(G) the date(s) of transport off-site and the dates of reuse;

(H) legible copies of the authorization from the landowner at the receiving location pursuant to §334.500 of this title (relating to Reuse of Petroleum-Substance Waste).

(4) documentation on the operations at the facility, including:

(A) information on the actual treatment efficiency of the unit;

(B) documentation on the results of all air emissions monitoring;

(C) any changes in the operations at the facility;

(D) documentation on any releases, fires, or explosions and the measures taken to abate the situation;

(5) monitoring data under §334.501 of this title (relating to Contaminant Assessment Program and Corrective Action) when required;

(6) a summary of the types and volumes of any petroleum-substance waste received without affidavits. This documentation shall include the following information:

(A) the dates the facility received the wastes;

(B) the LPST or other identification number of the generating facility, and the names and addresses of the tank owner or operator and the transporter, if available;

(C) a description and the quantity of each petroleum-substance waste the facility received which was not accompanied by a PST-waste affidavit;

(D) the method of storage and/or treatment for each petroleum-substance waste;

(7) any other information deemed necessary by the executive director.

§334.498. *Additional Reports.* The owner or operator of a Class A or Class B facility shall report to the executive director within 24 hours of the occurrence any releases, fires, explosions, breakdowns, shutdowns, releases, or spills which result or may result in the discharge of any contaminants to the ground, surface water, or groundwater.

§334.499. *Design and Operating Requirements of Stockpiles and Land Surface Treatment Units.*

(a) A stockpile or land surface treatment unit located at any storage or treatment facility or at any LPST site shall have an appropriate means of preventing any discharge or release of petroleum-substance waste or petroleum-substance waste constituents into any media. This shall be accomplished with:

(1) a synthetic, impermeable liner that is designed, constructed, and installed to prevent any migration of petroleum-substance wastes out of the stockpile or land surface treatment unit into the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the stockpile, or land surface treatment unit. The liner shall be constructed of materials that do not allow petroleum-substance waste or petroleum-substance waste constituents to migrate into the liner itself or into the adjacent subsurface soil, groundwater, or surface water during the active life of the facility. The liner shall:

(A) be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with

the hydrocarbons or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operations;

(B) be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, tearing, or uplift;

(C) be installed to cover all surrounding earth likely to be in contact with the petroleum-substance waste or leachate; and

(D) contain a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate and rainwater from the stockpile or land surface treatment unit. The facility owner and operator shall specify the design and operating conditions which will ensure that the leachate depth over the liner does not exceed the depth of soil on the liner. The leachate collection and removal system shall be constructed of materials that are:

(i) chemically resistant to the hydrocarbons managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying petroleum-substance wastes, petroleum-substance waste cover materials, and any equipment used at the stockpile or treatment unit; and

(iii) designed and operated to function without clogging through the scheduled life of the stockpile or land surface treatment unit; or

(2) an alternate design or operating practice that is effective in preventing any release or discharge and is approved by the executive director. The facility owner or operator shall demonstrate that the alternate design or operating practices, together with location characteristics, will prevent the migration of any petroleum-substance waste constituents into the soil, groundwater, or surface water at any future time. In deciding whether to approve the alternate design, the executive director will consider:

(A) the nature and quantity of the wastes;

(B) the proposed alternate design and operation;

(C) the hydrogeologic setting of the facility, including a tentative capacity and thickness of the liners and

soils present between the stockpile or land surface treatment unit and groundwater or surface water; and

(D) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to soil, groundwater or surface water.

(b) The facility owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the stockpile or land surface treatment unit.

(c) The facility owner or operator shall design, construct, operate, and maintain a run-off management system to prevent flow from a stockpile or land surface treatment unit.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall be emptied and managed expeditiously in accordance with applicable state and federal requirements after storms to maintain design capacity of the system.

(e) If the stockpile or land surface treatment unit contains any particulate matter which may be subject to wind dispersal, the facility owner or operator shall cover or otherwise manage the stockpile or land surface treatment unit to control wind dispersal.

(f) The executive director may specify other design and operating practices that may be necessary to ensure that the requirements of this subsection are satisfied.

(g) The facility owner or operator shall ensure that treatment is initiated on stockpiled soil within 90 days from the date of receipt at the facility.

(h) In addition to the requirements specified in subsections (a)-(g) of this section, the facility owner or operator shall design, construct, operate, and maintain the land surface treatment unit to maximize the degradation, transformation, or immobilization of petroleum-substance waste constituents in the treatment area. At a minimum, the facility owner or operator shall specify the following items, if applicable, in the facility registration application:

(1) the rate and method of petroleum-substance waste application to the treatment area;

(2) measures to control soil Ph;

(3) measures to enhance microbial or chemical reactions (e.g., fertilization); and

(4) measures to control the moisture content of the treatment area.

(i) The facility owner or operator shall inspect the unit weekly and after storms to detect evidence of:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) improper functioning of wind dispersal control measures.

§334.500. Reuse of Petroleum-Substance Waste.

(a) Wastes that are intended for reuse are subject to all the applicable provisions of this subchapter, including but not limited to the following requirements: §334.482 of this title (relating to General Prohibitions); §334.493 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste); §334.494 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); §334.495 of this title (relating to Shipping Requirements for Transporters of Petroleum-Substance Waste); §334.496 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); §334.497 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); and §334.499 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

(b) Recordkeeping and reporting requirements.

(1) Any person who intends to reuse petroleum-substance wastes shall maintain records and provide to the executive director when requested such information deemed necessary by the executive director to ensure compliance with the requirements of this subsection. This information may include, but is not limited to:

(A) identification, address, and name of the authorized representative of the generating facility;

(B) identification, address, and name of the authorized representative for the receiving facility or location;

(C) identification of the landowner of the receiving location or facility;

(D) the quantity, type, and contaminant levels of the reused wastes;

(E) documentation of the reuse methods and dates of reuse;

(F) documentation that asphalt mix or roadbase mix meets the specifications required by the final user;

(G) documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.

(c) Reuse requirements.

(1) Any person who intends to utilize petroleum-substance wastes for reuse shall obtain written approval from the landowner of the land on which the wastes will be placed.

(2) Petroleum-substance wastes shall be reused only in manners which are in accordance with §334.482 of this title (relating to General Prohibitions) and at contaminant levels as specified by the executive director.

(3) Petroleum-substance wastes may be reused under the following conditions.

(A) Petroleum-substance wastes may be utilized in cold-mix-emulsion bituminous paving at a cold-mix asphalt-producing facility registered under the terms of this subchapter. The petroleum-substance waste shall be mixed with aggregate or other suitable materials at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. The petroleum-substance waste shall contain less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes prior to mixing. Authorization for the facility shall also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

(B) Petroleum-substance wastes with nonhazardous contaminant levels may be utilized in asphalt mix at hot-mix asphalt-producing facilities registered under this subchapter. The petroleum-substance waste shall contain less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes prior to mixing. The petroleum-substance waste shall be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility shall also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

(C) Petroleum-substance wastes may be utilized in roadbase or parking lot stabilized base when the base will be covered with concrete or asphalt if the con-

taminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the executive director. The base shall be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized roadbase shall meet the criteria for clean soil as specified by the executive director in order to be spread on a road or parking lot. The generator shall obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(D) Petroleum-substance wastes may be utilized in roadbase or parking lot stabilized base when the base will not be covered with asphalt or concrete if the contaminant levels are less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes, and less than 200 mg/kg of total petroleum hydrocarbons or at contaminant levels otherwise specified by the executive director. The base shall be mixed according to the specifications required by the final user. The base shall be professionally mixed by a facility registered under the terms of this subchapter. Soil which is not mixed into stabilized roadbase shall meet the criteria for clean soil in order to be spread on a road or parking lot. The generator shall obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(E) Petroleum-substance wastes may be used as fill in another LPST site tankhold if the contaminant levels do not exceed 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes, and 10.0 mg/kg total petroleum hydrocarbons. Other contaminant levels may be considered by the executive director if documentation indicates that there is no threat to public health or safety and if there is no threat of groundwater contamination at the receiving site. The owner of the underground storage tanks at the receiving facility along with the landowner (if different from the tank owner) shall give written consent for this activity. The soil shall not be utilized in a tankhold in which a new tank installation will occur.

(F) Petroleum-substance waste may be reused by alternative methods or contaminant levels deemed appropriate and as authorized by the executive director. The generator shall obtain authorization, including authorization pursuant to the requirements of this subchapter, from the executive director prior to reusing the waste by alternative methods.

§334.501. Contaminant Assessment Program and Corrective Action.

(a) The facility owner or operator shall conduct an assessment when, in the opinion of the executive director, there exists a possibility of migration of contaminants into or adjacent to waters in the state. The assessment shall be capable of determining:

(1) whether petroleum-substance waste or petroleum-substance waste constituents have entered the groundwater, surface water, or soils;

(2) the rate and extent of migration of any petroleum-substance waste or petroleum-substance waste constituents in the soil, groundwater, or surface water; and

(3) the concentrations of petroleum-substance waste or petroleum-substance waste constituents in the soil, groundwater or surface water.

(b) The owner or operator of the facility shall conduct corrective action at the facility when, in the opinion of the executive director, petroleum-substance waste constituents exist in the soil, groundwater, or nearby surface water at levels above those which are protective of human health and safety and the environment.

(c) The corrective action program shall be capable of preventing the migration of contaminants and shall prevent the contaminants from exceeding the levels determined by the executive director.

(d) The facility owner or operator shall ensure that the corrective action measures under this subsection shall be initiated and completed within a reasonable period of time as determined by the executive director considering the extent of contamination. The executive director may issue additional directives should the corrective action activities prove to not be effective in reducing the contaminant levels at a sufficient rate.

(e) The facility owner or operator shall report in writing to the executive director the effectiveness of the corrective action program. The facility owner or operator shall submit these reports to the commission's Austin office and to the appropriate commission district office upon request by the executive director.

§334.502. Security.

(a) The facility owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry of persons or livestock (or other animals) onto the active portion of his facility, unless the facility owner or operator can demonstrate to the executive director that:

(1) physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or ani-

imals which may enter the active portion of a facility; and

(2) disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or animals onto the active portion of a facility, will not cause a violation of the requirements of this paragraph.

(b) Unless the facility owner or operator has made a successful demonstration under subsection (a)(1) and (2) of this section, a facility shall have:

(1) a 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2) an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(3) a means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) Unless exempt under subsection (a)(1) and (2) of this section, a sign with the legend, "Caution-Unauthorized Personnel Keep Out" shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Caution-Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

(d) The owner or operator of the facility shall submit details of the proposed security measures in the application for registration.

§334.503. Contingency Plan.

(a) Each facility owner or operator shall have a contingency plan for each facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of petroleum-substance waste or petroleum-substance waste constituents to air, soil, groundwater, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of petroleum-

substance waste or petroleum-substance waste constituents which could threaten human health or the environment.

(c) The contingency plan shall describe the actions facility personnel shall take in order to respond to fires, explosions, or any unplanned sudden or non-sudden release of petroleum-substance waste or petroleum-substance waste constituents to air, soil, or surface water at the facility.

(d) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as facility emergency coordinators and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external). This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by release of petroleum-substance waste or fires).

(g) A legible copy of the contingency plan and all revisions to the plan shall be:

(1) submitted to the executive director with the application for registration;

(2) maintained at the facility; and

(3) submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

(h) The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) the facility registration is revised;

(2) the plan fails in an emergency;

(3) the facility changes its design, construction, operations, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or release of petroleum-substance waste or petroleum-substance waste constituents, or changes the response necessary in an emergency;

(4) the list of emergency coordinators changes; or

(5) the list of emergency equipment changes.

§334.504. Emergency Procedures.

(a) At all times, there shall be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(b) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) shall immediately:

(1) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) notify appropriate state or local agencies with designed response roles if their help is needed.

(c) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or affidavits, and, if necessary, by chemical analysis.

(d) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that re-generated, or the effects of any surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(e) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the emergency coordinator shall report his findings as follows:

(1) if the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help

appropriate officials decide whether local areas should be evacuated; and

(2) the emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area, the Texas Emergency Response Center at (512) 463-7727, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report shall include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and type of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known; and

(E) the possible hazards to human health or the environment outside the facility.

(f) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other petroleum-substance waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(g) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(h) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, and/or disposing of recovered water, contaminated soil and surface water, and any other material that results from a release, fire or explosion at the facility.

(i) The emergency coordinator shall ensure that, in the affected area(s) of the facility, all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(j) The facility owner or operator shall notify the executive director and appropriate State and local authorities that the facility is in compliance with subsection (h) of this section before operations are resumed in the affected areas(s) of the facility.

(k) The facility owner or operator shall note in the operating record the time, date, and details of any incident that re-

quires implementing the contingency plan. Within 15 days after the incident, the facility owner or operator shall submit a written report on the incident to the executive director. The report shall include:

(1) name, address, and telephone number of the facility owner or operator;

(2) name, address, and telephone number of the facility;

(3) the facility's registration number;

(4) date, time, and type of incident (e.g. fire, explosion);

(5) name and quantity of material(s) involved;

(6) the extent of injuries, if any;

(7) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(8) estimated quantity and disposition of recovered material that resulted from the incident.

§334.505. Closure for Class A and Class B Facilities.

(a) An owner or operator of a Class A or Class B facility shall close the facility in accordance with the closure provisions of this subchapter.

(b) Except as provided in this subsection, the facility owner or operator shall submit his closure plan to the executive director for approval with the application for registration.

(c) In the closure plan the facility owner or operator shall address the following objectives and indicate how they will be achieved:

(1) removal and decontamination of all structures, equipment, or improvements which will no longer be utilized at the facility;

(2) removal and proper disposal or treatment and reuse of all petroleum-substance wastes from the facility; and

(3) removal or treatment of any petroleum-substance waste and petroleum-substance waste constituents which exist above the established cleanup levels that have been released from the facility into the soil, groundwater, or surface water.

(d) During the closure period the facility owner or operator of a petroleum-substance treatment facility shall:

(1) continue the contaminant assessment or corrective action at the facility as directed by the executive director;

(2) maintain the run-on and run-off control systems required under §334.499 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units);

(3) control wind dispersal of particular matter which may be subject to wind dispersal.

(e) When closure is completed the facility owner or operator shall submit to the executive director for approval certification both by the facility owner or operator and by an independent qualified hydrogeologist, geologist, or an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) The facility owner or operator shall prepare a written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan as specified in §334.506 of this title (relating to Financial Assurance). The closure cost estimate shall equal the cost of closing at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost estimate shall be based on the costs to the facility owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary for the facility owner or operator. Notwithstanding other closure costs, such estimate shall also include the costs associated with third party removal, shipment off-site, and treatment or disposal off-site of the following wastes to an authorized storage, treatment, or disposal facility:

(1) maximum inventory of wastes in storage and/or treatment units;

(2) any contaminated soils, groundwater, or surface water generated as a result of releases at the site;

(3) wastes generated as a result of closure activities;

(4) contaminated stormwater or leachate.

(g) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of petroleum-substance wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures. The facility owner or operator may not incorporate a zero cost for petroleum-substance waste that might have economic value.

(h) The facility owner or operator shall adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first closure cost estimate was prepared. The adjustment shall be made as specified in paragraphs (1) and (2) of this subsection, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product

published by the United States Department of Commerce in its *Survey of Current Business*. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(i) The facility owner or operator shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in this subsection.

(j) The facility owner or operator shall keep the following at the facility during the operating life of the facility: the

latest closure cost estimate prepared in accordance with subsections (f) and (g) of this section and, when this estimate has been adjusted in accordance with subsection (h) of this section, the latest adjusted closure cost estimate.

§334.506. Financial Assurance. The owner or operator of a Class A or Class B facility shall establish financial assurance for the closure of each facility. Documentation of the completion of financial assurance shall be submitted with the registration application pursuant to §334.484 of this title (relating to Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities) and §334.488 of this title (relating to Effect on Existing Facilities). The financial assurance shall be in the amount specified in the cost estimate for closure pursuant to §334.505 of this title (relating to Closure for Class A and Class B Facilities). The financial assurance mecha-

nisms shall consist of one or more of the following:

- (1) closure trust fund;
- (2) surety bond guaranteeing payment into a closure trust fund;
- (3) surety bond guaranteeing performance of closure;
- (4) closure letter of credit;
- (5) closure insurance; or
- (6) financial test and corporate guarantee for closure.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213049

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: September 25, 1992

Expiration date: January 23, 1993

For further information, please call: (512) 463-8069



Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resource Technologies

• 1 TAC §201.5

The Department of Information Resources proposes an amendment to §201.5, concerning agency planning instructions for preparation and submission of agency information resource strategic plans.

The amendment will provide instructions and formats to be used by an agency in the preparation and submission of the agency information resources strategic plans.

Larry Lehmann, business manager, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lehman also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more timely preparation and review of agency information resource plans and greater emphasis on the planning and use of information resources technologies to support state government activities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to the Department of Information Resources, Comments on Rule Changes, P.O. Box 13564, Austin, Texas 78711, Attention: Martin J. Cassano. The outside envelope must be clearly marked "Comments on Rule Changes." All comments received after 5 p.m. on November 2, 1992, will not be considered and will be returned unopened to sender. Only comments provided in writing will be considered.

The amendment is proposed under Texas Civil Statutes, Article 4413(32), which provide the Department of Information Resources with the authority to adopt rules as necessary to carry out its responsibilities under this article.

§201.5. Agency Planning.

(a) Agency Information Resources strategic plans.

(1) Submittal procedures.

(A) (No change.)

(B) The governing officer or chairman of the governing body of the agency shall sign the plan if the agency is governed by fully paid, full-time state officials. Otherwise, the executive director of the agency shall sign the plan. Amendments to the plan must be signed at the same level of authority as the basic plan.

(C) Each Agency Strategic Plan for Information Resources prepared by an agency and submitted to the department must include information in the format specified by the department in the Instructions for Preparing and Submitting Agency Information Resources Strategic Plans for the 1993-1997 Period (Hereafter Referred to as "Instructions"). Information Concerning the Instructions adopted by reference may be obtained from the Department of Information Resources P.O. Box 13564, Austin, Texas 78711. [Format of the agency IR strategic plan must comply with instructions, based on subsection (a)(2) of this section published by the department and distributed to each state agency. Prior to February 1 of each even-numbered year. Content of the plan must include, in the format prescribed by the department:]

[(i) an executive summary.

[(ii) a statement of the agency's planning assumptions;

[(iii) a statement of the agency's mission, goals, and programs;

[(iv) a description of the present status of the organizational environment, information resources management policies and practices, personnel resources, and operating environment;

[(v) a statement of agency information resources goals and strategies;

[(vi) a statement of agency compliance with and support for the State Strategic Plan for Information Resources;

[(vii) a statement of the agency's long-term information resources needs.]

(D) (No change.)

[(2) Contents. Each agency IR strategic plan must include:

[(A) a summary of the agency's goals, objectives and current programs as found in the agency's legislative appropriations request,

[(B) a description of the agency's major data bases and applications,

[(C) a description of the agency's current information resources management organizations, policies and practices,

[(D) a description of interagency computer networks in which the agency participates,

[(E) a statement of the strategic objectives of the agency relating to information resources management for the next five fiscal years, beginning with the fiscal year in which the plan is submitted, with a description of how those objectives help achieve the agency's programs and goals and support the goals and policies of the state strategic plan,

[(F) other planning components as defined in the department's published instructions.]

(2)[(3)] Review procedures.

(A) The department will evaluate agency IR strategic plans for:

(i) support of the goals and policies of [for consistency with] the state strategic plan, [including compliance with standards adopted by publication in the state strategic plan];

(ii) support of the goals and strategies of the State Strategic Plan for Information Resources Management;

(iii) support of state-wide standards and legislative initiatives;

[(ii)][(iv)] [for] assurance that agency goals and strategies for information resources support the [are consistent with agency] the mission, goals, and objectives as stated in the agency strategic plan;

[(iii)] for the effective use of information resources technologies in support of the agency's mission and its information needs;

[(iv)] for the technical feasibility of the plan;]

(v) compliance with department planning instructions.

(B) The department will review and approve or disapprove each agency's IR strategic plan in writing no later than April 15 of each odd-numbered year. If the department disapproves an agency's plan, it shall notify the person that signed the plan, the agency's information resources manager and executive director in writing [of] indicating the reasons for disapproval. If the agency and the department fail to resolve the problems causing disapproval in within 30 days, the agency may appeal the department's disapproval at the next regularly scheduled board meeting.

(b)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213058

Ann S. Fueberg
Executive Director
Department of Information
Resources

Earliest possible date of adoption: November 2, 1992

For further information, please call: (512) 475-4714

◆ ◆ ◆
TITLE 4. AGRICULTURE
Part I. Texas Department of Agriculture
Chapter 28. Texas Agriculture Finance Authority: Loan Guaranty Program

• 4 TAC §§28.3, 28.7, 28.9

The Texas Agricultural Finance Authority (TAFE) of the Texas Department of Agriculture proposes amendments to §§28.3, 28.7, and 28.9, concerning definitions, project eligibility requirements, and contents of applica-

tions filed under the TAFE Loan Guaranty Program. The amendments are proposed in order to clarify the types of project applications eligible under the program. The changes in §§28.3, 28.7(a)(1) and (2) and §28.9(a)(4) clarify the eligible businesses, eligible projects, and eligible project cost for the Loan Guaranty Program.

Robert Kennedy, deputy assistant commissioner for agricultural finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Kennedy also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clearly identify the businesses eligible under the program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Agricultural Finance, P.O. Box 12847, Austin, Texas 78711.

The amendments are proposed under the Texas Agriculture Code, §58.022, which provides the board of the Texas Agricultural Finance Authority with the authority to adopt rules to establish rules and procedures for administration of the Texas Agricultural Finance Authority Loan Guaranty Program.

§28.3. *Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Agricultural business—A business that is or proposes to be engaged in innovative, diversified, or value-added production [producing], processing, marketing, or exporting and agricultural product.

§28.7. *Project Eligibility Requirements.*

(a) Project. An applicant is eligible for assistance from the Texas Agricultural Finance Authority (the Authority) if the proposed project meets the following criteria:

(1) the project provides significant benefits for the expansion on [,] development of diversified, innovative, [, and diversification of production,] or or value-added production, processing, marketing, or [and] exporting of Texas agricultural products; provided that the board shall give priority to agricultural businesses that include producers of Texas agricultural products; provided, also, that the board will give preference to applicants, the majority ownership of which is held by citizens of the United States; and if the applicant is a corporation, the board will give preference to a corporation organized under the laws of the State of Texas with majority ownership by Texas residents; provided further, that the board will give preference to applicants who are Texas residents doing business in

the state, and then to applicants who can demonstrate that the financed activities will take place predominately in the state; provided, finally, that the board will also give preference to those agricultural businesses that demonstrate a significant new technology or market opportunity for Texas producers;

(2) the project will create or retain employment, directly or indirectly, in the diversified, innovative, or value-added agricultural production, processing, and distribution systems in Texas;

(3)-(8) (No change.)

(b) Project costs. The proceeds of the guaranteed loan may be used to finance costs incurred in connection with the innovative, diversified, or value-added production, processing, marketing, or export of Texas agricultural products, including, but not limit to, the costs of:

(1)-(12) (No change.)

(c) (No change.)

§28.9. *Contents of Application.*

(a) Required information. The application must set forth the information necessary for the determination of eligibility and will include the following as appropriate to the nature of the loan being requested.

(1)-(3) (No change.)

(4) a business plan which includes the following:

(A) (No change.)

(B) how such innovative, diversified, or value-added products or services will help [expand.] develop [,] or diversify Texas agriculture;

(5)-(15) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213039

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: November 2, 1992

For further information, please call: (512) 463-7583

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 7. Local Records

Microfilming Standards for Local Governments

- 13 TAC §§7.21, 7.22, 7.23, 7.24, 7.26, 7.28, 7.30, 7.31, 7.34, 7.35

The Texas State Library and Archives Commission proposes amendments to 13 TAC §§7.21, 7.22, 7.23, 7.24, 7.26, 7.28, 7.30, 7.31, 7.34, and 7.35 concerning rules for the microfilming of local government records. Amendments to §7.21 make minor changes to four definitions. Section 7.31 is amended to remove the requirement that master negatives of microfilm intended for jacketing must be stored in roll form only, to require that jackets used for the storage of master negatives be of a prescribed composition, and to set standards for testing and image sequence. Section 7.34 is amended to remove the requirement that master negatives of microfilm intended for aperture cards must be stored in roll form only, to require that aperture cards used for the storage of master negatives be of a prescribed composition, and to clarify target and certification requirements. Section 7.35 is amended to clarify testing and image sequence requirements. Section 7.26 is amended to reconcile requirements relating to roll film in this section with proposed amendments to other sections. Amendments to §§7.23, 7.24, 7.28, and 7.30 make changes to the designations of editions of national standards publications. Section 7.22 is amended to correct an error in citation to statutory law.

Michael Heskett, policy and program development coordinator, State and Local Records Management Division, has determined there will be fiscal implications as a result of enforcing or administering this section.

The effect on local government for the first five-year period the rules will be in effect will be an estimated reduction in cost of \$224,000 in 1992; \$168,000 in 1993; \$56,000 in fiscal years 1994-1996;

The cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the rule will be the same (i.e., none) based on the cost per employee, cost of labor per hour, or cost per \$100 of sales.

Mr. Heskett also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be that, without compromising the physical protection and informational integrity of public records, the expenditure of public funds for microfilming by local governments using some types of jacketing and aperture card systems will be reduced because of a relaxation of certain requirements regarding the systems. The cost of compli-

ance with the rule for small business will be none, because the rules do not establish standards for business practice. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to William L. Dyess, Director, State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The amendments are proposed under the Local Government Code, Title 6, Subtitle C, Chapter 204, which requires the Texas State Library and Archives Commission to adopt rules establishing standards and procedures for the microfilming of local government records.

§7.21. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these rules shall have the meanings defined in the Local Government Code, Title 6, Chapter 201, or the standards of the Association for Information and Image Management according to Technical Report for Glossary of Imaging Technology [Micrographics] (TR2-1992 [TR2-1990] or latest revision).

Medium-term film—Film suitable for the preservation of records for [more than] 10 years or more but less than 100 years when stored under proper conditions, providing the original film was processed correctly.

Medium-term record—A record for which the retention period on a records retention schedule is [more than] 10 years or more, but less than 100 years.

Short-term film—Film suitable for the preservation of records for less than 10 years when stored under proper conditions, providing the original film was processed correctly.

Short-term record—A record for which the retention period on a records retention schedule is less than 10 years [or less]

§7.22. General.

- (a)-(f) (No change.)

(g) Master microfilm produced for a local government shall be the property of the local government and the local government shall have the same responsibilities for ensuring its management and preservation as it would have for the records under the Local Government Code, Title 6, Subtitle C [6], if they were not microfilmed. If the master microfilm is to be stored by a service provider, the local government may demand and receive delivery of the master microfilm upon five working days' notice.

- (h) (No change.)

§7.23. Standards for Film Quality, Resolution, Density, Definition, and Chemical Stability.

- (a) (No change.)

(b) Duplicate film must be diazo film conforming to American National Standard for Imaging Media (Film)-Ammonia-Processed Diazo Films-Specifications for Stability (ANSI IT9.5-1988 or latest revision), vesicular film conforming to American National Standard for Photography (film)-Processed Vesicular Film-Specifications for Stability (ANSI PH1.67-1985 or latest revision), or silver film conforming to American National Standard for Imaging Media (Film)-Silver-Gelatin Type-Specifications for Stability (ANSI IT9.1-1989 or latest revision). Duplicate film must meet Standard for Information and Image Management-Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM (ANSI/AIIM MS43-1988 with 1991 supplement or latest revision).

- (c)-(i) (No change.)

§7.24. Tests and Other Methods of Inspection and Verification.

- (a) (No change.)

(b) The following tests must be utilized in the production of all film.

- (1)-(2) (No change.)

- (3) Resolution test.

- (A)-(B) (No change.)

(C) The resolution target must meet the American National Standard Microcopying-ISO Test Chart Number 2-Description and Use in Photographic Documentary Reproduction (ANSI/AIIM MS51-1991 [ANSI/ISO 3334-1979] or latest revision) and/or American National Standard Test Chart for Rotary Microfilm Cameras (ANSI/AIIM MS17-1983 or latest revision) and/or Standard for Information and Image Management-Recommended Practice for Identification of Microforms (ANSI/AIIM MS19-1987 or latest revision). Photocopies may not be used.

- (4) (No change.)

- (c)-(e) (No change.)

§7.26. Use of Editorial and Technical Targets.

(a) A title page target [must be included on each roll of microfilm and] must identify the local government and subordinate organizational unit(s), the records which are included on the microfilm, title of the records (with identification of contents

if not obvious from series titles), restriction or classification (if necessary), bibliographic information (if any), unique identifier [roll number], and date(s) of records being filmed.

(b)-(e) (No change.)

§7.28. Master Microfilms.

(a) (No change.)

(b) For master microfilm containing short-term records and not meeting the specifications in American National Standard for Imaging Media (Film) -Silver-Gelatin Type-Specifications for Stability (ANSI IT9.1-1989 or latest version) and silver film that is not included in the testing program required by §7.24(b)(1) of this title (relating to Tests and Other Methods of Inspection and Verification) a duplicate security copy must be made in accordance with Standard for Information and Image Management-Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM (ANSI/AIIM MS43-1988 with 1991 supplement or latest revision).

(1)-(4) (No change.)

(c) (No change.)

(d) Storage requirements.

(1) Storage containers and reels must be made from a noncombustible and noncorrosive material such as anodized aluminum[,] or plastic[,] and must conform to American National Standard for Photography (film)-16-mm 100-foot, 16-mm 200-foot, 35-mm 100-foot, and 70-mm 100-foot Spools for Recording Instruments, Microfilms, and Still-Picture Cameras-Dimensions (ANSI PH1.33-1990 [1986] or latest revision) and American National Standard for Imaging Media-Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers (ANSI IT9.2-1991 [1988] or latest revision).

(2)-(8) (No change.)

(9) Adhesives that may have a harmful effect on microfilm must not be used. Adhesives used to secure microfilm must pass the photographic activity test as outlined in American National Standard for Imaging Media-Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers (ANSI IT9.2-1991 [1988] or latest revision).

(10) Paper may be used to secure rolls, if it conforms to the specifications contained in American National Standard for Imaging Media-Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers (ANSI IT9.2-1991 [1988] or latest revision).

(A) Paper in direct contact with film must have a pH of 7.5 to 9.5, over 87% alpha cellulose content, over 2.0% alkali reserve, and matte surface for the paper in accordance with American National Standard for Imaging Media-Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers (ANSI IT9.2-1991 [1988] or latest revision).

(B) (No change.)

(11)-(22) (No change.)

(e) -(f) (No change.)

§7.30. Computer Output Microfilm (COM).

(a) (No change.)

(b) COM master microfilms must be wet processed silver-gelatin film for essential, medium-term, long-term, and permanent records. If silver-gelatin film is not used for the master of non-essential and short-term records, thermally processed silver film must be produced in accordance with Technical Report for Thermally Processed Silver Microfilm (AIIM TR3-1981 with 1991 addendum or latest revision) and a duplicate must be made on diazo, vesicular, or silver-gelatin film.

(c) (No change.)

(d) The following standards must be met:

(1)-(2) (No change.)

(3) Standard for Information and Image Management-Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM (ANSI/AIIM MS43-1988 with 1991 supplement or latest revision).

(e)-(h) (No change.)

§7.31. Jacketing.

(a) (No change.)

(b) If master microfilm is placed in a jacket, the jacket must be made completely from ultrasonically welded Mylar (polyester) sheets. Jackets made from Mylar M (a polyester coated with a layer of PVDC, a polymer related to PVC) must not be used for storing master microfilm. [For medium-term, long-term, and permanent records first-generation silver-gelatin microfilm in roll form must be used for storage.]

(c) A duplicate of a first-generation film must have a resolution loss of no more than one test pattern of the test objects as described in American National Standard Microcopying-ISO Test Chart Number 2-Description and Use in Photographic

Documentary Reproduction (ANSI/ISO 3334-1991 [1979] (ANSI/AIIM MS51-1991) or latest revision).

(d)-(f) (No change.)

(g) A density test must be conducted at the beginning of each day of filming and at a minimum of once every roll, or in using strip film processor cameras, at a minimum of once every roll or every 3,000 images.

(h) A resolution test must be conducted at the beginning of each day of filming and at a minimum of once every roll, or in using strip film processors cameras, at a minimum of once every roll or every 3,000 images.

(i) Density and resolution targets must be on the microfilm or a sample of the microfilm.

(j) The following image sequence must be followed:

(1) title page target;

(2) records being microfilmed;

and

(3) certificate of authenticity (if used on microfilm).

(k) Adherence to the provisions of §7.27 of this title (relating to Image Sequence) is not required.

(1) The jackets must not be stored under pressure; e.g., packed too tightly in drawers.

§7.34. Aperture Card/CAD Systems.

(a) (No change.)

(b) The microfilm and enclosure must pass the photographic activity test criteria outlined in the American National Standard for Imaging Media-Photographic Processed Films, Plates, and Papers-Filing Enclosures and Storage Containers (IT9.2-1991 or latest revision). [For medium-term, long-term, and permanent records master negatives must be silver-gelatin microfilm in roll form.]

[(c) For short-term microfilm:

[(1) a methylene blue test must be performed on a sample aperture card according to §7.24(b)(1) of this title (relating to Tests and Other Methods of Inspection and Verification);]

(c)[(2)] A [a] density test must be conducted on a sample at a minimum of once every 250 cards or every 1,000 images, whichever is greater. [;]

(d) [(3)] A [a] resolution test must be conducted on a sample at a minimum of once every 250 cards or every 1,000 images, whichever is greater. [;]

(e)[(4)] Density [density] and resolution targets must be on the microfilm or a test sample of the microfilm.

(f)[(d)] Aperture cards must have the following information on label headings: name of government, office of origin, record series, and unique identifier.

(g) The following target and certificate must be maintained on or off film:

- (1) title page; and
- (2) certificate of authenticity.

(h)[(e)] Adherence to the provisions of [§7.26 of this title (relating to Use of Editorial and Technical Targets) and] §7.27 of this title (relating to Image Sequence) is not required [in the production of short-term aperture cards].

(i) The aperture cards must not be stored under pressure; e.g., packed too tightly in drawers.

§7.35. Step-And-Repeat Systems.

(a)-(b) (No change.)

(c) A density test must be conducted at the beginning of each day of filming and at a minimum of once every roll, or in using pre-cut film, every 3,000 images.

(d) A resolution test must be conducted at the beginning of each day of filming and at a minimum of once every roll, or in using pre-cut film, every 3,000 images.

(e)-(f) (No change.)

(g) Adherence to the provisions of §7.27 of this title (relating to Image Sequence) is not required.

(h) Master negatives in microfiche form must not be stored under pressure; e.g., packed too tightly in drawers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 23, 1992.

TRD-9213009

Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: November 2, 1992

For further information, please call: (512) 463-5440



TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 541. Rules Relating to the Provisions of Article 6252-13c

Criminal Offense Guidelines

• 22 TAC §541.1

The Texas Real Estate Commission proposes an amendment to §541.1, concerning criminal offense guidelines. The amendment is necessary to remove obsolete language and to clarify the findings of fact that are required in contested cases involving criminal convictions.

Section 541.1 establishes guidelines for the consideration of criminal offenses that may have been committed by persons who are licensed or registered by, or seeking licensure or registration from, the Texas Real Estate Commission. The commission licenses real estate brokers, real estate salesmen, real estate inspectors, and inspectors-in-training and registers apprentice real estate inspectors. The amendments specify the occupations regulated by the commission and delete a reference to certified appraisers. Appraisers are now certified by the Texas Appraiser Licensing and Certification Board.

The amendment also would require the commission to consider and make appropriate findings of fact in contested cases upon the factors provided in Texas Civil Statutes, Article 6252-13c, to determine whether an offense is directly related to the duties and responsibilities of the occupations for which license or registration is issued by the commission. If an offense is determined to be directly related to the occupation's duties and responsibilities after consideration of these factors, the commission may decline to license or register the person or suspend or revoke the person's existing license or registration. The amendments also track a provision of Texas Civil Statutes, Article 6252-13c, which requires an applicant to the extent possible to secure and provide to the commission the recommendations of prosecution, law enforcement and correctional authorities and proof relating to employment and satisfaction of court costs, supervision fees and restitution.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the effect of a criminal conviction of a person whose occupation is regulated by the Texas Real Estate Commission. There is no anticipated effect on small businesses. There is no anticipated economic cost to persons

who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the commission to make and enforce all rules and regulations necessary for the performance of its duties.

§541.1. Criminal Offense Guidelines.

(a) For the purposes of Texas Civil Statutes, Article 6252-13c, the Texas Real Estate Commission considers the following felonies or misdemeanors to be criminal offenses which may be directly related to the duties and responsibilities of the occupation of real estate broker, real estate salesman, real estate inspector, real estate inspector-in-training, or apprentice real estate inspector [licensed real estate brokers or salesmen or certified appraisers] for the reason that the commission of the following criminal offenses tends to demonstrate inability to represent the interest of another with honesty, trustworthiness and integrity:

(1)-(6) (No change.)

(b) In determining whether a criminal offense is directly related to an occupation, the commission shall consider and make appropriate findings of fact in a contested case upon the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors that may be considered under subsection (b) of this section, the commission, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(d) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the commission that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212986

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: November 2, 1992

For further information, please call: (512) 465-3900

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 241. Shellfish Sanitation

Texas Crab Meat

- 25 TAC §§241.2, 241.4, 241.8-241.10, 241.13, 241.15, 241.16, 241.19, 241.21, 241.23, 241.25, 241.26, 241.29

The Texas Department of Health (department) proposes amendments to §§241.2,

241.4, 241.8-241.10, 241.13, 241.15, 241.16, 241.19, 241.21, 241.23, 241.25, 241.26, and 241.29, concerning Texas crab meat. The sections cover licensing and enforcement procedures; plant location, grounds, and arrangements; heating, cooling, and ventilation; water supply; plumbing, sewage, and related facilities; cooking, cooling, and storage areas; picking and packing of crab meat; cleaning and sanitizing equipment and utensils; labeling crab meat; employee health; and education and training.

The amendments will update and clarify the existing rules. The primary areas of clarification concern private water supplies and allowing other seafood processing. The Division of Water Hygiene, which assisted in regulating private water supplies, has been transferred to the Texas Water Commission, causing the department to adopt rules to regulate crab meat processors who use private water supplies in their operations. These sections, as amended, contain the same language as previously used by the Division of Water Hygiene. Other seafood processing will be allowed, subject to the same sanitation requirements as processing crab meat, with additional sanitation of the processing areas between different seafoods.

Richard E. Thompson, director, division of shellfish sanitation control, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government.

Mr. Thompson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better assurance that crab meat processed in or imported into Texas will be free of disease or other health hazards transmissible by these products. There will be no cost to small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Richard E. Thompson, R.S., Director, Division of Shellfish Sanitation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7510. Comments will be accepted for 30 days from the date of publication of this proposal. Public hearings to receive comments on the proposed sections will be held at the auditorium in the classroom laboratory building, Pelican Island Campus, Texas A&M University, Galveston, at 7 p.m. on Monday, October 12, 1992; and at the First State Bank, 311 North Virginia, Port Lavaca, at 7 p.m. on Tuesday, October 13, 1992.

The amendments are proposed under the Texas Health and Safety Code, §436. 045, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas crab meat; and the Texas Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§241.2. Licensing and Enforcement Procedures.

(a) No crab meat shall be offered for sale for food in the State of Texas unless the crab meat has been processed and packaged in compliance with these sections or obtained from sources outside the state accepted by the Texas Department of Health (TDH) [TDH]. If obtained from sources outside of the state, the crab meat shall originate from a crab meat processor currently licensed by the appropriate state or other government authority. Crab meat obtained from sources other than those outlined in this section shall be considered unfit for human consumption. No person shall engage in the processing and packing of crab meat for sale without having complied with these sections. No person shall engage in any activity requiring a license under these sections without having applied for and obtained a numbered license from the commissioner.

(b) Prior to construction of a new crab meat plant, or major remodeling of an existing crab meat plant, (which includes, but is not limited to: any process new to that particular plant; any change of product flow; or any enlarging of the plant structure) complete, legible plans showing the floor plan of the building, with dimensions drawn to scale, location of equipment, doors, floor drains, etc., and written, complete operational procedures for all phases of the activity, including flow of the product, shall be submitted to the TDH's Division of Shellfish Sanitation Control (DSSC) [DSSC] for review and approval. No operations shall be conducted while any inside plant construction or any other construction which has the potential to contaminate the product is occurring. A legibly written or typed application on forms provided by the DSSC must be filed with the DSSC before any crab meat processing begins each license year. A license and number shall be issued by the commissioner only after an inspection of the plant by an authorized agent has revealed that the plant and operations are in compliance with these sections.

(c) The inspection of a previously licensed plant which has exhibited operational problems or violations of the operational requirements of these sections or had a license revoked shall not be conducted until written, complete operational procedures for all phases of the activity, including flow of the product, have been submitted to the DSSC for review and approval. An application may be rejected and a license denied based on a history of failure to comply with the requirements of these sections.

(d) Crab meat processing at the plant shall not begin until the license issued by the Commissioner has been received and

posted at the plant. Each license shall expire automatically at 11:59 p.m. the last day of February following the date of issue. Licenses shall not be transferable.

(e)[(c)] After a license is issued, [After a plant is licensed.] unannounced inspections [using the appropriate forms] shall be conducted at any time the DSSC has reason to believe the plant may be in operation and at such frequency as may be necessary to assure that adequate operational and sanitary conditions are maintained and shall be conducted a minimum of three times each six months. A copy of the completed inspection form listing written descriptions of the violations [the noncompliance items] observed, along with any necessary explanation [or recommendation], shall be provided by an authorized agent of TDH to the most responsible individual present at the firm at the conclusion of the inspection. Any violation of the same requirement found on a consecutive inspection may result in license revocation in accordance with subsection (f) of this section.

(f)[(d)] The DSSC may initiate procedures to revoke a license as follows.

(1) The procedures, including the opportunity for a hearing prior to revocation, shall be in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the TDH formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(2) The grounds for revocation shall be one or more of the following:

(A) inspection results indicate unsatisfactory conditions in the plant or the existence of a public health hazard; or

(B) the license holder or representative [agent] refuses to allow an inspection or otherwise interferes with the authorized TDH agent in the performance of his or her duties.

[(e) After licensing of a facility, inspections shall be conducted at least two times each six months. Upon finding a violation of these sections, an authorized agent of TDH shall provide a written description of the violations as provided in these sections. Any violation of the same requirement found on a consecutive inspection may result in a license revocation in accordance with subsection (d) of this section.]

(g) [(f)] A person whose license has been revoked shall not process any crab meat until the DSSC is satisfied that all necessary corrections have been made. A new license shall not be issued until an inspection establishes that the firm is in full compliance with all applicable criteria of

these sections. A person whose license has been revoked shall not apply for a new license until [for at least] 30 days after [from] the [effective] date of signing of the final order of revocation.

(h) [(g)] By acceptance of a license, the holder agrees to save, hold harmless, and indemnify the State of Texas, TDH, and its employees against any and all liability, claims, or losses for property damage or personal injury which result in whole or in part from the license holder's activities. The State of Texas shall not be held liable for financial losses incurred by the crab fishermen, plant supervisors, or plant owners due to failure of the crab industry, [confiscation] condemnation of crab meat, loss of crab meat, or other reasons.

§241.4. Plant Location, Grounds, and Arrangements.

(a)-(c) (No change.)

(d) The backing room or area shall be adjacent to the cooking and cooling rooms and shall be physically separated from the live crab and cooking areas to prevent live crabs from entering the backing area. Where a crab washer machine is utilized, it shall be located in the backing room. Entrance doors shall be provided to both the cooking and backing areas of the plant so that cooking and backing personnel can enter without passing through other processing areas of the plant. Cooking and backing personnel shall confine themselves to their particular area so as to retard cross-contamination of the cooked crab meat.

(e)-(j) (No change.)

(k) Processing and packing facilities shall be located so that they will not be subjected to flooding by ordinary high tides. If plant floors are flooded, all operations shall be discontinued and the Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC) [DSSC] shall immediately be notified of the flooding. No operations may occur until waters have receded and the building is thoroughly cleaned and sanitized, and the facilities have been inspected by an authorized agent of TDH.

(l)-(n) (No change.)

(o) Other operations which could result in contamination of the crab meat shall not be conducted in the same area at the same time where crab meat is being processed. [Only crab meat processing shall be allowed in any portion of the plant after the plant is approved for licensing.] Other seafood processing operations may be allowed in any portion of the plant, but shall be conducted in compliance with these requirements. Following completion of other allowable activities, the plant

shall be thoroughly cleaned and sanitized before any crab meat processing activities are conducted.

(p)-(s) (No change.)

§241.8. Heating, Cooling, and Ventilation.

(a) (No change.)

(b) Processors shall have their picking and packing areas cooled with mechanical refrigeration adequate to maintain the internal air temperature at 72 degrees Fahrenheit or less. Each processing room or area shall be equipped with an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location.

§241.9. Water Supply.

(a) Potable water shall be from a safe source, and protected from contamination, and the water supply system shall be constructed, maintained, and operated according to applicable state laws and this undesignated head. All water distribution systems shall be designed and constructed so as to provide a minimum residual pressure of 20 pounds per square inch under peak demand conditions. Under normal operating conditions, minimum pressures should not be less than 35 pounds per square inch in the distribution system.

(b)-(c) (No change.)

(d) Water wells shall be so located that there will be no danger of pollution from flooding or from insanitary surroundings, such as, privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites, or abandoned and improperly sealed wells.

(e) Well sites shall not be within 50 feet of a tile or concrete sanitary sewer, septic tank, or storm sewer, or within 150 feet of a septic tank perforated drainfield, absorption bed, evapotranspiration bed, or underground fuel storage tank.

(f) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station, or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(g) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites, or lands irrigated by sewerage plant effluent.

(h) Livestock shall not be allowed within 50 feet of water supply wells.

(i) Abandoned water wells in the area of a proposed source shall be plugged and sealed properly to prevent possible contamination of freshwater strata.

(j) A sanitary control easement covering that portion of the lands within 150 feet of the well location shall be secured from all such property owners and recorded in the deed records at the county courthouse.

(k) A concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the well head.

(l) Wellheads and pump bases shall be sealed by the use of gaskets or sealing compounds and, as applicable, properly vented to prevent the possibility of contamination of the well water.

(m) Upon completion of a new well, or after an existing well has been reworked, the well shall be disinfected and unused for at least six hours. After the water containing chlorine is completely flushed from the well, prior to placing the well in service, samples of water shall be collected and submitted for bacteriological analysis until three successive samples collected on separate days shall be free of coliform organisms.

(n) A suitable raw water sampling cock shall be provided on the discharge pipe of each well pump.

(o) All completed well units shall be protected by intruder resistant fences, the gates of which are provided with locks, or enclosed in locked ventilated well houses to exclude possible contamination or damage to the facilities by trespassers. The gates and wellhouses shall be locked during periods of darkness and when the plant is unattended.

(p) Mechanical disinfection facilities capable of maintaining a free chlorine residual of 0.2-0.5 parts per million shall be provided with the point of injection prior to the hydropneumatic pressure tank or shall be ahead of the water storage reservoir(s), if a storage reservoir is provided. A test kit must be provided and available for testing the chlorine residual of the potable water.

(q) The use of disinfectants other than hypochlorination with mechanical injection shall be considered on a case-by-case basis. Hypochlorination solution containers and pumps shall be housed and locked to protect them from adverse weather conditions and vandalism.

(r) All hydropneumatic tanks shall be located wholly above grade and

shall be of steel construction with welded seams.

(1) Metal thickness for hydropneumatic tanks shall be sufficient to provide at least a minimum of 1/8 inch corrosion allowance and to withstand the highest expected working pressures with a four to one factor of safety.

(2) All hydropneumatic tanks shall be provided with a pressure release device and an easily readable pressure gauge.

(3) The tank size shall be large enough to maintain 35 pounds per square inch working pressure to the farthest end of the distribution system and large enough to provide adequate disinfection contact time as reflected by negative confluent and/or coliform monthly sample results. The tank size shall not be less than 82 gallons.

(s) At least one sample of water taken from the distribution system shall be submitted to an approved laboratory each month for bacteriological analysis. Any coliform positive or confluent (TNTC) sample shall necessitate resampling the water within 24 hours of receiving the result. The Texas Department of Health's Division of Shellfish Sanitation Control (DSSC) shall be notified upon receipt of a coliform positive sample result. If the resample result is coliform positive, the DSSC shall be notified upon receipt of the result and the DSSC shall determine the appropriate steps for disinfection and/or resampling.

§241.10. Plumbing, Sewage, and Related Facilities.

(a) Plumbing shall be installed in compliance with applicable state laws, and shall be of adequate size and design to:

(1)-(3) (No change.)

(4) provide adequate floor drainage in all areas where floors are subject to flooding type cleaning or where normal operations discharge water or other liquid waste on the floor. Drainage outlets shall be constructed and maintained to prevent the possible entrance of insects and rodents. Floor drainage shall not be allowed to drain from the plant on top of the ground.

(b)-(h) (No change.)

§241.13. Cooking, Cooling, and Storage Areas.

(a)-(g) (No change.)

(h) Containers used for transporting cooked crabs or claws at any time shall be of corrosion resistant material with no open seams, but shall be perforated on the

sides for air circulation. Carts, hand trucks, dollies, etc., used for transporting these containers, and racks to support the containers above the floor shall have contact surfaces of smooth corrosion resistant metal or its equivalent.

(i) (No change.)

(j) Every precaution shall be taken to prevent contamination of the cooked crabs at all times. Condensation drip shall not come in contact with the cooked crabs.

§241.15. Picking of Crab Meat.

(a)-(h) (No change.)

(i) The crab meat shall be picked directly into the final container. Each picker shall have no more than six containers at his/her work station at any time.

(j) (No change.)

(k) After each weighing, and before returning to work, the picker shall wash his/her hands and knife with hot water and detergent and then rinse them in a bactericide of approved strength.

(l)[(k)] Crab meat containers shall be rinsed in a bactericidal solution of approved strength before filling.

(m)[(l)] Picking container trays shall be of smooth, stainless steel metal or food grade plastic or its equivalent with rounded corners and no rolled edges.

(n)[(m)] Only non-perforated containers shall be used for crab waste. Waste containers or disposal units shall be of basic construction which will allow for adequate cleaning. Waste containers shall be of heavy gauge, corrosion resistant metal or its equivalent in plastic and shall be of an easily cleanable design. Non-perforated containers shall not be used to hold cooked crab bodies and claws.

§241.16. Packing of Crab Meat.

(a)-(g) (No change.)

(h) Repacking of crab meat [which has been picked or processed in another plant] shall not be allowed.

(i)-(n) (No change.)

§241.19. Pasteurization of Crab Meat.

(a) (No change.)

(b) Recording and indicating thermometers shall be provided on all pasteurizing equipment, and shall serve as time temperature controllers. The bulbs of both thermometers shall be located in such a place as to give a true representation of the operating temperature of the water bath. An

authorized agent of the Texas Department of Health (TDH) [TDH] shall check the accuracy of both thermometers as installed and thereafter at least once each operating season. The recording thermometer chart must be at least a 24-hour chart, and shall be at least 12 inches in diameter.

(c)-(t) (No change.)

§241.21. *Cleaning and Sanitizing Equipment and Utensils.*

(a) -(g) (No change.)

(h) Pans or trays shall be cleaned and sanitized after each delivery of crab meat to the packing room.

§241.23. *Labeling Crab Meat.*

(a) All containers of fresh or fresh frozen crab meat shall have permanently recorded on the [container] principal display panel, so as to be easily visible, the following information:

(1)-(3) (No change.)

(b) (No change.)

(c) The principal display panel on each container of fresh or fresh frozen packed crab meat shall contain a calendar date. This date shall be the date of packing unless a SELL BY date is established and used in accordance with subsection (d) of this section. [If a code date is used, it shall consist of five numbers as follows: the first digit being the last number of the year; the second two digits being the numerical sequence of the month; and the last two digits being the day of the month.] The calendar date shall consist of and be in the following order: the abbreviation for the month, the numerical day of the month, and the year.

(d) If the date is a SELL BY date, the method of determining that date shall be based on the date the crab meat is packed and shall be approved by the Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC) [DSSC] before being used. The proposed method must be submitted in writing to the DSSC. The sell by date shall be preceded by the words SELL BY or BEST WHEN SOLD BY.

(e) (No change.)

(f) Frozen crab meat shall be labeled as FROZEN in print of equal prominence immediately adjacent to the words CRAB MEAT. The word FROZEN shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container. Stamping shall not be allowed.

(g) Use of rubber stamps shall not be allowed except for dating. [Waterproof adhesive labels shall not be used unless

prior approval of the DSSC is obtained. The request must be submitted in writing.]

(h) (No change.)

(i) All required information shall be provided in a legible and indelible form, and shall be on the sidewall of the container unless the cover becomes an integral part of the container during the sealing process. All information, except the date, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container by the container printing company, unless an adhesive label which has been approved by the DSSC is used. Adhesive labels shall be durable and waterproof and shall not be used unless prior approval from the DSSC is obtained. The request must be submitted in writing. All labeling is subject to review and approval by the DSSC.

[(i) All required information, except the date, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container by the container printing company. All labeling is subject to review and approval by the DSSC.

[(j) All required information shall be provided in a legible and indelible form, and shall be on the sidewall of the container unless the cover becomes an integral part of the container during the sealing process.]

§241.25. *Records.*

(a) Complete, accurate, and legible records in a form approved by the Texas Department of Health's (TDH) Division of Shellfish Sanitation (DSSC) [DSSC] shall be maintained by each licensed dealer. These reports shall be sufficient to document the dates of purchases of live crabs and the dates of purchases or sales of packed crab meat so that a container of crab meat may be traced back to the specific cook lot in which it was processed. Specific quantities of live crabs purchased and sales of crab meat shall be recorded in a permanently bound ledger book. Transaction records indicating origin of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the DSSC.

(b)-(d) (No change.)

§241.26. *Employee Health.*

(a)-(c) (No change.)

(d) Pickers, packing room personnel, or any other employee who has a stab wound, puncture, or any other open wound who may handle the cooked product shall be excluded from the plant, unless appropriate steps are taken to cover the wound and properly protect the product.

§241.29. *Education and Training.*

(a) (No change.)

(b) Employees shall receive instruction and training in proper food handling and personal hygiene and sanitary practices from supervisory personnel or from other sources acceptable to the Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC) [DSSC].

(c) Crab meat plant owners and/or managers and supervisors shall be required to take a food service worker accreditation and training course, obtain a certificate of completion, and provide a copy to the DSSC prior to obtaining a shellfish certificate of compliance. New supervisors shall be required to take the course and obtain a certificate of completion before working as a supervisor in a plant and shall submit a copy of their certificate to the DSSC within two weeks of employment.

(d)[(c)] Unsanitary practices of employees shall be brought to the attention of the employees by their supervisor and the employees shall be instructed on the proper sanitary practice that is to be used.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213079

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7510

Molluscan Shellfish

The Texas Department of Health (department) proposes the repeal of existing §§241.50-241.100, and proposes new §§241.50-241.52, 241.54-241.100, concerning molluscan shellfish. The sections cover definitions and standards for the classification of shellfish growing areas and the harvesting, processing, and distribution of shellfish.

The new sections will update and clarify the existing rules and will implement the requirements and guidelines established in the 1990 *National Shellfish Sanitation Program Manual of Operations*, Parts I and II, published by the Interstate Shellfish Sanitation Conference and the United States Food and Drug Administration. The new sections also have been reorganized for readability and clarity to more appropriately serve its purpose.

Richard E. Thompson, director, division of shellfish sanitation control, has determined

that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local government.

Mr. Thompson also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be better assurance that shellstock processed in or imported into Texas will be free of disease or other health hazards transmissible by these products. The effect on small businesses will be the cost to obtain harvester tags, estimated to be a cost of \$0.05 to \$0.10 each. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Richard E. Thompson, R.S., Director, Division of Shellfish Sanitation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7510. Comments will be accepted for 30 days from the date of publication of this proposal. Public hearings to receive comments on the proposed rules will be held at the auditorium in the classroom laboratory building, Pelican Island Campus, Texas A&M University, Galveston, Texas at 7 p.m. on Monday, October 12, 1992; and at the First State Bank, 311 North Virginia, Port Lavaca, at 7 p.m. on Tuesday, October 13, 1992.

• 25 TAC §§241.50-241.100

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Codes Annotated, the Parks and Wildlife Code, §76.203, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas shellfish; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§241.50. Definitions.

§241.51. Growing Area Classification.

§241.52. Transplanting and Gathering for Depuration.

§241.53. Certification and Enforcement Procedures.

§241.54. Harvesting and Handling Shellstock.

§241.55. Wet Storage.

§241.56. Plant Location, Grounds, and Arrangements.

§241.57. Dry Storage and Protection of Shellstock.

§241.58. Floors, Walls, and Ceilings.

§241.59. Insect and Vermin Control Measures.

§241.60. Lighting.

§241.61. Heating and Ventilation.

§241.62. Water Supply.

§241.63. Plumbing, Sewage, and Related Facilities.

§241.64. Poisonous or Toxic Materials.

§241.65. Construction of Shucking Benches and Tables.

§241.66. Construction of Utensils and Equipment.

§241.67. General Maintenance and Cleanliness.

§241.68. Cleaning and Sanitizing Equipment and Utensils.

§241.69. Sources of Shellfish.

§241.70. Shucking of Shellfish.

§241.71. Shell and Waste Disposal.

§241.72. Single Service Containers.

§241.73. Packing of Shucked Shellfish.

§241.74. Labeling Shucked Shellfish.

§241.75. Refrigeration and Shipping of Shucked Shellfish.

§241.76. Ice.

§241.77. Records.

§241.78. Employee Health.

§241.79. Supervision.

§241.80. Personal Cleanliness.

§241.81. Education and Training.

§241.82. Shellstock Shipping.

§241.83. Repacking Shucked Shellfish.

§241.84. Heat Shock.

§241.85. Depuration Certificate Requirements.

§241.86. Depuration Gathering Permit.

§241.87. Depuration Tank Design and Construction.

§241.88. Depuration Plant Sanitation.

§241.89. Depuration Plumbing, Water Supply, and Related Facilities.

§241.90. Depuration Construction Requirements.

§241.91. Depuration Laboratory Procedures.

§241.92. Depuration Plant Operation.

§241.93. Depuration Shellfish Sampling Procedures.

§241.94. Depuration Process Water Control-Sampling.

§241.95. Depuration Treatment Water-Standards.

§241.96. Depuration Shellfish Meat Standards.

§241.97. Depuration Ultraviolet (UV) Unit.

§241.98. Depuration Shellstock Storage.

§241.99. Tagging and Release of Depurated Shellfish.

§241.100. Depuration Records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213081

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7510

◆ ◆ ◆
• 25 TAC §§241.50-241.100

The new sections are proposed under Texas Codes Annotated, the Parks and Wildlife Code, §76. 203, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas shellfish; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§241.50. Definitions. The following words and terms, when used in these sections, shall have the following meaning, unless the context clearly indicates otherwise.

Adequate—That which, in the judgment of the department, is needed to implement these sections and to accomplish the intended purpose in keeping with good public health practice.

Air gap—The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the receptacle.

Approved—Acceptable to the Commissioner of Health and the Division of Shellfish Sanitation Control.

Approved area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to be acceptable for harvesting shellfish for direct marketing.

Authorized agent—An employee of the Department of Health who is designated by the Commissioner to enforce provisions of these sections.

Backflow—The flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

Backsiphonage—The flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other source into a potable water supply pipe due to negative pressure in such pipes.

Blower—A container for washing shucked shellfish which uses forced air as a means of agitation.

Certificate of compliance (Certificate)—A numbered document issued by the Division of Shellfish Sanitation Control which authorizes a person to process shellfish for sale.

Certification—The issuing by the Division of Shellfish Sanitation Control of a numbered document to operate that indicates compliance with these sections.

Certification number—The number assigned by the Division of Shellfish Sanitation Control to each certified shellfish dealer. It consists of a one to five digit number preceded by the two letter state abbreviation and followed by the two letter symbol designating the type of operation certified.

Certified laboratory evaluation officer—A person employed by the Texas Department of Health who has met the requirements of the United States Food and Drug Administration and who has been issued a letter of certification to evaluate shellfish laboratories in the State of Texas.

Classes of shippers—The classes of shippers are as follows.

(A) **Depuration processor (DP)**—A person who receives shellstock from areas designated by the Texas Department of Health and submits such shellstock to an approved controlled purification process. A depuration processor may not conduct a shellfish purification operation in a building or facility in which shellfish are being stored or handled for other purposes, unless the purification operation, including receiving, storage, packing, and distribution areas, is entirely separated from other operations by physical barriers with no connecting openings.

(B) **Repacker (RP)**—A person other than the original certified shucker/packer who repacks shucked shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck shellfish.

(C) **Shellstock shipper (SS)**—A person who grows, harvests, buys, or repacks and sells shellstock. A shellstock shipper is not authorized to shuck shellfish nor to repack shucked shellfish. A shellstock shipper may ship properly packed and labeled shucked shellfish.

(D) **Shucker/packer (SP)**—A person who shucks and packs shellfish. A shucker/packer may act as a shellstock shipper or repack shellfish originating from other certified dealers.

(E) **Wet storage operator (WS)**—A shipper who purchases or harvests shellstock from areas meeting approved growing area criteria and holds such shellfish in water from an approved source.

Closed area—A shellfish growing area where the harvesting of shellfish is temporarily or permanently not permitted. A closed area status is or may be placed on any of the five classified area designations as established in the National Shellfish Sanitation Program Manual of Operations as

follows: approved; conditionally approved; restricted; conditionally restricted; or prohibited. For the purposes of these sections a closed area status shall be established by declaring the area to be a polluted area.

Commingling—The act of combining different lots of shellstock or shucked shellfish.

Commissioner—The Commissioner of Health for the State of Texas.

Conditionally approved area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved growing area criteria. For the purposes of these sections a closed area status shall be established by declaring the area to be a polluted area.

Conditionally restricted area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to meet restricted area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally restricted area shall be declared to be a polluted area. The conditionally restricted area shall be open for transplanting or gathering for depuration only during the times it meets restricted area criteria and is so specified by the Texas Department of Health.

Container—The physical material which is in contact with and/or directly surrounds the shellfish confining them into a single unit.

Controlled purification or depuration—The process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in live shellstock.

Corrosion resistant materials—Those materials that maintain their original surface characteristics under normal exposure to the foods being contacted, normal use of cleaning compounds and bactericidal solutions, and other conditions of use.

Cross connection—Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other containing water of unknown or questionable safety, or steam, gas or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

Dealer—A commercial shellstock shipper, repacker, shucker/packer, or depuration processor.

Department (TDH)—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 or its successor.

Depuration—See definition for controlled purification.

Depuration plant—A facility of one or more depuration units.

Depuration unit—A tank or series of tanks supplied by a single process water system.

Division of Shellfish Sanitation Control (DSSC)—The division of the Texas Department of Health to which responsibility to classify shellfish growing waters, to issue certificates for the interstate shipment of shellfish and to regulate harvesting, processing, and shipping of shellfish is delegated, in accordance with the National Shellfish Sanitation Program Manual of Operations, Parts I and II.

Dry storage—The storage of shellstock out of water.

Easily cleanable—A surface which is readily accessible; and is made of such materials, has such a finish and is so fabricated that residues may be effectively removed by normal cleaning methods.

Food and Drug Administration (FDA)—The federal agency in which regulation of foods, including the Cooperative Shellfish Program, is vested.

Food contact surfaces—Those surfaces with which shucked shellfish come in contact and those surfaces from which drainage onto surfaces that come in contact with shucked shellfish ordinarily occurs during the normal course of operations. Food contact surfaces includes utensils and food contact surfaces of equipment.

Gatherer—A person who takes shellfish by any means from a growing area designated by the Commissioner for delivery only to a depuration plant.

Growing area—An area which supports or could support live shellfish.

Harvester—A person who takes shellfish by any means from any growing area for delivery to a certified dealer or for transplanting purposes.

Heat shock—The process of subjecting shellstock to any form of heat treatment, such as steam, hot water or dry heat for a short period of time prior to shucking to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the shellfish.

Internal temperature—The actual temperature of the shellfish meat, as opposed to the air temperature of the area where the shellfish are stored.

Interstate Certified Shellfish Shippers List (ICSSL)—The listing, published by FDA, of dealers certified by the states to pack and ship shellfish.

Label—Any written, printed, or graphic matter affixed to or appearing upon any container of shellfish.

License—The document issued by the Texas Parks and Wildlife Department, under the Texas Parks and Wildlife Code, Texas Codes Annotated, Chapter 47 or Chapter 76, which authorizes a person to

harvest and transport shellfish for commercial sale.

Lot of shellstock—A collection of containers of shellstock of no more than one day's harvest from a single defined growing area by one or more harvesters.

Lot of shellstock for depuration—Shellstock gathered from a particular area at a particular time and delivered to one depuration plant.

Lot of shucked shellfish—A collection of containers of no more than one day's shucked shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

Marine toxins—Poisonous compounds accumulated by shellfish feeding upon toxic microorganisms. The poisons may come from dinoflagellates, e.g. *Gonyaulax catenella*, *G. tamarensis*, and *Ptychodiscus brevis*.

Market shellfish—Shellfish which are, may be, or have been harvested and/or prepared for sale for human consumption as a fresh or frozen product.

National Shellfish Sanitation Program (NSSP)—The cooperative State/Food and Drug Administration/Industry program enabling the classification of shellfish growing waters and the certification of interstate shellfish shippers as described in the NSSP Manual of Operations, Parts I and II, or its successor program.

Pack—All activities involved in placing shellfish in containers.

Person—An individual, partnership, corporation, association or other legal entity.

Poisonous or deleterious substance—A toxic compound occurring naturally or added to the environment that may be found in shellfish and for which a regulatory tolerance limit has been or may be established to protect public health. Examples of naturally occurring substances would be paralytic shellfish toxins and trace elements geologically leached from the environment, such as mercury. Examples of added substances would be agricultural pesticides and polynuclear aromatics from oil spills.

Polluted area—The declaration of an area determined by the DSSC to be unacceptable for harvesting of shellfish for direct marketing. Shellfish may not be harvested from a polluted area unless they are subjected to transplanting or controlled purification in accordance with these sections and the permitting requirements of the Texas Parks and Wildlife Department, Title 31, §57.231 (relating to Transplant Permits) and §57.232 (relating to Harvest Permits).

Principal display panel—The part of a label that is most likely to be displayed, presented, shown or examined under customary conditions for sale.

Process batch—A quantity of shellfish used to fill each separate depuration unit.

Process water—The water in depuration tanks during the time that shellfish are being depurated.

Processor—A person who depurates, shucks, packs, or repacks shellfish.

Prohibited area—The classification of a shellfish growing area determined by the DSSC to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal from a prohibited area allowed is for the purposes of depletion.

Restricted area—The classification of a shellfish growing area determined by the DSSC to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area shall be declared to be a polluted area. A restricted area may be closed for transplanting or gathering for depuration when the DSSC determines that the area does not meet the restricted area criteria established in the NSSP.

Safe materials—Articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

Sanitary survey—The evaluation of all factors having an effect on the sanitary quality of a shellfish growing area, including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of the polluting materials, and the bacteriological quality of the water.

Sanitize—The adequate treatment of food contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

Shall—The term used to state mandatory requirements.

Shellfish—All edible species of oysters, clams, and mussels either shucked, in the shell, fresh or fresh frozen, whole or in part, as defined in the NSSP.

Shellstock—Shellfish in the shell.

Shucked shellfish—Shellfish, whole or in part, from which one or both shells have been removed.

Texas business address—A permanent structure on land within the jurisdiction of the State of Texas where aquatic products or orders for aquatic products are received or where aquatic products are sold, but does not include a boat or any type of floating device, a public cold storage vault, the portion of a structure that is used as a residence, or a vehicle of any kind.

Texas Parks and Wildlife Department (TPWD)—The Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or its successor state agency, having the responsibility for the

enforcement of laws concerning harvesting and depletion of the resource in accordance with the NSSP Manual of Operations, Part I.

Transaction record—A form(s) used to document each purchase or sale of shellfish at the wholesale level.

Transplanting—Moving of shellfish from one growing area to another for improving growth, stocking depleted areas and leases, natural cleansing or for other aquaculture purposes.

Wet storage—The temporary storage of shellfish from approved sources, intended for marketing, in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

§241.51. Growing Area Classification.

(a) Shellfish growing areas shall be classified in compliance with the guidelines established in the National Shellfish Sanitation Program (NSSP) Manual of Operations, Part I.

(b) Approved harvesting areas are those areas specifically approved by the Texas Department of Health (TDH) as meeting the growing area criteria established in the NSSP for approved areas under all conditions except unusual situations. Approved area classifications shall be established as the result of a sanitary survey. Shellfish may be taken from such areas for direct marketing. An approved classified growing area may be temporarily made a closed area when a public health emergency such as a hurricane or flooding is declared. For the purposes of these sections a closed area status shall be established by declaring the area to be a polluted area.

(c) Conditionally approved areas are those areas meeting the criteria for an approved area except when certain conditions occur. These conditions must be predictable and must occur with a frequency which will result in the area being acceptable for harvesting for a period of time which will justify the additional monitoring required. The conditions must be outlined in a management plan which provides for monitoring and establishes the specific trigger points that result in closing the area to harvesting. When the conditions occur that result in the need for closing the area it shall be declared to be a polluted area until verification by TDH that conditions have returned to normal and the shellfish from the area are again safe for direct market harvesting. The time the area is declared a polluted area shall include a cleansing time for the shellfish after conditions have returned to normal and, in the judgement of the Division of Shellfish Sanitation Control (DSSC), shellfish feeding activity has resumed. Shellfish may be harvested for direct marketing only during the time the area is not declared to be a polluted area. Shell-

fish may be transplanted or gathered for depuration only in accordance with these sections and the permitting requirements of the Texas Parks and Wildlife Department (TPWD) established in §57.231 of Title 31 (relating to Transplant Permits) and §57.232 of Title 31 (relating to Harvest Permits). Shellfish may not be harvested or gathered from these areas when they are declared to be a polluted area without subjecting them to transplanting or controlled purification.

(d) Polluted areas are areas that have not been surveyed, are subject to unpredictable pollution, or that otherwise do not meet the requirements to allow harvesting of shellfish for direct marketing. The areas in this State corresponding to the classifications restricted, conditionally restricted, and prohibited, as established in the NSSP Manual of Operations, Part I, are declared polluted areas to prevent harvesting for direct marketing. Shellfish may be transplanted or gathered for depuration from the polluted areas meeting the restricted or conditionally restricted criteria during the periods established by TDH, and subject to permitting by TPWD. Transplanting or gathering for depuration shall not be allowed from those areas which have not been surveyed or which do not meet the criteria to be classified as restricted or conditionally restricted and therefore are classified as prohibited areas. Shellfish taken from prohibited areas shall not be used for any human food purposes.

§241.52. Transplanting and Gathering for Depuration.

(a) Transplanting to approved or conditionally approved areas may occur, provided that permission is first obtained from Texas Parks and Wildlife Department (TPWD) and the necessary permits are granted. Upon completion of the transplanting operations, the transporter shall notify the Texas Department of Health (TDH) of the quantity of shellstock transplanted, the origin of the shellstock, the reef or lease upon which the shellstock were transplanted (including the most precise location of the shellstock as is possible), and the date the transplant permit expired or was cancelled. No transplanted shellfish may be harvested for marketing during the 14 days following the date of expiration or cancellation of the transplant permit. All boats and equipment used to transplant shellfish shall be thoroughly cleaned and sanitized prior to being used for any subsequent shellfish harvesting.

(b) Gathering shellfish for depuration may occur in those areas designated by TDH, provided that permission is first obtained from TPWD and the necessary permits are granted. All activities related to controlled purification or depuration shall be carried out in compliance with the requirements established in these sections.

§241.54. Sources of Shellfish.

(a) Shellstock shall originate from either a harvester licensed in accordance with the Texas Parks and Wildlife Department (TPWD) rules or a certified dealer. Transportation agents or common carriers utilized by certified dealers do not have to be certified.

(b) Incoming shellstock shall be inspected to ensure they are alive, clean and wholesome, and shall be received at a temperature that conforms with §241.55 of this title (relating to Harvesting and Handling Shellstock).

(c) Shellstock shall be identified in accordance with §241.55 of this title and shall be protected from contamination.

(d) Dead, unwholesome, unidentified, or contaminated shellstock shall be destroyed.

§241.55. Harvesting and Handling Shellstock.

(a) Boats and trucks.

(1) All boats used for harvesting or transporting shellstock and all trucks used for dry storing or hauling shellstock shall be constructed, operated, and maintained so as to prevent contamination, deterioration, or decomposition of the shellstock and shall be kept clean. All shellfish boats or trucks shall be subject to approval by the commissioner or his duly authorized representative.

(2) Decks and storage bins shall be constructed and located so as to prevent bilge water or polluted overboard water from coming into contact with the shellstock.

(3) Bilge pump discharges shall be located so that pumpage will not contaminate shellstock or the boat.

(4) Body waste shall not be discharged overboard from any boat at any time.

(5) Portable toilets shall be provided on each boat, shall be used only for the purpose intended, and shall be secured and located so as to prevent contamination of the shellfish by spillage or leakage.

(6) An adequate supply of toilet paper and hand cleanser and/or sanitizer shall be provided on each boat.

(7) The contents of portable toilets shall be emptied only into an approved sewage disposal system, and the portable toilets shall be cleaned before being returned to the boat. Facilities used for cleaning food processing equipment shall not be used for cleaning portable toilets.

(8) Sacks or other containers used for storing shellstock shall be clean and fabricated from safe materials. Storage areas shall be constructed of nontoxic materials.

(9) Boat decks, truck floors, and storage bins shall be kept clean with potable water or water from an approved growing area and shall have effective drainage.

(10) Adequate coverings shall be provided on harvest boats to protect shellstock from exposure to sun, birds, and other adverse conditions.

(11) Portions of boats or trucks (decks, storage bins, floorbeds, etc.) and all other equipment (shovels, wheelbarrows, rakes, etc.) coming in contact with shellstock during handling or transport from polluted areas to approved areas for relaying shall be thoroughly cleaned and sanitized immediately after unloading before they are used to transport or handle shellfish from approved areas.

(12) Commercial harvesters shall be required to deliver shellstock to a certified dealer within the day the shellstock is harvested. For this purpose a day shall be considered to be midnight to midnight. Delivery of shellstock is considered to be transfer of the shellstock from the boat to the dock and acceptance by the certified dealer. Commercial harvesters shall sell their shellstock only to a currently certified shellfish dealer. The certified dealer shall place a properly completed tag on each sack immediately upon accepting control from the harvester.

(13) Shellstock shall be placed under mechanical refrigeration at air temperatures between 45 degrees fahrenheit and 35 degrees fahrenheit within two hours of unloading from the boat. Mechanical refrigeration facilities shall be adequate in size and cooling capacity to refrigerate all shellstock on the premises. Each facility shall be equipped with an automatic temperature regulating control (thermostat) and an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location in the storage compartment.

(14) Refrigerated shellstock shall be maintained at internal temperatures between 45 degrees fahrenheit and 35 degrees fahrenheit. After initial refrigeration, shellstock removed from refrigeration shall not be permitted to remain in air temperatures above 45 degrees fahrenheit for more than two hours. The internal air temperature in trailers shall be at or below 45 degrees fahrenheit when shellstock loading begins.

(15) Trucks used to transport shellstock shall have the storage area constructed of a nontoxic, smooth, impervious material so as to protect the shellfish from

contamination and shall be kept clean. Shellstock, other than for delivery to a shucking plant within approximately 50 miles or approximately one hour travel time, shall be transported in mechanically refrigerated trucks that can maintain an air temperature between 45 degrees fahrenheit and 35 degrees fahrenheit, shall be pelletized, and shall be arranged to allow maximum air circulation. Shellstock storage areas shall be similarly constructed.

(16) Dogs, cats, or other animals shall not be permitted on vessels, in vehicles, or in any other area where shellstock is held or transported.

(b) Washing of shellstock.

(1) Shellstock shall be washed reasonably free of bottom sediments and detritus at the time of harvest or as soon after harvesting as is feasible. Washing shellstock shall be the responsibility of the harvester.

(2) Water used for washing shellstock shall be obtained from an approved growing area, or from other safe sources approved by the Texas Department of Health (TDH).

(c) Shellstock packing and identification.

(1) Sacks, boxes, and other shellstock packing containers shall be clean and fabricated from safe material.

(2) A shellfish harvester shall sack all shellstock and securely affix an approved, durable, waterproof, harvester's tag to each container of shellstock prior to delivery to a certified dealer. This tag shall remain on the container during transport and storage until the shellstock is processed or reaches the consumer.

(3) The harvester's tags shall contain the following information:

(A) the Texas Parks and Wildlife Department commercial harvester's number and name of the captain and the boat name or the oyster boat license number and the captain's name;

(B) the date of harvesting;

(C) the most precise identification of the harvest location as is practicable including the two letter state abbreviation;

(D) the type of shellstock; and

(E) the following statement in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL

CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(4) The initial certified shellfish dealer shall securely affix an approved, durable, waterproof, tag or label to each container of shellstock immediately upon accepting control of the shellstock. This tag or label shall remain on the container during transport and storage until the shellstock is processed or reaches the consumer.

(5) The certified dealer's tags or labels shall contain the following information:

(A) the name of the certified business as it appears on the certificate issued by the Division of Shellfish Sanitation Control (DSSC);

(B) the address of the business, including at least the city and state;

(C) the complete certification number assigned by the DSSC;

(D) the date of harvesting;

(E) the most precise identification of the harvest location as is practicable including the two letter state abbreviation;

(F) the type of shellstock;

(G) the name of the harvester or the harvest boat; and

(H) the following statement in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(6) All information shall be permanently printed on the tags or labels by the printing company, except the date of harvest, harvest location, and the name of the harvester or harvest boat, which shall be added by the certified dealer, before the tags or labels are affixed to the container. All information either printed or added to the tag or label must be done using a permanent type ink, and shall not be altered or changed after being entered on the tag or label. The certification number shall only be complete and valid if it has a proper state two letter abbreviation, followed by a one to five digit number followed by a two letter abbreviation for the type of operation the dealer is certified to perform, (SP for shucker/packer, RP for repacker, SS for shellstock shipper, or DP for depuration plant). These tags shall be no smaller than

the minimum size allowed as stated in the National Shellfish Sanitation Program (NSSP) Manual, Part II.

(7) The certified dealer shall accept responsibility for the shellstock at the time the tag is attached to the sack.

§241.56. Shellstock Shipping.

(a) Source, identification, and records.

(1) All incoming shellstock shall be inspected to assure compliance with requirements of §241.54 of this title (relating to Sources of Shellfish).

(2) Dead, unwholesome, inadequately protected, or unidentified shellfish shall be destroyed.

(3) Complete, accurate, and legible records in a form approved by the Division of Shellfish Sanitation Control (DSSC) shall be maintained by each certified dealer. These records shall be sufficient to document that the shellstock are from an approved source and to permit a container to be traced back to the harvest area, date of harvest, and the name of the harvester or harvest boat. Purchases and sales shall be recorded in a permanently bound ledger book and maintained for a minimum of one year. Transaction records indicating origin, date, and time of receipt of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the DSSC.

(b) Shellstock storage and shipping.

(1) Trucks used to store or transport shellstock shall be constructed, maintained, cleaned, and refrigerated in accordance with §241.55 of this title (relating to Harvesting and Handling Shellstock).

(2) Buildings in which shellstock are held shall comply with the construction requirements of the sections of this undesignated head. Shellstock shippers shall have sanitary toilet facilities acceptable to the DSSC and an approved water supply providing at least warm water suitable for hand washing.

(3) Shellstock in storage shall be protected from contamination and maintained at temperatures necessary to minimize microbial growth pursuant to the requirements of §241.55 and §241.75 of this title (relating to Refrigeration and Shipping of Shucked Shellfish).

(4) All equipment and conveyances which come into contact with shellstock shall be maintained and cleaned according to the requirements of §241.68 of this title (relating to General Maintenance and Cleanliness).

(5) Animals and unauthorized persons shall not be allowed in any area where shellstock is being stored or handled.

(6) Shellstock shall be identified in accordance with the requirements of §241.55, and records shall be maintained in accordance with the requirements of §241.77 of this title (relating to Records). Shippers whose physical facilities consist of trucks and/or organized docking facilities only, shall have a Texas business address at which records are maintained and inspections can be performed.

(c) Repacking and relabeling shellstock.

(1) Only shellstock that are clean, alive, and wholesome shall be repacked or relabeled.

(2) Shellstock repacking facilities shall be in compliance with the construction requirements established in the sections of this undesignated head.

(3) Shellstock shall be held, transported, and handled in accordance with the requirements of §241.55 of this title (relating to Harvesting and Handling Shellstock). Shellstock repacking and relabeling shall be conducted in facilities which comply with the construction and operational requirements of this undesignated head.

(4) Shellstock from different lots shall not be commingled during repacking.

(5) Sacks, boxes, and other shellstock packing containers shall be clean, fabricated from safe materials, and protected from contamination.

(6) Animals or unauthorized persons shall not be allowed in any area where shellstock is being stored or repacked.

(7) A durable, waterproof tag or label shall be securely affixed to each container. This tag or label shall remain on the container during transport and storage until the shellstock is processed or reaches the consumer. The tag or label shall contain the following information in a legible and indelible form:

(A) the name of the business as it appears on the certificate of compliance;

(B) the business address including at least the city and state;

(C) the complete certification number of the dealer performing the repacking or relabeling;

(D) the date of harvest;

(E) the most precise description of the harvest area as is practicable including the two letter state abbreviation;

(F) type of shellstock;

(G) the name of harvester or harvest boat, or the source from which the shellstock was purchased; and

(H) the following statement in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(8) Records shall be maintained which will permit a container of shellstock to be traced back to the harvest area. Records shall also include the date of harvest and the name of the harvester or harvest boat, or the source from which the shellstock was purchased. Records shall be maintained for a period of at least one year.

§241.57. Plant Location, Grounds, and Arrangements.

(a) Processing and shipping facilities shall be so located that they will not be subjected to flooding by ordinary high tides. If plant floors are flooded, all operations shall be discontinued and the Division of Shellfish Sanitation Control (DSSC) shall immediately be notified of the flooding. No operations may occur until waters have receded, the building is thoroughly cleaned and sanitized, and the facilities have been inspected by an authorized agent of TDH.

(b) The grounds about a plant under the control of the operator shall be free from conditions which may result in the contamination of shellfish, including, but not limited to, the following:

(1) improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(2) excessively dusty roads, yards, or parking lots that may constitute a source of contamination in areas where shellfish are exposed; or

(3) inadequately drained areas that may contribute contamination to shellfish products through seepage or footborne filth, and by providing a breeding place for insects or microorganisms.

(c) If the plant grounds are bordered by grounds not under the operator's control of the kinds described in subsection (b) of this section, care must be exercised in the plant by inspection, extermination, or other means to effectively exclude pests, dirt, and other filth that may be a source of shellfish contamination.

(d) Shucking and packing operations shall be carried out in separate rooms so that there is no likelihood of the shucked product or packing room equipment being contaminated by splash or by other means from adjacent areas.

(e) Other operations which could result in contamination of shellfish shall not be conducted in the same area at the same time where shellfish are being processed. Other seafood processing operations may be allowed in any portion of the plant, but shall be conducted in compliance with these requirements. Following completion of other allowable activities, the plant shall be thoroughly cleaned and sanitized before any shellfish activities are conducted.

(f) Adequate space shall be provided to place equipment and to store materials in order to assure sanitary operations and safe shellfish production. Fixtures, ducts, and pipes shall not be suspended over food processing or storage areas or over areas in which containers or utensils are stored or washed. Aisles or working spaces between equipment, and between equipment and walls, shall be unobstructed and adequately wide to permit employees to perform their duties without contaminating shellfish or food contact surfaces with clothing, personal, or other contact.

(g) Because shucking and packing operations occur in separate rooms, a delivery window shall be provided so that shuckers do not enter the packing area. The delivery window shall be equipped with a corrosion resistant shelf constructed of smooth, easily cleanable materials which can be effectively sanitized. The shelf shall drain toward the shucking room and, if necessary, be curbed on the packing room side. The delivery window shall stay closed, except when passing a shucking bucket through it.

(h) Storage facilities which have adequate capacity for storing clothing, aprons, gloves, and other personal articles of the employees shall be provided outside the food processing area.

§241.58. Dry Storage and Protection of Shellstock.

(a) The storage area floor shall be impervious to water, free of cracks and uneven surfaces that create sanitation problems and interfere with drainage, and shall be graded to assure complete and rapid drainage of water away from the shellfish.

(b) Walls and ceilings of shellstock storage rooms shall be smooth, white colored, and constructed of material that will not deteriorate under repeated washing.

(c) Shellstock storage areas shall be constructed so they will not receive floor drainage from other portions of the plant.

Shellstock shall be stored in such a protected manner and at an adequate height (minimum four inches) off the floor to prevent them from coming into contact with water which might accumulate on the floor or from splash by foot traffic, cleaning, or other activities. Shellstock storage areas shall not serve as an entry way to other areas of the establishment.

(d) Conveyances or devices used in transporting shellstock shall be constructed, maintained and handled in a way that prevents contamination of the shellstock. Where overhead monorails or conveyers are used, hydraulic fluid or lubricants shall not leak or drip onto the shellfish or conveyance surfaces.

(e) Shellstock shall be refrigerated in compliance with §241.55 of this title (relating to Harvesting and Handling Shellstock).

(f) Lots of shellstock from different sources or harvest areas shall be kept separated to prevent commingling.

§241.59. Floors, Walls, and Ceilings.

(a) Floors shall be constructed of smooth, easily cleanable, corrosion resistant, impervious material.

(b) The floor surface shall be graded to drain quickly and shall be free from cracks and uneven surfaces that create sanitation problems and interfere with drainage. Junctions between floors and walls shall be impervious to water. Floors shall be kept clean and maintained in good repair.

(c) The interior surfaces of rooms shall be smooth, washable, easily cleanable, corrosion resistant, impervious, white colored, and shall be kept clean and in good repair. The interior surfaces shall be constructed and maintained so as to prevent contamination of shellfish during holding or processing.

§241.60. Insect and Vermin Control Measures.

(a) Openings to the outside shall be effectively protected against the entry of vermin and insects by tight fitting, outward opening, self-closing doors; closed windows; effective screening; controlled air currents; or other means. Screening material shall not be less than 16 mesh per inch.

(b) Insects, rodents, and other vermin, or evidence of their infestation, shall not be present.

(c) Necessary internal insect and vermin control measures shall be used, and such measures shall be in compliance with all state and federal rules. The use of insecticides and rodenticides shall be permitted

only under such precautions and restrictions as will prevent the contamination of shellfish or containers with illegal residues, and will cause no health hazards to employees.

§241.61. Lighting.

(a) Safe and adequate lighting shall be provided in all areas.

(b) Light bulbs, fixtures, and skylights or other glass suspended over exposed shellfish shall be of a safety type or shall otherwise be protected to prevent food contamination in case of breakage.

§241.62. Heating and Ventilation.

(a) Working rooms shall be adequately ventilated and heated or cooled. Adequate ventilation shall be provided to minimize odors, noxious fumes, vapors, or condensation (including steam) in areas where shellfish may become contaminated. Operation of cooling, heating or ventilating equipment shall not create conditions that may cause shellfish to become contaminated.

(b) Dealers who wish to process shellfish when the temperature inside the plant exceeds 80 degrees fahrenheit shall have their facilities cooled with mechanical refrigeration adequate to maintain the internal air temperature at or below 80 degrees fahrenheit at all times the shellfish are being processed. Each processing room or area shall be equipped with an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location.

§241.63. Water Supply.

(a) Potable water shall be from a safe source, protected from contamination, and the water supply system shall be constructed, maintained, and operated according to this undesignated head. All water distribution systems shall be designed and constructed so as to provide a minimum residual pressure of 20 pounds per square inch under peak demand conditions. Under normal operating conditions, minimum pressures should not be less than 35 pounds per square inch in the distribution system.

(b) Running water shall be provided at an adequate temperature and pressure in all areas where needed to process food, clean equipment, utensils, or containers, and supply sanitary facilities.

(c) Hot and cold water shall be provided through a mixing valve at each compartment of every three compartment sink and at each hand washing lavatory.

(d) Water wells shall be so located that there will be no danger of pollution from flooding or from insanitary surround-

ings, such as, privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites, or abandoned and improperly sealed wells.

(e) Well sites shall not be within 50 feet of a tile or concrete sanitary sewer, septic tank, or storm sewer, or within 150 feet of a septic tank perforated drainfield, absorption bed, evapotranspiration bed or underground fuel storage tank.

(f) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(g) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites or lands irrigated by sewerage plant effluent.

(h) Livestock shall not be allowed within 50 feet of water supply wells.

(i) Abandoned water wells in the area of a proposed source shall be plugged and sealed properly to prevent possible contamination of freshwater strata.

(j) A sanitary control easement covering that portion of the lands within 150 feet of the well location shall be secured from all such property owners and recorded in the deed records at the county courthouse.

(k) A concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the well head.

(l) Wellheads and pump bases shall be sealed by the use of gaskets or sealing compounds and, as applicable, properly vented to prevent the possibility of contamination of the well water.

(m) Upon completion of a new well, or after an existing well has been reworked, the well shall be disinfected and unused for at least six hours. After the water containing chlorine is completely flushed from the well, prior to placing the well in service, samples of water shall be collected by the well owner or the certified dealer and submitted for bacteriological analysis until three successive samples collected on separate days shall be free of coliform organisms. Accurate records pertaining to the well, such as, the log of the ground formations, casing records, material settings, water levels, etc., shall be kept on file and made available to the Division of Shellfish Sanitation Control (DSSC) upon request.

(n) A suitable raw water sampling cock shall be provided on the discharge pipe of each well pump.

(o) All completed well units shall be protected by intruder resistant fences, the gates of which are provided with locks, or enclosed in locked ventilated well houses to exclude possible contamination or damage to the facilities by trespassers. The gates and wellhouses shall be locked during periods of darkness and when the plant is unattended.

(p) Mechanical disinfection facilities capable of maintaining a free chlorine residual of 0.2-0.5 parts per million shall be provided with the point of injection prior to the hydropneumatic pressure tank or shall be ahead of the water storage reservoir(s), if a storage reservoir is provided. A test kit must be provided and available for testing the chlorine residual of the potable water.

(q) The use of disinfectants other than hypochlorination with mechanical injection shall be considered on a case-by-case basis. Hypochlorination solution containers and pumps shall be housed and locked to protect them from adverse weather conditions and vandalism.

(r) All hydropneumatic tanks shall be located wholly above grade and shall be of steel construction with welded seams.

(1) Metal thickness for hydropneumatic tanks shall be sufficient to provide at least a minimum of 1/8 inch corrosion allowance and to withstand the highest expected working pressures with a four to one factor of safety.

(2) All hydropneumatic tanks shall be provided with a pressure release device and an easily readable pressure gauge.

(3) The tank size shall be large enough to maintain 35 pounds per square inch working pressure to the farthest end of the distribution system and large enough to provide adequate disinfection contact time as reflected by negative confluent and/or coliform monthly sample results. The tank size shall not be less than 82 gallons.

(s) At least one sample of water taken from the distribution system shall be submitted to an approved laboratory each month for bacteriological analysis. Any coliform positive or confluent (TNTC) sample shall necessitate resampling the water within 24 hours of receiving the result. All shellfish operations associated with the well shall immediately cease upon notification of a coliform positive result. The DSSC shall be notified upon receipt of a coliform positive sample result. If the resample result is coliform positive, the DSSC shall be notified upon receipt of the result and the DSSC shall determine the appropriate steps for disinfection and/or resampling. Shellfish operations shall not resume until a coliform negative result is obtained and the DSSC is properly notified.

§241.64. Plumbing, Sewage, and Related Facilities.

(a) Plumbing shall be installed in compliance with applicable state laws, and shall be of adequate size and design to:

(1) carry adequate quantities of water to required locations throughout the plant;

(2) properly convey sewage and liquid disposable waste from the plant;

(3) ensure that the water supplies and food contact surfaces are not contaminated as a result of an inadequate plumbing system; and

(4) provide adequate floor drainage in all areas where floors are subject to flooding type cleaning or where normal operations discharge water or other liquid waste on the floor. Drainage outlets shall be constructed and maintained so as to prevent the possible entrance of insects and rodents.

(b) There shall be no cross connections between the approved pressure water supply and water from an unapproved source, and there shall be no fixtures or connections through which the approved pressure supply might be contaminated by backsiphonage. Adequate devices approved by the appropriate regulatory agency shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where the air gap between the water supply inlet and the fixture's flood level rim is less than twice the diameter of the water system inlet. All submerged inlets, including hoses attached to faucets, shall be equipped with a backflow prevention device. If booster pumps are connected directly to the potable water supply, the pumps shall be equipped with a low pressure cutoff device or equivalent method to prevent backsiphonage.

(c) Hand washing facilities shall be adequate in number and size for the number of employees, convenient to the work areas, and so located that the person responsible for supervision can readily observe that employees wash their hands before beginning work and after each interruption. There shall be at least one hand washing lavatory located in the shucking room. There shall be at least one hand washing lavatory in the packing room for use by packing room workers. Three compartment sinks used for washing and sanitizing equipment and utensils shall not be used for hand washing. There shall be at least one three compartment sink located in the packing room. This sink shall be of adequate size to completely immerse and properly clean equipment and utensils.

(d) Hand washing lavatories shall be provided with hot water of at least 100 degrees fahrenheit from either a controlled

temperature source with a maximum temperature of 115 degrees fahrenheit, or from a hot and cold mixing or combination faucet. Steam water mixing valves or steam water combination faucets shall not be acceptable.

(e) A supply of hand cleansing soap or detergent shall be available at each hand washing facility. A supply of disposable towels or a suitable hand drying device that provides heated air shall be conveniently located near each hand washing facility. Common towels shall be prohibited. Where disposable towels are used, easily cleanable waste receptacles, with covers, shall be conveniently located near the hand washing

facilities. Hand washing signs, in languages understood by the employees, shall be posted in toilet rooms and near hand washing facilities. Hand washing facilities, hand drying devices, and all related facilities shall be kept clean and in good repair.

(f) Toilet facilities, in toilet rooms separate for each sex, shall be provided in all places of employment in accordance with the following table. The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided. Where

NUMBER OF EMPLOYEES	MINIMUM NUMBER OF WATER CLOSETS
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
over 150	1 additional fixture for each additional 40 employees

(g) No drainpipes or wastepipes shall be located over food processing or storage areas, or over areas in which containers are stored or washed.

(h) Sewage shall be discharged into an adequate sewerage system or shall be disposed of through other effective means. Where private sewerage systems are utilized, they shall be constructed and maintained according to state and local laws. Privies are not acceptable. The sewerage system shall be constructed and maintained in order that sewage will be inaccessible to flies or other insects, rodents, or other vermin, and the sewage shall not provide a source of contamination. All sewerage lines and floor drainage lines shall be separate and shall be trapped to prevent entrance of sewage into any portion of the plant.

§241.65. Poisonous or Toxic Materials.

(a) Only those poisonous or toxic materials necessary for plant operation shall be present in the plant. Containers of poisonous or toxic materials shall be prominently labeled according to law for easy identification of contents and safely stored. Such materials shall be used only in accordance with label directions.

(b) Poisonous or toxic materials not required for cleaning, sanitizing, insect or vermin control shall not be present in the plant.

(c) Each of the following categories of poisonous or toxic substances shall be separated from each other:

(1) pesticides; and

(2) cleaning agents, such as detergents and sanitizers, and chemicals, such as caustic acids or polishes.

(d) Poisonous or toxic substances shall not be stored above shellfish, food contact surfaces, utensils, or single service articles, except that this subsection does not prohibit conveniently located detergents or sanitizers in utensil or equipment cleaning areas.

(e) Poisonous or toxic materials shall not be used in a way that contaminates shellfish and food contact surfaces nor in a way that constitutes a hazard to employees.

§241.66. Construction of Shucking Benches, Stools, Runs, and Tables.

(a) Shucking runs or tables and contiguous walls shall be constructed of easily cleanable, corrosion resistant, impervious material, and shall be free from cracks.

(b) The tops of shucking runs, tables, benches, or stools, shall be located at an adequate height above the floor to prevent product contamination. Runs, tables, benches, and stools, shall drain completely and rapidly, and drainage shall be directed away from any shellfish on them.

(c) Shucking blocks shall be easily cleanable, fabricated from safe material, of solid, one-piece construction, and, unless an integral part of the shucking bench, stool, run, or table, shall be easily removable.

such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purposes of the table. The sewage disposal method shall not endanger the health of employees. Each water closet shall occupy a separate compartment with a door and walls or partitions between fixtures adequately high to assure privacy. Toilet room doors shall be tight fitting, self-closing, and not open directly into a processing area. Toilet rooms shall be kept clean and in good repair. A supply of toilet paper in a suitable holder shall be available in the toilet rooms. Air vents shall be screened or have self-closing louvers. A covered waste receptacle shall be provided in each toilet room.

(d) Stands or stalls and shucker's stools or benches, including padding, shall be fabricated from impervious, corrosion resistant, safe materials, and constructed so as to be easily cleaned and sanitized.

§241.67. Construction of Utensils and Equipment.

(a) All utensils and equipment shall be designed and fabricated from smooth, corrosion resistant, safe materials, durable under conditions of normal use, and resistant to denting, buckling, pitting, chipping, and crazing.

(b) There shall be no exposed screws, bolts, or rivet heads on food contact surfaces, and all joints on food contact surfaces shall be welded and have a smooth surface.

(c) Blower tanks, tubs, and skimmers shall be so constructed that their top rims are at an adequate height above the floor to prevent product contamination.

(d) Blower tanks, skimmers, reusable in plant storage containers, shucking buckets, and pans shall conform to the Shellfish Industry Equipment Construction Guides, National Shellfish Sanitation Program (NSSP) Manual of Operations, Part II, Appendix B. Equipment in use prior to January 1, 1989, having seams soldered with safe materials which are corrosion resistant, smooth, and easily cleanable may continue to be used by the processor using them on that date so long as the processor

obtains certification each consecutive year at that location and the equipment remains in good repair.

(e) All utensils and equipment shall be subject to inspection for compliance by an agent of the Division of Shellfish Sanitation Control (DSSC) prior to certification and shall be kept in good repair.

(f) All equipment, including external and internal blower airlines and hoses below a point two inches above the overflow level of the tank and blower drain valves, shall be constructed so as to be easily cleanable; perforations in skimmers shall be smooth to facilitate cleaning; and all internal angles in the food contact zone shall be filled or otherwise fabricated to facilitate cleaning. The use of wire or fiber mesh in the food contact zone of equipment is not acceptable, unless it is of approved material, is properly designed and constructed for such usage, and acceptable cleaning and sanitizing procedures are established. Surfaces which are not in the food contact zone shall be constructed so that they can be kept clean; seams and joints shall be welded or filled with food grade solder ground to a smooth surface; and there shall be no inaccessible spaces in which dirt or organic material might accumulate.

(g) Air pump intakes shall be located in a protected place. Air filters shall be installed on all blower air pump intakes. Oil bath type filters shall be prohibited.

§241.68. General Maintenance and Cleanliness.

(a) Building fixtures, doors, walls, ceilings, and floors shall be cleaned at a frequency necessary to maintain an adequate level of sanitation during operation and shall also be cleaned within two hours after each day's operations have ceased. Cleaning operations shall be conducted in such a manner as to minimize the danger of contamination of shellfish and food contact surfaces.

(b) Detergents, sanitizers, and other supplies employed in the cleaning and sanitizing procedures shall be safe and effective for their uses.

(c) Only material and equipment for routine use in the shellfish processing operation shall be stored in rooms used for shellstock storage, shucking, packing, repacking, or container storage. The premises shall be clean and free of litter and rubbish.

(d) No animal shall be permitted in a shellfish processing plant or on the premises. Unauthorized persons shall be excluded from the plant.

(e) No food or drink consumption or preparation, use of tobacco in any form,

spitting, or any other unsanitary act shall be permitted in the processing or storage areas of the plant.

§241.69. Cleaning and Sanitizing Equipment and Utensils.

(a) Adequate cleaning facilities, including three compartment sinks, brushes, detergents, sanitizers, hot water, and pressure hoses shall be available within the plant.

(b) Cleaning compounds and sanitizing agents shall be free from undesirable microorganisms and safe and adequate under the conditions of use. Only chemical sanitizing agents at effective concentrations as specified in the National Shellfish Sanitation Program (NSSP) Manual of Operations shall be used.

(c) Procedures shall be established which may employ machines or devices used for cleaning and sanitizing equipment and utensils that will routinely render equipment and utensils clean and provide adequate sanitizing treatment.

(d) Cleaning and sanitizing of food contact surfaces and equipment shall be required prior to commencing each day's operation. Cleaning and sanitizing operations shall be conducted in such a manner and at such a frequency as is necessary to prevent the contamination of shellfish and food contact surfaces. All floors, doors, walls, equipment, utensils, and work surfaces, including the external and internal blower airlines and blower drain valves shall be cleaned by scrubbing with water and detergent and rinsing with potable water within two hours after the day's operations have ceased. Windows and skylights shall also be kept clean.

(e) Food contact surfaces of utensils and equipment used in the plant shall be cleaned and sanitized following any interruption during which food contact surfaces may have become contaminated. The proper set up and use of a three compartment sink is necessary for proper washing and sanitizing. One end compartment of the three compartment sink shall be filled with hot water and cleanser or detergent and used for the cleansing of the utensils. The solution of water and cleanser or detergent shall be changed as frequently as necessary to assure thorough cleaning of all utensils. The middle compartment shall be kept free of standing water and used, first, for rinsing the residue from the utensils before cleansing, and second, for rinsing the wash water from the utensils after cleansing. The other end compartment shall be used for bactericidal treatment of utensils. Chlorine, when used as a sanitizer, is most effective in cool, not hot, water. The water temperature when using chlorine as a sanitizer shall be maintained warmer than 40 degrees fahrenheit. A free available chlorine level of 100 parts

per million shall be maintained. A contact time of at least 15 seconds shall be used for sanitizing.

(f) Cleaned and sanitized portable equipment and utensils shall be stored in such a location and manner as to allow air drying, and product surfaces shall be protected from splash, dust, and other contamination.

§241.70. Shucking of Shellfish.

(a) Shellfish shall not be subjected to contamination while being held or processed.

(1) Shellstock to be shucked shall be stored an adequate height off the floor (minimum four inches) and in such locations that contamination from standing water or splash from foot traffic does not occur.

(2) Shellstock shall be reasonably free of mud when shucked.

(3) Only live, safe, and wholesome shellfish shall be shucked.

(4) Dead shellfish or shellstock with badly broken shells shall be discarded.

(b) During shucking and packing, shellfish shall not be exposed to contamination or held for times or at temperatures exceeding the requirements established in these sections.

(1) Shucking buckets and storage containers shall be so used that their rims are at an adequate height above the floor to prevent contamination from floor splash.

(2) Shellstock shall be mechanically refrigerated in compliance with §241.55 of this title (relating to Harvesting and Handling Shellstock). When shellstock is shucked, the meats shall be shucked and delivered to the packing room within one hour.

(3) Shucking buckets shall be completely emptied at the packing room and no overage shall be returned to the shucker. Overages shall be held in a sanitary container on ice in the packing room until they can be combined with other oysters of the same lot to be packed.

(4) Shucking containers shall be rinsed clean with running water and sanitized before each filling.

(5) The precautions that apply to hand shucking methods shall be applied to mechanical procedures for the shucking of all species of shellfish.

(c) The use of dip buckets for hand or knife rinsing shall be prohibited.

(d) Shellstock from different lots shall be kept separate, and shucking opera-

tions shall be scheduled to avoid commingling shellfish from different lots.

(e) Water used for fluming or washing shellstock and the shucked product shall be obtained from an approved source.

§241.71. Shell and Waste Disposal.

(a) Shells and other inedible materials shall be promptly and effectively removed from the shucking bench or table area to prevent interference with the sanitary operations of the shucking process.

(b) Shell and waste materials shall be disposed of so as to minimize the development of odor and not become an attractant, harborage, or breeding place for vermin. Fly control measures shall be necessary in the vicinity of shell disposal areas when flies are likely to be present.

(c) Shells and inedible waste shall be disposed of in such a manner that contamination of shellfish, food contact surfaces, ground surfaces, and water supplies does not occur.

§241.72. Single Service Containers.

(a) Containers for shucked shellfish shall be clean; constructed of non toxic metal, food grade plastic, glass, or other impervious material; and designed and fabricated such that the contents shall be protected from contamination during shipping and storage.

(b) Single service and single use containers and covers shall be kept in original cartons until used, and shall be kept clean and dry, or otherwise protected. Container storage rooms shall be kept clean and free of vermin; containers shall be stored in a manner that the presence of vermin may be easily detected. Container storage rooms shall not be used as general store rooms for unused equipment and materials. Containers shall be stored off the floor and away from the walls to facilitate inspecting and cleaning of the area.

(c) Shucked shellfish containers shall be cleaned, sanitized, and properly stored prior to filling, or they shall be discarded if they are unable to be cleaned adequately. Single service and single use containers which have been used and the shellfish removed, shall be destroyed or otherwise made unusable to hold shucked shellfish again.

(d) Plant employees shall use reasonable precautions to prevent food contact surfaces of containers from coming into contact with themselves or their clothing. Empty containers in the packing rooms shall be protected and kept inverted on stands or tables at an adequate height above the floor to prevent contamination from splash.

§241.73. Packing of Shucked Shellfish.

(a) Skimmer tables and other packing equipment shall be located so they will not receive drainage from the delivery window or contamination from shucking room equipment and utensils.

(b) Shuckers and other unauthorized persons shall not enter the packing room for any purpose. An exception may be made in a small operation where an employee may adequately work in both the packing room and shucking room. In such cases, the employee shall put on a clean apron and shall wash his/her hands thoroughly, immediately upon entering the packing room.

(c) Shellfish meats shall be examined for naturally occurring extraneous materials such as shell fragments, sand, pearls, and other inedible components. The packing process and equipment shall not transmit contaminants or objectionable substances to the products. Containers shall conform to applicable food additive regulations and provide adequate protection from contamination.

(d) Shucked meats shall be thoroughly rinsed clean, drained, and packed promptly after delivery to the packing room. The packing operations shall be scheduled and conducted so as to chill all meats to an internal temperature of at least 45 degrees fahrenheit or less within two hours of delivery to the packing room. Containers of shucked shellfish shall be closed promptly after filling. Shucked meats which are to be packed into containers having a capacity of more than one gallon shall be chilled to 45 degrees fahrenheit or less prior to packing.

(e) Washing, blowing, and rinsing of shellfish meats shall be in compliance with time limits specified in the National Shellfish Sanitation Program (NSSP) Manual of Operations.

(f) Shucked shellfish shall be packed only into containers correctly labeled with the authorized plant certification number. The presence of usable containers or covers with a certification number other than that on the unexpired plant certificate will be considered a violation of this subsection; except that filled, properly labeled containers of shellfish from another currently certified dealer may be present when records verify that the shellfish were purchased from that dealer already packed.

(g) Reusable containers shall be used only for in-plant storage of shucked shellfish and shall be sealed during storage. Reusable containers allowed by the Division of Shellfish Sanitation Control (DSSC) shall be constructed of corrosion proof, impervious material with an exceptionally

smooth interior making them easily cleanable. Covers of reusable containers shall be designed so as to protect the pouring lip of the container from contamination. These containers shall not be larger than five gallons in volume and no more than three gallons of shucked shellfish shall be stored in them at any one time. The shellfish shall be chilled to 45 degrees fahrenheit prior to being put into these containers.

§241.74. Labeling Shucked Shellfish.

(a) Each individual container of fresh or fresh frozen shucked shellfish shall have permanently recorded on the container or principal display panel, so as to be easily visible, the following information:

(1) the packer's, or repacker's, name as it appears on the certificate of compliance;

(2) the packer's or repacker's address, including at least the city and state; and

(3) the two letter state abbreviation followed by the one-to-five digit certificate number and followed by the two letter abbreviation for the type of operation the dealer is qualified to perform (shucker/packer (SP) or repacker (RP)).

(b) The principal display panel on each container of fresh or fresh frozen shucked shellfish shall contain a date in compliance with the current National Shellfish Sanitation Program (NSSP) Manual of Operations, Part II. If the date is a shucking date, it shall be preceded by the word shucked and shall be required on containers of 64 ounces or more.

(c) If the date is a sell by date, the method of determining that date shall be based on the date the shellfish are shucked and shall be approved by the Division of Shellfish Sanitation Control (DSSC) before being used. The proposed method must be submitted in writing to the DSSC. The sell by date is 14 days after the date of shuck unless otherwise approved in writing by the DSSC. The sell by date shall be preceded by the words SELL BY. A sell by date shall be required on containers of 63 ounces or less.

(d) The principal display panel on each container of fresh or fresh frozen shucked shellfish shall contain a lot identification adequate to permit the container to be traced back to the incoming lot of shellstock from which it was packed.

(e) Frozen shellfish shall be labeled as FROZEN in print of equal prominence immediately adjacent to the name of the shellfish. The word frozen shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container. Stamping shall not be allowed.

(f) Reusable containers used to temporarily store shucked shellfish shall have the following information permanently recorded on the container:

(1) the packer's or repacker's name as it appears on the certificate of compliance;

(2) the packer's or repacker's address, including at least the city and state; and

(3) the complete certification number.

(g) Reusable containers must have a tag or label attached to each container indicating the date shucked so that the date on the final container can be determined properly at repacking. Other information necessary to properly identify the lot and source of the shucked product shall also be on the tag or label.

(h) All required information shall be provided in a legible and indelible form. All information, except the date and lot identification, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container by the container printing company, unless, an adhesive label which has been approved by the DSSC is used. Adhesive labels shall be durable and waterproof and shall not be used unless prior approval from the DSSC is obtained. The request must be submitted in writing. All labeling is subject to review and approval by the DSSC.

§241.75. Refrigeration and Shipping of Shucked Shellfish.

(a) Shucked shellfish shall be held and transported under mechanical refrigeration at air temperatures of 45 degrees fahrenheit or less. Storage and shipping of containers of shucked shellfish in wet ice is also required. Containers of shucked shellfish shall not be stored upside down.

(b) Containerized shellfish to be frozen shall be arranged to insure rapid freezing, and shall be frozen at an ambient air temperature of zero degrees fahrenheit or less, with the shellfish frozen solid within 12 hours after the start of freezing. Frozen shellfish shall be handled in such a manner as to remain frozen solid, and shall be held at zero degree fahrenheit or less. Previously frozen shellfish which have thawed shall be destroyed.

(c) Refrigeration and frozen storage compartments shall be equipped in compliance with §241.55 of this title (relating to Harvesting and Handling Shellstock). Mechanical refrigeration facilities shall be adequate in size and cooling capacity to refrigerate all shucked shellfish on the premises. Each facility shall be equipped with an automatic temperature regulating control

(thermostat) and an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location in the storage compartment.

(d) After initial refrigeration, shucked shellfish removed from refrigeration shall not be permitted to remain in air temperatures above 45 degrees fahrenheit for more than two hours.

(e) All containers holding shucked shellfish shall be kept covered during refrigeration.

(f) Trucks used to transport shucked shellfish shall have the storage area constructed of a nontoxic, smooth, impervious material so as to protect the shellfish from contamination and shall be kept clean. Shucked shellfish shall be transported in mechanically refrigerated units that can maintain an air temperature between 45 degrees fahrenheit and 35 degrees fahrenheit, shall be pelletized, and shall be arranged to allow maximum air circulation.

(g) Dogs, cats, or other animals shall not be permitted on vessels, in vehicles, or in any other area where shucked shellfish are held or transported.

§241.76. Ice.

(a) Ice shall be manufactured at the establishment from potable water in a commercial machine which has been properly installed without any cross connections, or in another establishment approved by the appropriate regulatory agency.

(b) Ice shall be stored so as not to come into contact with unclean surfaces and shall be handled in such a manner that it will not be contaminated or exposed to contamination. Equipment used to handle ice shall be kept clean and shall be stored in a sanitary manner.

(c) Ice not manufactured in the shellfish processing establishment shall be inspected upon receipt and rejected if not delivered in clean conveyances and protected from contamination.

§241.77. Records.

(a) Complete, accurate, and legible records in a form approved by the Division of Shellfish Sanitation Control (DSSC) shall be maintained by each certified dealer. These reports shall be sufficient to document that the shellfish are from an approved source and to permit a container of shellfish to be traced back to its specific incoming lot. Purchases and sales shall be recorded in a permanently bound ledger book and are maintained for a minimum of one year. Transaction records indicating origin, date, and time of receipt of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the DSSC.

(b) Records covering purchases and sales of fresh shellfish shall be retained for a minimum of one year. Records covering purchases and sales of frozen shellfish shall be retained for at least two years or for a period of time that exceeds the shelf life of the product, if that period is longer than two years.

(c) Records shall be made available for inspection upon verbal request by an agent of the DSSC during all normal working hours.

(d) The following items pertaining to purchases shall be identified in the records:

- (1) seller's identification (harvester or other certified dealer);
- (2) harvest location for shellstock;
- (3) harvest date for shellstock;
- (4) shuck date for shucked product;
- (5) quantity purchased; and
- (6) date purchased.

(e) The following items pertaining to processing or shipping shall be identified in the records:

- (1) Processing or repacking date;
- (2) Quantity processed or repacked;
- (3) Quantity remaining;
- (4) Quantity disposed of and method;
- (5) Date shipped;
- (6) Quantity shipped; and
- (7) Consignee identification.

§241.78. Employee Health.

(a) Persons infected by disease in a communicable form, or while a carrier of such disease, or while infected with boils, sores, infected wounds, or acute respiratory infection shall not work in a shellfish processing establishment in any capacity in which there is a likelihood of such persons contaminating shellfish or shellfish contact surfaces with pathogenic organisms or transmitting diseases to other persons.

(b) Daily observation of employees shall be made by the supervisor, with reasonable inquiries being made when signs of illness appear. Employees having diarrhea, sore throat, or any other symptoms of illness or disease shall promptly report this to their supervisor.

(c) Upon an inquiry indicating the possibility of a communicable disease, the

infected employee shall be excluded from the plant pending clearance by a licensed medical doctor.

(d) Shuckers, packing room personnel, or any other employee who has a stab wound, puncture, or any other open wound and may handle the product shall be excluded from the plant, unless appropriate steps are taken to cover the wound and properly protect the product.

§241.79. Supervision.

(a) A reliable, competent individual shall be appointed by the management to supervise general plant operations as enumerated in the sections of this undesignated head. Appointing such an individual does not relieve management of the responsibility for complying with the sections of this undesignated head.

(b) There shall be evidence that supervisors have been monitoring employee hygiene practices, including proper hand washing, no eating and no smoking at work stations, and properly storing personal items of clothing. Supervisors shall also insure that proper sanitary practices are implemented, including plant and equipment cleanup, protecting shellfish from contamination during shucking and packing, and rapid product handling.

(c) Unauthorized persons shall not be permitted in the processing areas during periods of operations.

§241.80. Personal Cleanliness.

(a) Employees handling shucked shellfish shall wear clean outer garments. These outer garments shall be rinsed or changed as necessary to be kept clean. Persons rinsing and packing shellfish shall wear an apron of approved material.

(b) Employees shall wash their hands thoroughly with soap and water and shall sanitize their hands before starting work, after each absence from the work station, after each interruption, and at any other time when their hands may have become soiled or contaminated. Utensil sinks shall not be used for hand washing. There shall be at least one hand washing lavatory in the packing room and one in the shucking room.

(c) Finger cots, gloves, and shields, if worn by shuckers, shall be sanitized as often as necessary or at least twice daily; shall be properly stored until used; and shall be maintained in an intact, clean, and sanitary condition. Finger cots, gloves, and shields shall be made of an impermeable material except where use of such materials would be inappropriate or incompatible with the work involved.

(d) Hands of employees handling shucked shellfish shall be either protected

by sanitized finger cots or gloves, or shall be washed and disinfected immediately before any manual handling of the shucked shellfish.

(e) Employees shall not store clothing or other personal belongings, eat food, chew gum, drink beverages, use tobacco in any form, spit, or conduct any other unsanitary acts in areas where shellfish are being stored, shucked, or packed or in areas that are being used for washing equipment or utensils.

(f) Employees handling shucked shellfish shall wear effective hair restraints, remove all insecure jewelry and remove from hands any jewelry that cannot be adequately sanitized. If jewelry cannot be removed from hands, adequate finger cots or gloves shall be worn.

(g) Employees shall take other necessary precautions to prevent contamination of shucked shellfish with microorganisms or foreign substances, including, but not limited to, perspiration, hair, cosmetics, chemicals, and medicants.

§241.81. Education and Training.

(a) Supervisors shall receive appropriate training in proper food handling techniques and food protection principles and shall be cognizant of personal hygiene, sanitary practices, and the requirements established in these sections. Failure of any person or persons to avail themselves of this information does not relieve them of a violation of these sections.

(b) Employees shall receive instruction and training in proper food handling and personal hygiene and sanitary practices from supervisory personnel or from other sources acceptable to the Division of Shellfish Sanitation Control (DSSC).

(c) Shellfish plant owners and/or managers and supervisors shall be required to take a Food Service Worker Accreditation and Training course, obtain a certificate of completion, and provide a copy to the DSSC prior to obtaining a Shellfish Certificate of Compliance. New supervisors shall be required to take the course and obtain a certificate of completion before working as a supervisor in a plant and shall submit a copy of their certificate to the DSSC within two weeks of employment.

(d) Unsanitary practices of employees shall be brought to the attention of the employees by their supervisor and the employees shall be instructed on the proper sanitary practice that is to be used.

§241.82. Repacking Shucked Shellfish.

(a) Facilities in which shucked shellfish are repacked shall be in compliance with construction requirements estab-

lished in the sections of this undesignated head.

(b) Shucked shellfish for repacking shall originate only from certified shucker/packers, shall be labeled in compliance with §241.74 of this title (relating to Labeling Shucked Shellfish), and shall be received at internal temperatures of 45 degrees fahrenheit or less.

(c) Complete, accurate, and legible records, in a form approved by the Division of Shellfish Sanitation Control (DSSC), shall be maintained by the repacker. These records will permit a container of repacked shellfish to be traced back to the original shucker/packer. The records shall include date of pack and source of the shellfish. Purchases and sales shall be recorded in a permanently bound ledger book. If computer records are maintained, they shall be approved by the DSSC. Records shall be maintained for a minimum of one year for shucked shellfish and two years for frozen shellfish.

(d) Shucked unfrozen shellfish shall be maintained at an internal temperature of 45 degrees fahrenheit or less while in storage and throughout repacking operations.

(e) Only wholesome shellfish shall be repacked and the requirements of the sections of this undesignated head shall be followed to prevent contamination and to minimize microbial growth and product deterioration.

(f) Repacked shellfish shall be labeled in compliance with §241.74 of this title (relating to Labeling of Shucked Shellfish), and the original date of shucking shall be used in establishing the labeling date.

(g) Ice shall be manufactured and handled in accordance with the requirements of §241.76 of this title (relating to Ice).

(h) Employee health, supervision, and education and training shall be in compliance with the sections of this undesignated head.

(i) Shucked shellfish from different lots shall not be commingled during repacking.

(j) Animals and unauthorized persons shall not be allowed in any area where shucked shellfish are being stored or repacked.

§241.83. Wet Storage.

(a) Source and shipping.

(1) Shellfish for wet storage shall be harvested only from approved or conditionally approved areas.

(2) Shellfish for wet storage shall be harvested, identified, and shipped

in accordance with applicable requirements of these sections.

(b) Storage facilities.

(1) Each wet storage site or facility shall be evaluated and approved annually by the Division of Shellfish Sanitation Control (DSSC) on the basis of an evaluation of the nearshore site or the facilities plan and operating procedures for an on-shore operation submitted by the dealer and an inspection of the storage site or facility. Factors to be considered include, but are not limited to, the following:

(A) the sanitary survey of the nearshore storage site, with special consideration of potential intermittent sources of pollution;

(B) the location of nearshore storage sites and floats;

(C) a plan giving the design of the onshore storage facility, source of water to be used for wet storage, and details of any water treatment system; and

(D) the purpose of the wet storage operation, such as holding, conditioning, or salinization, and any species specific physiological factors that may affect design criteria.

(2) Wet storage is practiced only in strict compliance with provisions in the written approval for the wet storage operation given by the DSSC.

(3) Nearshore areas used for wet storage shall meet the National Shellfish Sanitation Program (NSSP) approved area criteria at all times shellfish are being held for direct marketing.

(4) Each onshore wet storage facility shall meet the following design, construction, and operating requirements.

(A) Effective barriers such as roofs, walls, screens, and doors shall be provided to prevent entry of birds, animals, and vermin into the area.

(B) Floors, walls, and ceilings shall be constructed, and lighting, plumbing, and sewage disposal systems shall be installed to comply with these sections.

(C) Storage tanks and related plumbing shall be fabricated of safe material and are easily cleanable. Tanks shall be constructed so as to be easily accessible for cleaning and inspection, shall be graded to drain, and shall meet food contact surface requirements. Plumbing shall be designed

and installed so that cleaning and sanitizing will be effective.

(D) Where necessary, a water treatment system shall be installed which provides an adequate quantity and quality of water to carry out the intended purpose of the wet storage operation and the treatment does not leave residues that may interfere with the process. The quality of the water prior to final disinfection shall be no less than for a restricted area.

(E) For water receiving ultraviolet disinfection, turbidity shall not exceed 20 nephelometric turbidity units (NTU's) measured in accordance with the publication titled "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association.

(F) Incoming water supplied to wet storage tanks shall have no detectable levels of coliform organisms as measured by the standard five tube Most Probable Number (MPN) test for drinking water. However, water from approved growing areas may be used in wet storage tanks without disinfection if the system is of continuous flow through design and provided that the nearshore water source used for supplying the system meets the NSSP approved area bacteriological criteria at all times that shellfish are being held for direct marketing.

(G) Shellfish shall be thoroughly washed with water from an approved source and culled to remove dead, broken, or cracked shellfish prior to wet storage in tanks.

(H) Shellfish from different harvest areas shall not be commingled during wet storage in tanks.

(I) Bivalve mollusks shall not be commingled with other species in the same tank. Where multiple tank systems use a common water supply system for bivalve mollusks and other species, process water shall be effectively disinfected prior to entering tanks containing the bivalve mollusks.

(J) Tanks, lines, pumps, and other equipment shall be cleaned and sanitized as necessary to prevent contamination of the tank and water.

(K) Disinfection units shall be cleaned, serviced, and tested as frequently as is necessary to assure effective disinfection. A water sampling schedule

shall be included in the firm's operating procedures and the water shall be tested according to the schedule. If the water supply is from a source meeting restricted area criteria, the sampling schedule shall require daily water testing by an approved laboratory.

(L) Salt added to increase salinity or produce synthetic seawater shall be free of any levels of poisonous or deleterious substances which may contaminate the shellfish.

§241.84. Heat Shock.

(a) Washing of shellstock.

(1) All shellstock subjected to the heat shock process shall be washed with potable water of adequate supply and pressure. Washing by immersion is prohibited. Unsafe or unwholesome shellfish, and shellfish with badly broken shells, shall be culled immediately prior to the heat shock operation.

(2) Shellstock shall be handled in a manner which prevents their contamination.

(b) Heat shock process.

(1) An approved scheduled process shall be used in each heat shock processing plant and the scheduled process shall be established by the Division of Shellfish Sanitation Control (DSSC) or other qualified persons having adequate facilities for conducting appropriate studies to make such a determination.

(2) Critical factors which may affect the process shall be adequately studied and provided for in establishing the process. Critical factors to be considered include, but are not limited to:

(A) type and size of shellfish;

(B) time and temperature of exposure;

(C) type of process (e.g. hot water immersion, steam tunnel, steam retort);

(D) size of the tank, tunnel, or retort;

(E) water to shellfish ratios in tanks; and

(F) temperature and pressure recording devices.

(3) The physical and organoleptic properties of the species shall not be changed by the scheduled process and the shellfish shall remain alive until shucked.

(4) The process shall not result in increased microbial deterioration of the shucked shellfish.

(5) Records covering all aspects of the establishment of the process shall be maintained in the central file of the DSSC.

(6) The scheduled process shall be posted at a conspicuous location in the plant and all responsible persons shall be familiar with the requirements.

(c) Cooling of heat shocked shellstock and shucked shellfish.

(1) All hot dipped shellstock shall be cooled with flowing potable water immediately after the heat shock process.

(2) All heat shocked shellstock shall be handled in such a manner as to preclude contamination during the cooling process.

(3) All shellfish meats of shellstock which have been subjected to the heat shock process shall be shucked and cooled to an internal temperature of at least 45 degrees fahrenheit within two hours after the heat shock process and shall be placed in storage at 45 degrees fahrenheit or below. This will require the use of crushed or flaked ice in the shucking containers, blowers, or chilling tanks, or the use of refrigerated water at the skimmer table.

(d) Cleaning of heat shock process equipment.

(1) Heat shock tanks or retorts, conveyers, tunnels, conveyances, and all other equipment used in the heat shock process shall be thoroughly cleaned and sanitized in such a manner and at such a frequency as to minimize the danger of contamination of the shellfish in accordance with the sections of this undesignated head. When used on a continuous basis, such equipment shall be cleaned and sanitized on a predetermined schedule using adequate methods of cleaning. Tanks, conveyances, and equipment shall be thoroughly cleaned and sanitized at the end of each day's operation.

(2) If a heat shock water tank is used, it shall be completely drained and flushed at three hour intervals or less in such a manner that all mud and detritus remaining in the dip tank from previous dippings are eliminated.

(3) All heat shock process tanks or retorts, conveyers, tunnels, conveyances, and other equipment shall be of such construction that they may be easily cleaned, and shall be constructed and maintained in accordance with the sections of this undesignated head.

§241.85. Depuration Certificate Requirements.

(a) Any person who obtains approval for certification to operate a depuration plant shall furnish a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or make a cash deposit in the form of a cashier check, a certified check, or a postal money order prior to issuance of the certificate. The corporate surety, two personal sureties, or the cash deposit that is posted as bond shall be on the condition that the certificate holder will comply with the requirements in the sections of this undesignated head pertaining to the gathering, depuration, and sale of shellfish. Upon failure to comply with these requirements, the certificate may be revoked, and the certificate holder or his surety, corporate or personal, shall pay as forfeiture to the commissioner the sum of at least \$1,000.

(b) Failure to comply with any requirements relating to depuration established in the sections of this undesignated head, or the refusal to allow an inspection of a depuration plant shall be considered to constitute an imminent hazard to public health. Such failure to comply shall constitute grounds for revocation of the depuration certificate prior to a hearing in accordance with the procedures established in §241.53 of this title (relating to Certification and Enforcement Procedures), and termination of all depuration operations. Shellfish in the plant at the time of a violation are subject to immediate removal and destruction. A new certificate may be issued when compliance with the sections of this undesignated head has been reestablished and a new bond has been posted as described in subsection (a) of this section. The facilities for which a certificate is issued are subject to inspection during normal business hours and at any time shellfish are being treated or stored on the premises.

(c) The depuration plant owner shall designate a plant supervisor and assistant plant supervisor to be accountable for compliance with all applicable state laws and rules. Supervisory personnel shall have a thorough knowledge of the process and shall be present during critical process operations.

(d) The depuration plant shall be used for no purpose other than the treatment of shellfish and research activities related thereto, unless approved by the Texas Department of Health (TDH). Persons not engaged in the operation of the shellfish depuration plant or not representing the TDH, the Texas Parks and Wildlife Department (TPWD), or the United States Food and Drug Administration shall not be allowed access to the depuration plant or the laboratory, unless approved by the TDH.

(e) No depuration facility shall be built in conjunction with another certified shellfish dealership. Any person desiring to operate both a depuration facility and a dealership of any other category shall be required to hold a separate certificate for each. A certificate issued for the operation of a specific depuration facility is not applicable to the operation of any other depuration facility.

(f) All depuration activities shall be conducted in accordance with the National Shellfish Sanitation Program (NSSP) Manual of Operations unless specified otherwise in the sections of this undesignated head.

§241.86. Depuration Gathering Permit.

(a) Any person, firm, or corporation engaging wholly or part-time in the business of gathering shellfish from areas designated by the commissioner of health for delivery to a controlled depuration plant shall be required to hold a current permit issued specifically for this purpose by the Texas Parks and Wildlife Department (TPWD), with a copy in the files of the Texas Department of Health (TDH).

(b) Gathering for depuration permits shall be granted only to responsible individuals on the following conditions.

(1) All gathering and transporting of shellfish for depuration must be accomplished between sunrise and sunset.

(2) All boats and vehicles used to gather or transport shellfish for depuration shall be conspicuously marked in a manner established by the TPWD. All boats or vehicles so marked shall be thoroughly cleaned and sanitized and the marking removed prior to use for harvesting or transporting treated shellfish or other shellfish approved for harvest or sale.

(3) Shellfish gathered for depuration shall not be sacked or containerized in any manner resembling normal sales of shellstock from approved harvest areas. Such sacks or other containers shall not be stored on any boat or vehicle used to gather or transport shellfish for depuration. Containers of untreated shellstock shall be tagged or labelled as polluted.

(4) A copy of the TPWD permit shall be kept on board the vessel at all times during gathering and transporting of shellstock for depuration.

(5) All gathering and transporting of shellfish for depuration shall be conducted under the immediate surveillance of a commissioned officer of the TPWD, or other commissioned officer as provided by law. The responsibility for obtaining this surveillance rests with the depuration plant owner or operator. A commissioned officer shall be present for every 10 gatherers or

gathering boats or for any portion of 10 gatherers or boats working for any single depuration plant. An officer shall not concurrently serve as surveillance officer for more than one depuration plant. Separate surveillance officers shall be present for gatherers from the same plant working concurrently in more than one geographic area. The surveillance officer shall have all shellstock under his or her control at all times during transport from the gathering area to the depuration plant. The surveillance officer shall prepare a report stating the gathering area(s), species, and quantity of shellfish gathered each day by each gatherer under his or her surveillance. One copy of the report shall accompany the shellstock to the depuration plant and be maintained in the plant files for not less than one year. One copy of the report shall be forwarded to the Texas Department of Health, Division of Shellfish Sanitation Control, 1100 West 49th Street, Austin, Texas 78756.

(6) All shellfish gathered under authority of a depuration permit shall be delivered only to the depuration plant specified, on the day gathered, and shall be depurated or disposed of as waste.

(7) Shellfish gathered for depuration shall be protected at all times during gathering and transporting to prevent contamination and undue stress.

§241.87. Depuration Tank Design and Construction.

(a) Tanks shall be designed to allow for the uniform flow of water with no turbulence where shellfish are located. Design and operation of the tanks shall be such that all areas are subject to water flow and there shall be no areas of poor circulation. Tanks shall be of sufficient size to allow at least eight cubic feet of water per bushel of shellfish in each tank. If tanks are rectangular in shape, length to width ratios shall be from 2:1 to 4:1. The maximum depth of each tank shall be 48 inches. The flow rate in each tank shall be at least one gallon per minute per bushel and some means of measuring flow rate shall be provided.

(b) Tanks shall be designed so that scum and sludge (shellfish feces and pseudo-feces, sand, grit, etc.) can be easily removed or flushed out. The bottom shall be sloped longitudinally at least 1/4 to 1/2 inch per foot toward the outlet end.

(c) To facilitate proper cleaning and sanitation, as well as proper treatment of shellfish, tanks shall be constructed from impervious, nontoxic and inert materials. Coatings, when used, may include epoxy resins, powdered polyesters, vinyl bituminous water tank paint, and paraffin. The coatings are not only for waterproofing but should provide a smooth, hard, nonporous surface for cleanability.

§241.88. Depuration Plant Sanitation.

(a) The general sanitation requirements of the plant, physical structure, equipment and utensils, and the sanitary requirements for operations, processes, and personnel shall be as follows:

(1) the regulations issued by the United States Food and Drug Administration, titled, "Human Food; Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Molding," 21 Code of Federal Regulations, Part 128, as revised;

(2) where applicable, the sanitation requirements for plant, handling of shellstock, and personnel described in the current National Shellfish Sanitation Program (NSSP), Part II; and

(3) the requirements in the sections of this undesignated head.

(b) Equipment surfaces that come into direct contact with the shellfish shall be made of smooth, corrosion resistant, impervious, nontoxic materials which will not readily deteriorate or crack; shall be so constructed as to be readily cleaned; and shall be kept in good repair.

(c) The depuration plant shall be free from insects, rodents, or other vermin, and domestic animals.

(d) The treatment plant shall be kept clean and free of litter and rubbish. Miscellaneous and unused equipment and articles which are not necessary to plant operations shall not be stored in rooms used for depuration or shellfish storage. Culled shellfish shall be promptly removed from the plant and disposed of as waste. Any person entering a treatment tank shall wear sanitized footwear.

§241.89. Depuration Plumbing, Water Supply, and Related Facilities.

(a) Plumbing shall be installed as required in §241.64 of this title (relating to Plumbing, Sewage, and Related Facilities). Lavatories shall have running hot and cold water through a common mixer valve and shall be so located that their use by plant personnel can be readily observed by supervisory personnel. Signs shall be posted in toilet rooms and near lavatories, directing employees to wash their hands before starting work and after each interruption.

(b) Pump volutes and impellers shall be made of nontoxic material.

(c) The water supply for all uses shall be from a source approved by the Texas Department of Health (TDH). When sea water is used in the depuration process, it must be obtained from an area that is currently approved for that purpose by TDH. The water that is used for depuration

purposes shall be sterilized before use and be properly disposed of at the conclusion of the treatment process.

(d) Plant domestic sewage shall be discharged into a sewage disposal system constructed in accordance with state and local requirements.

§241.90. Depuration Construction Requirements.

(a) Floors, walls, ceilings, screens, and doors shall be constructed in conformance with §241.59 of this title (relating to Floors, Walls, and Ceilings), and §241.60 of this title (relating to Insect and Vermin Control Measures).

(b) Adequate natural and/or artificial light shall be provided in all working and storage rooms. To insure constant conditions for the shellfish undergoing the treatment process, it is desirable to maintain at least 10 foot candles of illumination at the water surface level of the depuration tanks throughout the day. These water surfaces should not be subjected to the variations of direct sunlight.

(c) Working room temperatures should be maintained within a reasonable comfort range. If control of depuration tank water temperature is dependent on room air temperature, room air temperature shall be controlled to promote optimum conditions for the depuration process.

§241.91. Depuration Laboratory Procedures.

(a) All laboratory analysis shall be conducted in a local, county, or state government laboratory. The laboratory must be evaluated by a certified laboratory evaluation officer and meet the minimum requirements of the Texas Department of Health (TDH) and the Food and Drug Administration (FDA) prior to issuance of the depuration certificate. The laboratory shall be supervised and operated by a person or persons having written approval for these purposes currently issued by TDH. It shall be the responsibility of the plant owner or operator to obtain the necessary laboratory support.

(b) The laboratory shall conduct routine bacterial examinations of process water and shellfish, and special examinations when necessary or required.

(c) Bacterial examinations of shellfish and water shall be made in accordance with the most recent edition of the American Public Health Association publication titled, "Recommended Procedures for the Examination of Sea Water and Shellfish", or other methods approved by TDH.

(d) All other physical, chemical, or biological tests shall be conducted accord-

ing to the most recent edition of the publication titled "Standard Methods for the Examination of Water and Waste Water", prepared and published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation; or other methods approved by TDH.

§241.92. Depuration Plant Operation.

(a) Exclusion of infected persons. Any person infected with any disease in a communicable form, or known to be a carrier of any disease which can be transmitted through the handling of shellfish, or who has an infected wound or open lesion on any portion of his body, shall be excluded from the plant until appropriately treated and found by a licensed physician to be free from disease causing organisms.

(b) Source of shellfish. Shellfish shall be accepted for treatment at a shellfish depuration plant only from areas designated for this purpose, and only if they meet the raw product specifications established in the process verification study. A detailed description of all areas from which shellfish may be gathered for treatment purposes, updated as necessary, shall be filed by the Texas Department of Health (TDH) with the Texas Parks and Wildlife Department (TPWD) and the plant supervisor. The plant supervisor or assistant plant supervisor shall inspect all containers of raw shellfish upon arrival at the plant to verify that they contain the species and quantity stated on the surveillance officer's reports.

(c) Shellfish containers. Shellfish shall be accepted for treatment and released after treatment in clean containers only. All containers and conveyances shall be constructed of nonabsorbent, nontoxic, and rustproof material; and kept clean and free from foreign matter. Burlap bags or similar absorbent material shall not be used for transporting shellfish to the treatment plant nor for the removal of shellfish from the plant.

(d) Culling. All untreated shellfish prior to, or upon arrival at the plant, shall be thoroughly inspected and culled by the plant supervisor or assistant plant supervisor. All dead shellfish, or shellfish in broken or cracked shells shall be disposed of as waste. The plant supervisor or assistant plant supervisor shall be held responsible for suitable culling that shall include the removal and disposal of dead shellfish or shellfish with broken or cracked shells both before and after depuration. The quantity of shellfish disposed of as waste shall be recorded and maintained as part of the plant records. Where needed to prevent cross contamination, separate culling facilities shall be provided for untreated and treated shellfish.

(e) Washing shellfish.

(1) Before treatment, all shellfish shall be thoroughly washed or hosed with water taken from a source approved by TDH. Immersion of shellfish for washing purposes is prohibited.

(2) After treatment, all shellfish shall be thoroughly washed or hosed with water taken from a source approved by TDH. Where needed to prevent cross contamination, separate washing facilities shall be provided for untreated and treated shellfish.

(f) Baskets used in the treatment process. All baskets used in the treatment process shall be of suitable size, designed for easy handling and cleaning, and made of impervious material(s). Baskets shall be of such design as to allow water to flow freely over the shellfish in the treatment tank. Baskets shall not be filled beyond the level which will allow free circulation of water during the treatment process. The height of the shellfish in the baskets shall not exceed three inches. Baskets shall be stacked in such a manner as to allow free circulation of water and a minimum of three inches clearance in all directions. Containers used for treatment purposes shall not be used for any other purpose and no other equipment shall be placed in the treatment tank.

(g) Shellfish treatment. All shellfish, upon receipt at the treatment plant, shall be promptly treated or placed in controlled storage. Shellfish shall be treated for a minimum period of 48 hours or for such longer time as required by TDH.

(h) Washing treatment tanks. After each treatment period, the water in the tanks shall be drained, and feces, pseudo-feces and any other waste matter shall be flushed out of the tanks. Treatment tanks shall be sanitized with an approved sanitizing agent and thoroughly rinsed prior to the tanks being refilled with treatment water.

(i) Commingling prohibition. Different lots of shellstock for depuration shall not be commingled before or during treatment. Different species of shellfish shall not be depurated in the same depuration unit unless studies demonstrate the species are compatible. Different lots of treated shellstock shall not be commingled during packing.

§241.93. Depuration Shellfish Sampling Procedures.

(a) When shellfish are delivered to the depuration plant, the following schedule shall be followed.

(1) One or more shellfish samples (12 or more shellfish per sample), shall be collected for bacterial examination before the shellfish are submitted to the treatment process.

(2) Three or more shellfish samples, (12 or more shellfish per sample), randomly selected from three or more locations in each tank, shall be collected for bacterial examination after 24 hours of depuration.

(3) Three or more shellfish samples (12 or more shellfish per sample), randomly selected from three or more locations in each tank, shall be collected for bacterial examination after completion of the treatment process.

(b) The schedule in subsection (a) of this section shall be followed until such time as the Texas Department of Health (TDH) and the plant supervisor determine that the shellfish from designated areas are responding properly to the treatment process, and that the treatment process is successfully reducing bacterial levels. Commercial sale of treated shellfish shall not be allowed until the effectiveness of the treatment process has been established. After the treatment process has been determined to be effective, a routine sampling procedure shall be followed. A routine sampling procedure defining a program of daily sampling shall be established by TDH. Written permission from TDH must be obtained prior to the initiation of a routine sampling procedure.

(c) In the event of replacement or relocation of the laboratory, replacement of laboratory equipment, employment of additional or replacement laboratory personnel, changes in laboratory procedures, or the alteration of treatment procedures, a reevaluation shall be conducted by a certified laboratory evaluation officer, and TDH may require that initial depuration plant starting procedures be used until such time as TDH and the plant supervisor determine that the laboratory and/or the treatment process results are acceptable. Written permission from TDH shall be obtained before routine sampling procedures are resumed.

§241.94. Depuration Process Water Control-Sampling.

(a) All shellfish treatment controlled processes shall have quality tests to determine if standards are being met and if controls are effective.

(b) To insure the continuing effectiveness of the shellfish treatment process, the following minimum sampling procedures shall be followed.

(1) Incoming water shall be tested for temperature, turbidity, salinity, dissolved oxygen, bacteriological levels, and Ph prior to the initiation of the 48 hour minimum treatment process.

(2) Treatment tank water shall be tested for temperature, turbidity, salinity,

dissolved oxygen, bacteriological levels, and pH once per day per tank.

§241.95. Depuration Treatment Water Standards.

(a) Bacteriological. All water to be used in shellfish treatment tanks shall be subjected to either ultraviolet light treatment or treatment with ozone before use and at all times during treatments. The treated water shall be of bacterial quality equal to or better than the quality of water required in §241.63 of this title (relating to Water Supply).

(b) Dissolved oxygen. The amount of dissolved oxygen in the water in the treatment tanks shall be at least five milligrams per liter and shall be measured daily at the discharge end of each tank. If aeration is required to maintain dissolved oxygen levels, it shall be accomplished in such a manner that deposited material in the

tanks is not redistributed in the treatment water.

(c) Temperature. Treatment tank water temperatures shall be measured daily during the treatment process at the discharge end of the tanks. The temperature of water shall be maintained between 50 degrees fahrenheit and 77 degrees fahrenheit.

(d) Turbidity. Turbidity in the treatment process water shall not exceed 20 nephelometric turbidity units (NTU's) or equivalent, and shall be measured daily at the tank inlet, unless an automatic device for sensing disinfecting light output and shutting down the pumping system when output is not adequate to disinfect the process water is an integral part of the system.

(e) Salinity. Salinity of the treatment process water may vary from a minimum of 10 parts per thousand to a maximum of 30 parts per thousand and shall be measured daily. The salinity should

be within 20% of the salinity of the area from which the shellfish were gathered.

(f) pH. The pH of the treatment process water shall range from greater than or equal to 7.0 to less than or equal to 8.4 and shall be measured daily.

(g) Metallic ions and compounds. Levels of metallic ions and compounds shall not exceed levels found in approved shellfish harvesting areas and analyses shall be conducted, if required by the Texas Department of Health (TDH).

(h) Pesticides, detergents, and radionuclides. Levels of pesticides, detergents, and radionuclides shall not exceed levels found in approved shellfish harvesting waters and analyses shall be conducted, if required by TDH.

(i) Summary table. The following table summarizes the requirements of this section.

<u>Parameter</u>	<u>Minimum</u>	<u>Maximum</u>
Bacteriological (total coliform/100ml)	Less than 1.8	Less than 1.8
Dissolved Oxygen (milligrams/liter)	5.0	Saturation
Temperature	50 degrees F.	77 degrees F.
Turbidity (nephelometric turbidity units)	0	20 units
Salinity	10 ppt	30 ppt
pH	7.0	8.4
Metallic Ions Compounds	Not exceeding levels found in approved shellfish harvesting areas.	
Pesticides, Detergents and Radionuclides	Not exceeding levels found in approved shellfish harvesting areas.	

§241.96. Depuration Shellfish Meat Standards.

(a) Shellfish meats shall not be released for sale if the geometric mean or median fecal coliform MPN of the treated shellfish samples exceeds 20 per 100 grams of sample, or if any sample fecal coliform MPN exceeds 70 per 100 grams of sample.

(b) The use of the elevated temperature coliform plate count is authorized for the bacteriological evaluation of hard clams, *Mercenaria* spp., only.

(c) Should the Texas Department of Health (TDH) suspect contamination of shellfish by metallic ions and compounds, pesticides, detergents, radionuclides, marine toxins, or any toxic substance or adulterate, TDH may require that the shellfish be analyzed for such contaminants before being released for sale.

§241.97. Depuration Ultraviolet (UV) Unit.

(a) Any UV unit which provides the required treatment and desired results may be used for the purification of water to be used in the treatment process. The unit

shall be designed to deliver, at peak load, at least one gallon per minute of treated water per bushel of shellfish and shall be easily cleanable.

(b) UV tubes shall be checked for intensity utilizing an approved commercial meter on a daily basis and shall be replaced when they reach a point of 60% efficiency or an age of 7,500 hours, whichever occurs first. A log of intensity shall be kept and an orderly numbering procedure for units and tubes established.

(c) UV tubes and reflectors shall be cleaned as often as necessary and at least daily.

(d) Signs stating "Ultraviolet Light Danger to Eyes - Do not look at Bulbs Without Eye Protection" shall be displayed in full view of personnel and authorized visitors. Skin protection, especially for the face and hands, shall be provided for personnel monitoring the bulbs.

(e) An automatic shutoff switch shall be provided to break the electric circuit, thus shutting off the current to the UV bulb when the lid of the UV unit is raised.

(f) A time recording device shall be installed in line with all UV units to record continuity of operation as well as bulb life.

(g) The complete treatment system, which includes all equipment surfaces that come into direct contact with treatment water or shellfish, shall be cleaned and sanitized in conformance with approved procedures as often as necessary and at the conclusion of each treatment period.

§241.98. Depuration Shellstock Storage.

(a) Refrigeration of shellstock. Treated shellfish shall be placed under refrigeration immediately, and shall be stored at an air temperature not to exceed 45 degrees fahrenheit. Separate refrigerated storage facilities shall be provided for treated and untreated shellfish, and all treated shellfish shall be kept wholly separate from untreated shellfish. Said areas shall be under supervision of the plant supervisor or assistant plant supervisor, and adequate measures shall be taken to prevent the unauthorized removal of any shellfish. All shellfish shall be handled and stored under such sanitary conditions as will protect the quality of the product.

(b) Controlled storage. Shellfish which are received at the treatment plant and which cannot be processed immediately shall be placed in controlled storage. It is important, in order to insure proper treatment following storage, that the temperature at which shellfish are held does not vary greatly from the temperature of the process water. Therefore, it is recommended that the storage for untreated shellfish include a controlled temperature of approximately the same level as the process water, if the shellfish are to be processed within 24 hours of gathering. To avoid bacterial multiplication or spoilage of the shellfish, the maximum storage air temperature shall be 70 degrees fahrenheit. If shellfish are stored for periods longer than 24 hours before treatment, then the controlled storage air temperatures shall be 50 degrees fahrenheit or less as required by the National Shellfish Sanitation Program (NSSP). A gradual change of temperature from the storage temperature to the

treatment water temperature may then be necessary to ensure adequate, effective treatment.

§241.99. Tagging and Release of Depurated Shellfish.

(a) No shellfish shall be removed from the treatment plant until approved for release by the plant supervisor or assistant plant supervisor as provided in the sections of this undesignated head.

(b) All containers of treated shellfish, before being released from the shellfish treatment plant, shall be suitably tagged with a uniform tag or label bearing the following information:

(1) the depuration processor's name and address, including at least the city and state;

(2) the depuration processor's valid, complete certificate number issued by the Division of Shellfish Sanitation Control (DSSC);

(3) the type of shellstock;

(4) the date on which the shellfish were released from the depuration plant;

(5) the term "Depurated" in letters as large as the largest other letters printed on the tag or label; and

(6) the lot code of the treatment process batch.

§241.100. Depuration Records.

(a) Records containing the following information shall be available at the depuration plant at all times for shellfish presently undergoing the treatment process:

(1) name and/or location of gathering area(s);

(2) copy of permit(s);

(3) date received;

(4) quantity of shellfish received;

(5) quantity of shellfish destroyed;

(6) quantity of shellfish in tank(s); and

(7) date and time of initiation of treatment.

(b) Records containing the following information shall be available at the depuration plant at all times for each lot of shellfish for which the treatment process has been completed for a period of one year from the date of treatment:

(1) name and/or location of gathering area(s);

(2) copy of permit(s);

(3) date received in plant;

(4) quantity of shellfish received;

(5) quantity of shellfish destroyed;

(6) date and time of initiation of treatment;

(7) date and time of termination of treatment;

(8) number of hours treated;

(9) quantity of shellfish treated;

(10) quantity of shellfish destroyed after treatment;

(11) all laboratory results as specified;

(12) date released from plant; and

(13) quantity of shellfish released.

(c) The plant supervisor or assistant plant supervisor shall send to the Texas Department of Health, Division of Shellfish Sanitation Control, 1100 West 49th Street, Austin, Texas 78756, on a weekly basis, a copy of the daily records required under this section and the laboratory analysis results of all shellfish and water samples completed during each weekly period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1992.

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Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 458-7510

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing

• 31 TAC §§65.3, 65.9, 65.26, 65.27, 65.30, 65.31, 65.40

The Texas Parks and Wildlife Department proposes new §65.30 and amendments to

§§65.3, 65.9, 65.26, 65.27, 65.31, and 65.40, concerning white-tailed deer herd management tags, a new section of the statewide hunting and fishing proclamation. The proposed new rule will provide for a pilot "experimental" program for the taking of antlerless white-tailed deer under a tag system during the open deer season. This proposed tag system is designed to promote good stewardship of wildlife habitat by providing landowners an additional means to avert habitat destruction by deer whose population size, through department review, has been determined to be in excess of the carrying capacity of the habitat. This rule will be limited to 20 landowners and remain effective only through the 1992-1993 regular open deer season, after which it will be evaluated, and revised if necessary, for implementation statewide.

The Texas Parks and Wildlife Department is charged with the responsibility to regulate harvest of wildlife, based on surveys and analysis of biological data. The most widely known regulatory program of the Texas Parks and Wildlife Department (department) is that used to manage white-tailed deer populations. The centerpiece of white-tailed deer management is regulated harvest through sport hunting.

Harvest of white-tailed deer is necessary in most areas because the species is prone to overpopulate and damage its own habitat. Overpopulation can result in large swings upward and downward of deer populations. This boom or bust syndrome is destructive to habitat, to the deer, and to the wide diversity of wildlife species that share habitat with the white-tailed deer.

Because the habitat of white-tailed deer varies by ecological region within Texas, and because habitat quality and hunting pressure has an effect on the population biology of deer, harvest regulations vary by region and within regions of the state. Various methods exist to implement quality management of white-tailed deer in Texas. However, to be effective, all deer management programs must be implemented in partnership with private landowners who, by virtue of land ownership patterns in Texas, control 97% of the wildlife habitat. What may be acceptable to landowners in one part of the state, may not be acceptable to landowners elsewhere.

Deer harvest and permitting policies, and principle methods of deer management used by the Texas Parks and Wildlife Commission are listed following. These are the basis by which the Texas Parks and Wildlife Commission implements sound biological management of white-tailed deer in partnership with landowners, hunters, and other members of the Public.

The Texas Parks and Wildlife Department seeks to establish deer harvest regulations that maximize recreational use of the state's deer resources, by providing flexibility to landowners to harvest biologically appropriate numbers of deer within the provisions of a deer management program developed according to standard scientific principles.

Deer harvest regulations will be adjusted to achieve optimum harvest levels which will reflect consideration of maximum hunter op-

portunity, but which also may reflect other considerations, such as social and economic constraints that can reduce effective harvest and hunter opportunity in favor of ensuring the proper stewardship of wildlife habitat in general.

Further, the commission seeks to avoid placing deer populations in jeopardy by over-harvest, regardless of social or economic considerations. Thus, the commission works to maintain deer populations at an optimum sustainable level, where optimum levels are slightly less than maximum sustainable levels, such that a slight buffer is maintained to account for unusually severe conditions.

The commission recognizes a number of biologically acceptable methods and techniques to control deer population through harvest. These methods are listed following.

Season length and bag limits. Standard method to regulate antlered deer harvest, can be applied to antlerless deer.

Either-sex days. Emphasizes control over the harvest of antlerless deer, where the number of days in which antlerless deer can be harvested varies in relation to the number of antlerless deer desired to be harvested (also called "doe days" despite the fact that antlered deer also can be taken on doe days). Either-sex days may include the options of 0, 2, 6, 9, 14, or 16 days of either-sex hunting. Either-sex days can be followed by antlered deer only hunting for the remainder of the regular deer season.

Antlerless deer permits. Permits for the take of antlerless deer may be issued on a per acreage basis to landowners. Landowners may distribute these permits to individuals hunting on the landowner's property. Hunters may not exceed bag limits and all harvest must occur within established seasons.

Combined either-sex days-antlerless deer permit season. Emphasizing strict control over antlerless deer harvest, this method is characterized by limited either-sex days followed by antlerless permit issuance on an acreage basis for the remaining days of the open deer season. This combination method allows harvest objectives to be met while providing maximum recreational deer harvest opportunity. The number of either-sex days can be varied to prevent over-harvest. Permit issuance rate is conservative, but will provide landowners flexibility in designating timing and intensity of harvest.

Full season either-sex. A traditional regulation, especially where danger of over-harvest is minimal. Deer of either sex can be harvested, up to the total bag limit, throughout the entire regular deer season. Full season either-sex allows maximum recreational harvest opportunity and maximum landowner flexibility in areas characterized by high density and productive deer herds.

Late season antlerless deer harvest. To achieve additional antlerless deer harvest to control deer herd growth on productive or lightly hunted deer ranges, antlerless deer can be taken for a period following the close of the regular deer season.

Managed lands antlerless deer permit. Provides maximum flexibility to landowners who have implemented department-approved

wildlife management plans. Unlike regular antlerless deer permits, managed lands antlerless deer permits are not issued on a regional, per acreage allotment. Instead, landowners receive an allotment of managed lands antlerless deer permits tailored to the deer density and habitat conditions of the managed property.

Managed lands antlered deer permit. Provides added flexibility to landowners with an approved wildlife management plan to permit harvest of an additional buck in areas which allow only one antlered deer in the season bag. Managed lands antlered deer permits allow landowners greater flexibility to cull inferior bucks in an effort to improve quality of intensively managed herds.

Trap and transfer permit. These permits are specialized and not related to actual harvest. Trap and transfer permits allow the landowner or an agent to live trap and transport live deer from the landowner's property to an approved property elsewhere.

Deer herd management tags. To provide maximum flexibility, especially to owners of large tracts where hunter access opportunity is limited, deer herd management tags will enable an individual landowner or his agent to harvest deer without regard to daily bag limits. The purpose of issuing such tags will be to allow for the proper stewardship of wildlife habitat and wildlife diversity by providing landowners an additional way to prevent the damaging effects of overabundance of deer. The commission must establish new rules to issue this tag. A pilot program to investigate use of the tag is proposed in this rulemaking proposal.

Deer herd management tags will be issued for properties where harvest level by regularly-licensed hunters will be inadequate to control deer population growth. Harvest intensity will be determined by scientific investigations conducted on the property by department wildlife biologists or by certified wildlife biologists with the conclusions of such studies approved by department wildlife biologists.

This tag system will allow persons who have approved wildlife management plans to make application to the department for white-tailed deer herd management tags and be issued a regulated number of such tags based upon the harvest quota specified in the wildlife management plan. Deer herd management tags then may be used by the landowner or designee to take antlerless white-tailed deer up to the number of tags issued. Deer tagged with a herd management tag must be processed and delivered to a charitable organization.

The department will charge an application fee, and for each deer herd management tag issued, a tag issuance fee will be charged. A maximum of 20 participants will be allowed into the pilot program. All participants in the pilot program will provide one public hunting opportunity on the managed property in the 1993-1994 regular deer season. Public hunters will be chosen at random among applicants for such hunts as part of the department's regular offering of Type I public hunting opportunity.

The deer herd management tag system is based upon studies, surveys, investigations, and on-site inspections performed by a department wildlife biologist or a certified wildlife biologist. Approval of the application for deer herd management tags will be by a department wildlife biologist within the conditions established by the requisite wildlife management plan for the subject tract of land. The quota of antlerless deer to be harvested, effectiveness of deer reduction upon habitat, carrying capacity of the tract of land, and consideration of other wildlife species, goals, and purposes of the wildlife management plan must be considered before deer herd management tags will be issued.

This pilot program will provide a test of the tag's acceptability as a management tool to the commission, to landowners, to hunters, and the general public. This rule will remain effective only through the 1992-1993 regular open deer season. If successful, this system or a modification providing further improvement, will be considered by the commission for final approval and issuance on a regular basis by the department.

Robin Riechers, staff economist, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. The new rules permit the department to assess a \$1,000 deer herd management tag application fee and a \$5.00 tag issuance fee for each deer herd management tag to be issued to the landowner.

The application and tag issuance fee will allow the department to recoup necessary expenses in administering the tag system. It is not known whether small businesses will benefit or be adversely impacted by the proposed tag system.

Expenditures in certain locales may be increased or decreased due to the white-tailed deer herd management tag system. Certain charitable institutions will be positively affected by donations of wholesome deer meat.

Mr. Riechers also has determined that for the duration of this pilot program while the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to permit land managers to control populations of white-tailed deer that have exceeded the carrying capacity of the habitat. Regulated antlerless harvest is the only reliable method to control deer populations. The deer herd management tag system offers land managers increased flexibility in regulation of antlerless harvest.

Studies indicate that when plant diversity is maximized animal diversity is increased. Optimum habitat conditions favor both consumptively and non-consumptively utilized animals. Land managers sensitive to habitat and wildlife diversity can through various recognized management techniques increase biota significantly. Wildlife resources that are non-consumptively utilized benefit from habitat that is returned to or kept in an optimum condition.

Special public hunts derived from this tag system will ensure a program intended to

provide a limited number of reasonable cost public hunting opportunities.

It is anticipated there will be fiscal implications to persons who are required to comply with the sections as proposed. Land managers who choose to augment their traditional methods of deer herd management will pay additional fees.

These fees assessed by the department will reimburse the state for administration of the program, such as the administrative expenses involved in inspecting and assessing habitat criteria required for issuance of deer herd management tags. The cost to an individual landowner will be referenced to the number of deer herd management tags recommended for issuance in the wildlife management plan.

Since the new rule as proposed is based upon acknowledged wildlife management tenets, it is anticipated that the net value of economic effects to the state will be positive. Net economic effects to charitable organizations will be positive. Net economic effects to land managers who choose to augment their hunter harvest with this system cannot at this time be known. Net economic effects to hunters who may be supplanted by imposition of this new system of deer population control is also unknown.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, and as of this date has not received a reply as to the relative local employment impacts anticipated.

Comments on the rules as proposed may be submitted to Scot Williamson, Program Director for Big Game, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4774 or 1 (800) 792-1112, extension 4774.

The new section and amendments are proposed under the Texas Parks and Wildlife Code, Uniform Wildlife Regulatory Act, Chapter 61 (Wildlife Conservation Act of 1983), which provides the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations including seasons, bag limits, means, methods for this state, and specifically §61.057 to issue permits for the taking of antlerless white-tailed deer, Texas Parks and Wildlife Code, §42.010, which allows the department to establish fees for tags and Texas Parks and Wildlife Code, §11.027(b), which allows collection of fee to cover costs of reviewing permit application.

§65.3. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Certified wildlife biologist—A person who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has fulfilled the scholastic requirements of an accredited university or college for the B.S. degree (or advanced degree) with major course

work in wildlife science or wildlife management; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

Deer herd management tag—A tag that permits antlerless white-tailed deer to be taken under a wildlife management plan without becoming a part of the daily bag limit.

Designated agent—A person who is named in the application for deer herd management tags by the landowner to act on behalf of the landowner for purposes of the wildlife management plan, including acting as a designated harvester.

Designated harvester—A person who is named in the application for deer herd management tags by the landowner or designated agent to take and tag antlerless white-tailed deer with a deer herd management tag on the property specified in the wildlife management plan.

Eligible landowner—A landowner who has placed a specific tract of land under a department-approved wildlife management plan and the plan for the property specifies that 40 or more antlerless white-tailed deer shall be taken.

§65.9. Open Seasons: General Rules.

(a)-(h) (No change.)

(i) Every game bird or game animal wounded by hunting and reduced to possession by the hunter must be killed immediately and except as provided in §65.3 of this title (see definition of deer herd management tag) become a part of the daily bag limit.

(j)-(l) (No change.)

(m) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached, except for white-tailed deer tagged with a herd management tag, or is protected by a bag or possession limit, if the carcass or a part of a carcass is tagged with a hunter's document by the person who killed or caught the wildlife resource. The hunter's document shall accompany the carcass or a part of the carcass until reaching final destination and the document must contain the following information:

(1)-(5) (No change.)

§65.26. Wildlife Management Plan. A wildlife management plan (see §65.3 of this title (relating to Definitions)) shall:

(1) specify the number of antlerless deer to be harvested from a given tract of land and an equal number of permits or deer herd management tags may be issued to the owner or authorized agent of the tract;

(2) require each antlerless deer taken to be tagged with the permit or deer herd management tag required by this section; and

(3) no permit or deer herd management tag is valid unless it has been issued, used, and possessed in accordance with this section and §65.30 of this title (relating to White-tailed Deer Herd Management Tag) and §65.31 of this title (relating to Antlerless Mule Deer Permits and White-tailed Deer Permits and Tags).

§65.27. Permits and Tags.

(a) No person may hunt antlerless mule deer, pronghorn antelope, elk, or antlerless white-tailed deer in areas where permits or deer herd management tags are prescribed unless he first procures a valid permit or deer herd management tag issued by the landowner.

(b) It is unlawful to use an antlerless mule deer, antelope, elk, or antlerless white-tailed deer permit or white-tailed deer herd management tag on more than one antlerless mule deer, antelope, elk, or antlerless white-tailed deer.

(c) (No change.)

(d) No permit or deer herd management tag is valid unless it has been issued, used, and possessed strictly in accordance with this section; §65.29 of this title (relating to Antelope Permits), §65.30 of this title (relating to White-tailed Deer Herd Management Tag), §65.31 of this title (relating to Antlerless Mule Deer Permits and White-tailed Deer Permits and Tags), and §65.33 of this title (relating to Elk Permits).

(e) It is unlawful for any person other than a person named as a designated harvester to use a deer herd management tag for tagging deer.

§65.30. White-tailed Deer Herd Management Tag.

(a) The white-tailed deer herd management tag shall be issued to the first 20 eligible landowners (see §65.3 of this title (relating to Definitions)) or their designated agents (see §65.3 of this title) that make application to the department for the tags after the effective date of this section.

(b) The white-tailed deer herd management tag shall allow the taking of one antlerless white-tailed deer.

(c) The white-tailed deer herd management tag(s) shall be issued only to the

landowner or the designated agent of the landowner.

(1) The white-tailed deer herd management tag(s) shall be issued only after the landowner or landowner's designated agent has made application for such tag(s) to the department on a form prescribed by the department with such application including a departmental approved wildlife management plan, §65.26 of this title (relating to Wildlife Management Plan). For the application to be considered, the wildlife management plan must be written by a Texas Parks and Wildlife Department (TPWD) biologist or any certified wildlife biologist. Wildlife management plans will be subject to the TPWD standards and guidelines for wildlife management plans. Wildlife management plans shall be operational at time of application.

(2) The number of white-tailed deer herd management tags to be issued will be specified in the wildlife management plan following scientific studies that determine an adequate antlerless harvest to prevent the depletion or waste of the white-tailed deer resource.

(3) The white-tailed deer herd management tag(s) shall be issued only after the landowner or landowner's designated agent has provided to the department fees equaling \$1,000 as program application fee and \$5.00 for each tag issued under the provisions of the wildlife management plan. The fees required under this paragraph are not refundable.

(d) The white-tailed deer herd management tag shall be valid only during the lawful open deer season and during legal shooting hours, as prescribed in §65.40 of this title (relating to Deer: White-tailed and Mule Deer) and the Texas Parks and Wildlife Code, §62.004 (concerning hunting at night) for the period extending from the effective date of this rule through January 31, 1993.

(e) Deer taken under the authority of a white-tailed deer herd management tag shall be taken only on the property described in the wildlife management plan.

(f) Each landowner or designated agent who has issued white-tailed deer herd management tags to a designated harvester (see §65.3 of this title for definition of designated harvester) shall be required to harvest 40 antlerless deer or 20% of the recommended antlerless white-tailed deer harvest, whichever number is greater, by use of hunters other than those defined as designated harvesters.

(g) The landowner or designated agent shall assure that venison from deer tagged with a white-tailed deer herd management tag will be preserved in an edible condition in compliance with the Texas

Parks and Wildlife Code, §62.011 (concerning to retrieval and waste of game), donated to a charitable institution, hospital, or person or persons and delivered in an acceptable form.

(h) A designated harvester commits an offense if the designated harvester hunts an antlerless white-tailed deer without a deer herd management tag in his or her immediate possession.

(i) The white-tailed deer herd management tag shall be immediately attached to the carcass upon kill and shall remain attached to the carcass until final processing as required under the Texas Parks and Wildlife Code, §42.018 and §65.9(g) of this title (relating to Open Seasons: General Rules).

(j) A white-tailed deer herd management tag harvest report form provided by the department shall be submitted to the department by the landowner or designated agent not later than the 14th day of February and must contain the following information.

(1) The designated harvester shall submit the sex and date of kill for each deer tagged with a white-tailed deer herd management tag, and the name, address, telephone number, and hunting license number of the designated harvester.

(2) Hunters other than a designated harvester shall submit the sex and date of kill for each deer tagged with a white-tailed antlerless deer tag taken from the hunting license and the name, address, telephone number, and hunting license number of the hunter.

(3) Each landowner or designated agent donating deer killed under this program shall notify the department of the number of deer donated and the name of the charitable institution, hospital, or person or persons that received the deer.

(k) It is an offense if the taking of deer under the authority of the deer herd management tag is commenced less than 72 hours before notification of the regional law enforcement director for the area where the property is located.

(l) Each landowner receiving white-tailed deer herd management tags shall sign a contract to provide one guided quality buck hunt for one buck deer of no more than three days duration during the 1993-1994 regular open season to a public hunter chosen by the department by random drawing, with the hunter bearing all expenses for travel and subsistence.

(m) A person who fails to comply with any provision of §§65.27, 65.30, or 65.31 of this title (relating to Permits and Tags, White-tailed Deer Herd Management Tag; and Antlerless Mule Deer Permits and

White-tailed Deer Permits and Tags) commits an offense and in addition to a penalty provided for the offense under the Texas Parks and Wildlife Code, §61.901 (concerning penalties), the offense will result in the landowner and his designated agent being declared ineligible to apply for or receive white-tailed deer herd management tags for three years following the date of conviction.

(n) This section expires February 28, 1993.

§65.31. Antlerless Mule Deer Permits and White-tailed Deer Permits and Tags.

(a)-(d) (No change.)

(e) It is unlawful for a person to possess an antlerless mule deer or white-tailed deer, except as provided in §65.30 of this title (relating to White-tailed Deer Herd Management Tag), unless the person has been issued an antlerless mule deer or white-tailed deer hunting permit on which appear:

(1)-(3) (No change.)

(f) It is unlawful for a hunter to use an antlerless mule deer or white-tailed deer hunting permit or a designated harvester to use a white-tailed deer herd management tag on a tract of land other than the designated tract for which the permit or tag was issued.

(g) The permit or white-tailed deer herd management tag must be attached to each antlerless mule deer or white-tailed deer taken, and shall remain attached until the deer has reached its final destination as defined in the Texas Parks and Wildlife Code, §42.001(4) [has been fully processed].

(h)-(i) (No change.)

§65.40. Deer: White-tailed and Mule Deer. No person, other than the designated harvester acting under the authority of a white-tailed deer herd management tag (see §65.30 of this title (relating to White-tailed Deer Herd Management Tag), may take more than the aggregate total of five deer per license year; of which no more than two may be mule deer, only one of which may be a buck mule deer; no more than two white-tailed buck deer, or no more than five antlerless deer, both species combined.

(1)-(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213078

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 2, 1992

For further information, please call: 1 (800) 792-1112, ext. 4433 or (512) 389-4774

◆ ◆ ◆
Subchapter O. Late Season
Migratory

• 31 TAC §65.335

The Texas Parks and Wildlife Commission proposes to amend §65.335, concerning the late season migratory game bird proclamation. The proposed amendment will rectify a mistake in the season length of the extended falconry season for waterfowl (ducks, coots, and mergansers).

Robin Riechers, staff economist, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Riechers, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will bring the Texas extended falconry season into conformity with federal season length. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposal may be submitted to Ron George, Deputy Chief, Wildlife Branch, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4778, or 1 (800) 792-1112, extension 4778.

The amendment is proposed under the Texas Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the Texas Parks and Wildlife Commission with authority to establish open season, and means, methods, and devices for the taking and processing of migratory game birds.

§65.335. Extended Falconry Season.

(a) (No change.)

(b) It is lawful to take migratory game birds by means of falconry during the open seasons prescribed in paragraph §65.333 of this title (relating to Open Season) and during the following extended falconry seasons.

(1) Ducks, coots, and mergansers.

(A) (No change.)

(B) Remainder of the state, November 30, 1992-December 25, 1992 and January 18, 1993-February 19, 1993, [February 26, 1993] from 1/2 hour before sunrise to sunset.

(2) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 24, 1992.

TRD-9212978

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 2, 1992

For further information, please call: 1 (800) 792-1112 ext. 4433 or (512) 389-4778

◆ ◆ ◆
Chapter 69. Resource
Protection

• 31 TAC §§69.43, 69.45, 69.53

The Texas Parks and Wildlife Department proposes amendments to §§69.43, 69.45, and 69.53, concerning the review and issuance of permits for the rehabilitation of sick, injured, and orphaned wild animals. These amendments are proposed under the authority of the Texas Parks and Wildlife Code, §43.027, as amended by the 72nd legislature in House Bill 1771, effective September 1, 1991. Section 43.027 authorizes the department to make regulations governing the taking and possession of protected wildlife for rehabilitation purposes. The amendments are necessary to correct one error and to clarify certain application procedures.

Paul M. Shinkawa, director of legal services has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Shinkawa also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced protection and regulation of public wildlife resources, including endangered and threatened species. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as this agency has determined that the rules as amended will not impact local economies.

Comments on the proposed amendments may be submitted to Paul M. Shinkawa, Director, Legal Services Division, Texas Parks

and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4419 or 1-800-792-1112.

The amendments are proposed under the Texas Parks and Wildlife Code, Chapter 43, Subchapter C, which provides the Texas Parks and Wildlife Commission with authority to make regulations governing the taking and possession of protected wildlife indigenous to the state for wildlife rehabilitation purposes.

§69.43. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Full sub-permittee—A person authorized to perform the following activities in the absence of the permit holder or co-permittee: handle protected wildlife as authorized by the permit at the address of the permit holder or the co-permittee, transport protected wildlife as authorized by the permit, and conduct educational programs using protected wildlife as authorized by the permit.

Limited sub-permittee—A person authorized to handle or transport protected wildlife or conduct educational programs using protected wildlife only while in the presence of the permit holder or co-permittee.

§69.45. Applications and permits.

(a)-(g) (No change.)

(h) Permits may not be for the same species as permits issued to holders of other licenses or permits authorizing the propagation for [or] sale of any protected wildlife other than finfish or aquatic invertebrates.

(i)-(l) (No change.)

§69.53. Permit Requirements.

(a)-(j) (No change.)

(k) All applications for permits, renewals, and amendments shall provide the following information:

(1)-(2) (No change.)

(3) names of co-permittees and sub-permittees (each applicant for co-permittee status must submit a complete separate application meeting the requirements of this subsection and each applicant for full sub-permittee status must submit an affidavit application on forms supplied by the department);

(4)-(7) (No change.)

(l)-(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213077

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Earliest possible date of adoption: November 5, 1992

For further information, please call: 1 (800) 792-1112, extension 4433 or (512) 389-4419

◆ ◆ ◆
TITLE 34. Public Finance
Part I. Comptroller of
Public Accounts
Chapter 3. Tax Administration
Subchapter F. Motor Vehicle
Sales Tax

• 34 TAC §3.74

The Comptroller of Public Accounts proposes new §3.74, concerning record requirements of motor vehicle sellers. The new section is necessary so that persons selling motor vehicles are aware of their record responsibilities.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Comments on the new section may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.74. Records Required.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cash sale—Transfer of ownership of a motor vehicle where the full amount of the consideration is given the seller in money, check, other negotiable instrument, or other property at the time of purchase and title is not encumbered by a seller's or third party's lien.

(2) Consignment/agent sale—A sale where the owner of a motor vehicle is represented by an agent, broker, or factor to transact the sale of the motor vehicle.

(3) Seller—Every person who for himself or another sells, rents, or transfers ownership of a motor vehicle for consideration.

(4) Seller financed sale—A credit sale or transfer of a motor vehicle other than a rental, lease, or cash sale, for consideration, when title is retained or encumbered by the seller as security for payment of the purchase price. Seller financed sale includes a sale where financing is provided by an entity related to the seller. An entity is related if the lender's primary activity is to provide financing for the purchase of tangible personal property, including motor vehicles, that are purchased from the related seller.

(5) Third party financed sale—Transfer of a motor vehicle where the consideration is provided the buyer by a lender and the title is retained or encumbered by the lender not related to the seller.

(6) Title—Certificate of Title as provided for under the Certificate of Title Act, Article 6687-1.

(b) Every seller must maintain business records at the seller's principal place of business in such a form as may readily be examined by the comptroller or a comptroller representative. Sellers must retain these records for a minimum period of four years from the date of purchase and four years from the date of sale of the motor vehicle.

(c) A seller's business records must reflect the total receipts from all business income and expense including, but not limited to, transactions involving motor vehicles. Business records must include any documents required by other state agencies, the federal government, or a political subdivision.

(d) Specifically, records must include, but are not limited to, the following:

(1) for all sales transactions:

(A) a photocopy of the completed application for title/registration/motor vehicle tax affidavit;

(B) a photocopy of the assigned title or manufacturer's certificate of origin, front and back;

(C) a photocopy of the completed odometer statement (if separate from title);

(D) the sales contract, dated and signed, itemizing all charges; and

(E) photocopy of the assigned title or manufacturer's certificate of

origin, front and back, to any trade-in motor vehicle described in the sales contract;

(2) business records required for cash sales. In addition to business records required in paragraph (1) of this subsection, when the seller did not handle the transfer of the certificate of title or tax payment, the seller's records must include a statement by the purchaser, that is signed and dated, and indicating the date that each of the documents necessary to apply for the title, register the vehicle and pay the motor vehicle sales tax, were provided to the purchaser by the seller. The document should also include a statement that the seller advised the purchaser that the purchaser must pay tax to the county tax assessor collector;

(3) business records required for seller-financed sales. In addition to records required in paragraph (1) of this subsection, seller's business records must include:

(A) a photocopy of the receipt for title application/registration/motor vehicle sales tax (form 31 lienholder copy) where the dealer transferred the certificate of title. If the seller did not handle the transfer of the certificate of title, the seller must retain a statement by the purchaser, that is signed and dated, and indicating the date that each of the documents necessary to apply for the certificate of title, register the vehicle and pay the motor vehicle sales tax, were provided to the purchaser by the seller. The document should also include a statement that the seller advised the purchaser that the purchaser must pay tax to the county tax assessor-collector; and

(B) documentation of purchaser's payment(s);

(4) business records required for third-party financed transactions. In addition to records required in paragraph (1) of this subsection, seller's business records must include:

(A) a copy of the draft or check from the third party lender; and

(B) documentation that the payment from the third party lender is for payment of the specific transaction; and

(5) business records required for consignment/agent sales. In addition to any other records required by this subsection, seller's business records must include a copy of a written consignment agreement, signed and dated by the consignor. The motor vehicle must be identified by the vehicle identification number in the document.

(e) All written sales contracts and sales invoices must be retained as originals

or photocopies by the seller, and must include:

(1) the name and address of the seller;

(2) the name and address of the purchaser;

(3) the date of sale;

(4) the sales price and installment payment amounts, if applicable;

(5) description of vehicle sold including the vehicle identification number;

(6) description and value of any vehicle traded-in to the seller including the vehicle identification number;

(7) interest charges, if any, separately stated;

(8) documentary fee, if any, separately stated; and

(9) insurance charges, if any, separately stated.

(f) A seller is liable for all taxes, penalty, and interest on all transactions for which records as required by this section are not available unless the seller presents by competent evidence that the required documents were, in fact, delivered to the purchaser in accordance with law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 24, 1992.

TRD-9212977

Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 2, 1992

For further information, please call: (512) 463-4028

Subchapter O. State Sales and Use Tax

• 34 TAC §3.357

The Comptroller of Public Accounts proposes an amendment to §3.357, concerning real property repair and remodeling. The amendment clarifies the comptroller's definition of real property "maintenance," adds definitions of "scheduled" and "periodic," and revises subsection (b)(5) regarding repairs, remodeling, and restoration performed by exempt entities. Other wording changes were made for clarity.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the

section. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.357. Labor Relating to Nonresidential Real Property Repair, [and] Remodeling, Restoration, Maintenance, New Construction, and Residential Property.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(2) (No change.)

(3) Maintenance on real property—For operational and functioning improvements to realty, maintenance means scheduled, periodic work necessary to sustain or support safe, efficient, continuous operations, or to prevent the decline, failure, lapse, or deterioration of the improvement. Taxable real property services covered by §3.356 of this title (relating to Real Property Service) do not qualify as maintenance [All scheduled periodic work on operational and functioning improvements to real property necessary to sustain or support safe, efficient, continuous operations or to keep in good working order by preventing the decline, failure, lapse, or deterioration of the improvement].

(A) As it relates to maintenance, the term "scheduled" means anticipated and designated to occur within a given time period or production level.

(B) As it relates to maintenance, the term "periodic" means ongoing or continual or at least occurring at intervals of time or production which are generally predictable.

(4) New construction—All new improvements to real property including initial finish out work to the interior or exterior of the improvement. An example would be a multiple story building which has only had its first floor finished and occupied.

The initial finishing out of each additional floor prior to initial occupancy will be considered new construction. New construction also includes the addition of new footage to an existing structure.

(5) Nonprofit hospital—A public or private hospital licensed under the Health and Safety Code, Chapter 241 or Chapter 555, that is operated as a charitable or nonprofit establishment.

(6)[(5)] Real property—Land including structures and other improvements embedded in or permanently affixed to the land.

(7)[(6)] Remodeling or modification—To make over, [or] rebuild, replace, or upgrade existing real property [or structures in a similar but different way. Replacement or upgrading of any part of an existing structure is remodeling or modification]. However, the replacement of an item within an operating and functioning unit in accordance with subsection (a)(3) of this section is not taxable remodeling or modification. Finish out work performed after initial finish out has been done is remodeling even though the improvement has not been occupied. An example would be a shopping complex completely finished by the developer prior to renting to tenants. A prospective tenant wants a different color scheme before taking possession. The repainting by the developer is remodeling.

(8)[(7)] Repair—To mend or bring back as near as can be to its original working order real property which was broken, damaged, or defective. However, minor repair work performed on operational and functioning improvements to realty within the meaning of subsection (a)(3) of this section is not taxable repair.

(9)[(8)] Residential property—Property intended for use [used] as a family dwelling or a multifamily apartment or housing complex, nursing homes, condominiums, or retirement homes. The term includes homeowners association-owned and apartment-owned swimming pools, apartment-owned laundry rooms for tenants, and other common areas for tenants' use. Managers' offices will only be residential if the space occupied by the office is 5.0% or less of the total space of the residence. The term does not include hotels or any other facilities which are subject to the hotel occupancy tax or any other area open to nonresidents.

(10)[(9)] Restoration—An activity performed to [To] bring back as near as can be to its original condition real property which is still operating and functional but that [which] has faded, declined, or deteriorated, that is not work performed within the meaning of subsection (a)(3) of this section.

(11)[(10)] Unrelated service—A service will be considered as unrelated if:

(A) it is not a service involving the repair, remodeling, or restoration of real property, nor a service taxed under other provisions of the Tax Code, Chapter 151;

(B) it is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include engineering plans or architectural designs.

(b) Tax responsibilities of persons who repair, remodel, or restore nonresidential real property [repairmen and remodelers].

(1) All persons who repair, restore, or remodel nonresidential real property must obtain a Texas sales and use tax permit. Persons who maintain real property are not covered by this rule. Persons who are constructing new facilities or are repairing or remodeling residential property should refer to §3.291 of this title (relating to Contractors).

(2) All persons who repair, restore, or remodel nonresidential real property must collect tax on the total sales price to their customers less separately stated charges for unrelated services or accept valid resale, exemption, or direct payment exemption certificates in lieu of tax. Previously, lump-sum and separated contracts were treated differently for tax purposes. This distinction is no longer valid when the contract is for the repair, remodeling, or restoration of real property.

(3) A contract which involves both nonresidential remodeling and new construction will be taxed in total unless the charge for new construction labor is separately stated as outlined in paragraph (7) of this subsection. An example would be remodeling a restaurant's kitchen at the same time a new dining area outside the existing structure was added. Work on the kitchen would be taxable as remodeling, while the new dining area would be new construction. Minor repair, restoration, or remodeling done in connection with new construction will not be taxable if the charge attributed to repair, restoration, or remodeling is 5.0% or less of the overall charge.

(4) [All tangible personal property purchased by the repairman or remodeler and incorporated into the real property may either be purchased tax free or the repairman or remodeler may pay tax on purchases and take credit against tax later

collected and remitted on the total sales price.] Sales tax must be paid at the time of purchase by the repairman or remodeler on all materials and supplies used but not incorporated in the realty. The repairman or remodeler is not entitled to a credit for the tax paid on materials and supplies used but not incorporated into the realty.

(5) Items used in performing repairs, remodeling, or restoration for exempt entities.

(A) Persons who repair, remodel, or restore real property or make improvements to real property for school districts or nonprofit hospitals [exempt organizations] may claim an exemption for taxable items used in those activities. Taxable items used in performing repairs, remodeling, or restoration activities for school districts or nonprofit hospitals [exempt organizations] are exempt from tax to the extent of the value of the items so used or consumed.

(B) Taxable items incorporated into realty being repaired, remodeled, or restored by persons performing work for entities covered by the Tax Code, §151.309 or §151.310, other than school districts or nonprofit hospitals, may be purchased tax free as sales for resale. The contract between the persons performing the work and the organization covered by the Tax Code, §151.309 or §151.310, may be either lump sum or separated. [Procedures for calculating and claiming this exemption are the same as are set out in §3.291(d) of this title (relating to Contractors)].

(C) Consumable items, machinery, or equipment used but not incorporated into the realty being repaired, remodeled, or restored for entities covered by the Tax Code, §151.309 or §151.310, other than school districts or nonprofit hospitals, are taxable to the persons performing the work.

(6)-(7) (No change.)

(8) Repainting is presumed to be a restoration or remodeling activity unless it meets the definition of maintenance found in subsection (a)(3) of this section. Persons performing repainting or other restoration activities should collect sales tax on their total charge unless their customer provides a properly completed exemption certificate as outlined in subsection (c)(2) or (4) of this section.

(c) Exemptions.

(1) It is the responsibility of the repairman or remodeler to verify any exemption claimed by the customer, except for real property scheduled maintenance

or [unless] the customer is a governmental agency or a nonprofit school.

(2) A charge for labor to maintain real property is not taxable. Persons providing maintenance on real property are liable for tax on all materials used. A service provider's customer [Persons whose contracts purport to be maintenance contracts] must be able to substantiate [show] by way of maintenance schedules or work orders or other evidence that the services meet the definition in subsection (a)(3) of this section. If the person performing the service does not have a written contract, but is only hired as needed, the service provider must presume that the labor is for repair or restoration and collect tax. If the service provider's customer has documentation to prove that the labor qualifies as maintenance, the customer may issue an exemption certificate in lieu of paying tax to the service provider. The certificate must state that the labor is [for the purpose of] maintenance as defined in subsection (a)(3) of this section, rather than repair or restoration, as defined in subsection (a)(8) and (10) of this section, and that the customer will be liable for any additional tax due in the event that it is determined that repairs rather than maintenance were performed. Repairs or restoration performed under a claimed maintenance contract will not change a nontaxable maintenance contract into a taxable repair or restoration contract as long as the charges attributable to repairs and restoration are 5.0% or less of the overall charge. Note: The 5.0% test applies to each contract and subcontract. For example, if five different companies provide lump-sum contracts for services, each contract stands alone in determining if taxable services are 5.0% or less of that contract. In the absence of a written contract, the 5.0% test will apply to each billing or invoice to the customer. Maintenance contracts or services billed with repair and restoration as defined in subsection (a)(8) and (10), [charges] that exceed [exceeding] 5.0% will be taxable in total unless the charges for repairs and restoration are separately identified to the customer in the contract or billing.

(3) (No change.)

(4) An exemption certificate may be issued for the labor involved in [by persons] remodeling, restoring, or repairing buildings listed in the National Register of Historic Places. An [or by an] organization exempted under the Tax Code, §151.309 or §151.310, may issue an exemption certificate if the repair, restoration, or remodeling appears reasonably related to the exempt purpose of the organization. See §3.322 of this title (relating to Exempt Organizations)

(5) Repairing property lost or damaged by fire, flood, explosion, natural disasters, or other accident for which a casualty claim could have been filed if the

property was insured will be considered new construction. See §3.291 of this title (relating to Contractors). A person [Person] having property repaired under this paragraph should issue the service provider an exemption certificate in lieu of tax. The service provider's presumption is that all work is taxable until an exemption certificate is issued.

(6) (No change.)

(d) (No change.)

(e) Local taxes. Local taxes (city, county, transit authority, city transit department, and special purpose districts) apply to services in the same way as they apply to tangible personal property.

(1) Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction.

(2) Transit [However, transit authority and transit department] sales taxes do not apply to services provided outside the boundaries of a [the] transit area.

(3) If the service provider's place of business is outside [such] a local taxing jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is required to collect them.

(4) For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax [Imposition of the Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax]), §3.375 of this title (relating to City [Administration of] Use Tax [; Collection by Retailer]), §3.424 of this title (relating to Collection and Allocation of Transit [Imposition of] Sales Tax), and §3.425 of this title (relating to Transit [Administration of] Use Tax [; Imposition and Collection]).

(f)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 24, 1992.

TRD-9212978

Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 2, 1992

For further information, please call: (512) 463-4028

TITLE 40. Social Services and Assistance

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter D. Resources

• 40 TAC §15.435

The Texas Department of Human Services (DHS) proposes an amendment to §15.435, concerning liquid resources, in its Medicaid Eligibility chapter. The purpose of the amendment is to specify when certain cash payments received for medical or social services are exempt as a resource for Medicaid eligibility. This amendment incorporates a policy that was omitted from the 1989 recodification of these rules.

Burton F. Raiford, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the policy regarding the exemption of certain cash payments for medical or social services as countable resources will be applied to determine Medicaid eligibility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long Term Care area. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-238, Texas Department of Human Services E- 503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§15.435. Liquid Resources.

(a)-(m) (No change.)

(n) Certain cash payments for medical or social services. Cash received for medical or social services that is not countable income is not a resource for the calendar month after the month of receipt. Cash kept until the first moment of the second calendar month after its receipt becomes a countable resource at that time. This exclusion does not apply to cash reimbursement for medical or social services already paid for by the client.

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213059

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: December 15, 1992

For further information, please call: (512) 450-3765

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**Chapter 27. Intermediate Care
Facility for Mentally
Retarded**

**Subchapter B. Contracting Re-
quirements**

• **40 TAC §27.203**

The Texas Department of Human Services (DHS) proposes an amendment to §27.203, concerning provider applications, in its Intermediate Care Facility for Mentally Retarded (ICF/MR) rules. The purpose of the amendment is to improve the quality of services provided in ICFs/MR by recommending changes to the application process.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be a simplified and improved application process which will result in improved services to ICF/MR facility residents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Terry Childress at (512) 450-3169 in DHS's Institutional Programs Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-226, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.203. Provider Applications.

(a) The words and terms in paragraphs (1) and (2) of this subsection,

when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant—The individual(s) specified on DHS's facility ownership information form who:

(A) operate a for-profit organization; or

(B) serve as the authorizing entity for a nonprofit organization.

(2) Designated representative—The chief executive officer, the chief financial officer, the president or executive director, or other individual who serves in an upper management, decision-making capacity and has financial responsibility for the proposed facility.

(b) All applicants for participation in the Intermediate Care Facility for the Mentally Retarded (ICF/MR) Program must submit an application to the Texas Department of Mental Health and Mental Retardation (TXMHMR) for review and approval. The application must include documentation to verify the applicant's ability to ensure the delivery of quality care and services. The documentation submitted must indicate that:

(1) the following persons have completed the ICF/MR preapplication training course within six months prior to approval of the application:

(A) the applicant and/or a designated representative, other than a consultant; and

(B) the individual who will be responsible for the direct management of the facility;

(2) the applicant is financially creditable and of good moral character.

(c)(a) All applications [for participation in the Intermediate Care Facility for the Mentally Retarded (ICF-MR) Program] are limited to one level-of-care classification (I, V, VI, or VIII) and must meet the [following] requirements specified in paragraphs (1)-(5) of this subsection.[:]

(1) (No change.)

(2) The proposed facility is noncontiguous to an already existing residential facility which serves individuals with mental retardation or a related condition. The proposed facility is in compliance with applicable special use permit requirements, local zoning, and/or occupancy code requirements, and §27.103 of this title (relating to State Licensing Standards) and §27.201 of this title (relating to Participation Requirements). The proposed facility must also meet the [following] specifications described in subparagraphs (A) and (B) of this paragraph:

(A) The applicant must submit information about the proposed facility which addresses the services, programs, and plans detailed in clauses (i)-(iv) of this subparagraph. [documents access to community resources (as appropriate for the individuals to be served); and]

(i) Availability of 24-hour emergency medical services, utility services, fire protection, police and sheriff protection, and waste disposal.

(ii) Plans for providing opportunities and support for the residents to develop and maintain positive relationships with a variety of persons in the community, including identification of the transportation resources available to the individuals who will reside in the proposed facility.

(iii) Plans for providing the programmatic and other support services, as required by 42 Code of Federal Regulations, Part 483, Subpart D, which are appropriate to the individuals who will be residing in the proposed facility.

(I) If the proposed facility intends to serve individuals who are eligible for educational services, the application must include documentation to verify that the local school district has been notified of the development of the proposed facility.

(II) If the proposed facility intends to serve individuals

who are 22 years of age and older, the application must include a description of how the program intends to provide and/or support the delivery of vocational, day habilitation, or supported employment services.

(III) If the services are to be provided by an entity other than the applicant or facility, the service provider must submit documentation of his intent to provide services to the individuals who will be residing in the proposed facility.

(iv) Use of the Mental Retardation Authority (MRA) as a referral source. If the applicant intends to use the MRA as a referral source or as a resource to provide and coordinate other services required by residents in the proposed facility, the applicant must submit a letter from the MRA addressing this arrangement. The letter must:

(I) refer to the proposed facility by name and/or street address;

(II) be current within six months prior to the submission of the application; and

(III) be printed on the MRA's letterhead.

(B) The applicant must submit documentation [for all levels of care] to verify [that verifies] that the proposed facility is located such that no other ICF/MR is within a one-half mile radius of the proposed facility. [One of the following is required:

[(i) if the proposed facility is located in an incorporated city, documentation from a city official stating such; or

[(ii) if the proposed facility is located in an unincorporated area, a statement from the applicant describing accessibility to appropriate community resources including but not limited to emergency medical services and utility services.]

(3) A needs assessment has been conducted to include the following:

(A) The applicant must submit a statement concerning [identify] the known number of developmentally disabled persons residing in the community

and surrounding geographic area [(defined in the assessment)] who can benefit from the services provided by the facility.

[(B) The applicant must identify by name other ICF/MR facilities, if any, located within the same community and/or geographic area. The applicant must state the level-of-care classification and the number of individuals served at each facility.]

(B)[(C) If the facility serves individuals qualifying for Level-of-Care I, V, or VI services.] The [the] applicant must submit documentation to verify that the MRA [Mental Retardation Authority] in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria. The applicant must obtain and submit letters [or supportive documentation] which address the need for the facility from at least two of the following sources: the superintendent of the state school and/or the executive director of the MHMR center in whose catchment area the proposed facility is located, advocacy groups, developmental disability service providers and organizations, [and/or] school districts, and/or other appropriate developmental disability referral sources. Letters from individuals who have a financial interest in the proposed facility are not acceptable. The letters must refer specifically to the proposed facility by name and/or address, [and] be current within six months prior to the submission of the application, and be printed on the letterhead of the acknowledging entity [include a statement as to the known number of individuals identified in the area who will meet the admission criteria of the facility].

(C)[(D)] If the facility serves individuals qualifying for Level-of-Care VIII services, the applicant must additionally submit documentation [to verify that the Mental Retardation Authority in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria. Additionally, the applicant must submit documentation] that verifies that the regional DHS office and at least two other appropriate developmental disability referral sources have been notified about the development of the proposed facility. [The applicant must obtain at least two letters or supportive documentation from the appropriate referral sources. The letters must refer specifically to the proposed facility by name and/or address and include a statement as to the known number of individuals identified in the area who will meet the admission criteria of the facility.]

(D)[(E)] The applicant must submit a written description of the resident group to be served, including admission criteria.

[(4) The applicant must develop a description of the educational, medical, vocational, and any other programmatic support services (as defined by 42 CFR Part 483, Subpart D) which are required by the individuals served. The applicant must send a copy of either a letter of intent, memorandum of understanding, or a contract with the educational and/or vocational service provider.]

(4)[(5)] If the applicant plans to serve individuals qualifying for Level-of-Care I or VIII services, the applicant must submit a written description of alternatives for semi-independent and independent living available to the facility for those individuals who successfully complete the active treatment plan and evidence ability to move to a less restrictive placement. In the absence of these alternatives, the applicant must present evidence of having initiated planning for the development of these alternatives.

(5)[(6)] Facilities requesting to reclassify must withdraw from the program in accordance with DHS's Texas Community ICF/MR Provider Manual, Item 2560, and reapply in compliance with the requirements of this section. This includes new facilities seeking to reclassify during the application process prior to initial certification and currently certified facilities.

[(b) After the Texas Department of Mental Health and Mental Retardation (TDMHMR) receives and reviews the application for participation in the ICF/MR program and before request for a certification survey by the Texas Department of Health (TDH), the TDMHMR ICF/MR program staff contacts the applicant as necessary to facilitate completion of the application process. The contract for services is dependent on satisfactory compliance with these criteria.]

(d) The applicant has nine months from the date an application for participation in the ICF/MR program has been approved by TXMHMR to obtain a license and certification by the Texas Department of Health (TDH). If, at the end of the nine-month period, the provider is unable to obtain a license and certification, the applicant must withdraw the request for program participation and reapply in compliance with the requirements of this section.

(1) TXMHMR may grant applicants a three-month extension for new construction delayed by inclement

weather, natural disaster, construction strike, or other causes beyond the provider's control. New construction does not include renovations or modifications to existing structures. The request for the extension must be submitted in writing to TXMHMR at least 60 days prior to the end of the nine-month period and include documentation to support the circumstance which caused the delay.

(2) If an applicant must change locations following application approval by TXMHMR, the change in location must:

(A) be reported to TXMHMR at least 10 days prior to the actual location change; and

(B) be requested within the first 30 days from the date of the original application approval;

(C) meet all requirements set forth in this section and be approved by TXMHMR, ICF/MR Section;

(D) remain within the same geographic region as the previously approved location, as defined in the TXMHMR's Plan for New Bed Development in the Texas ICF/MR Program;

(E) not alter the applicant's ability to obtain a license and certification within the nine-month time period set forth in this subsection.

(e) All applications for participation in the ICF/MR Program will be reviewed within three weeks of receipt in the TXMHMR, ICF/MR Section. Applications must meet all requirements set forth in this section to receive approval for participation. As necessary, TXMHMR, ICF/MR Program staff will contact the applicant to facilitate completion of the application process. Applications not completed within three months of receipt will be withdrawn from the review and approval process. Upon approval, TXMHMR will notify the TDH that the facility can begin the licensing and certification survey processes. The contract for services is dependent on compliance with the provisions of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 1, 1988.

TRD-9213060 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: December 1, 1992

For further information, please call: (512) 450-3765

Chapter 35. Pharmacy Services

Subchapter B. Administration

The Texas Department of Human Services (DHS) proposes repeals of §§35.703-35.708; amendments to §§35.202, 35.203, 35.402, 35.606, 35.701, and 35.702; and new §§35.704, 35.705, 35.707, and 35.708; concerning on-line transmission of pharmacy provider claims in its Pharmacy Services chapter. The purpose of the repeals is to delete the sections regarding claims processing by paper and magnetic tape submission. The purpose of the amendments and the new sections is to provide the requirements for submission of pharmacy claims through the new on-line billing system.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated reduction in cost of \$354,719 in fiscal year (FY) 1993; \$617,462 in FY 1994; \$737,001 in FY 1995; \$949,776 in FY 1996; and \$1,476,872 in FY 1997. There is no anticipated effect on local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient process for handling pharmacy claims for reimbursement. There will be no effect on small businesses as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Pat Gladden at (512) 338-6967 in DHS's Vendor Drug Program. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-225, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §35.202, §35.203

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§35.202. Pharmacy Services. Under the Vendor Drug Program, pharmacy services include the dispensing to eligible recipients of covered legend and nonlegend drugs that appear in the latest revision of the Texas Drug Code Index and updates. If at least one covered legend drug (in therapeutic

amount) is included in the ingredients, the Vendor Drug Program covers compounded prescriptions.

§35.203. Prescriber Identification Numbers.

(a) (No change.)

(b) Vendors must enter [write] the identification number of the prescriber on each claim.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 28, 1992.

TRD-9213062 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: January 1, 1993

For further information, please call: (512) 450-3765

Subchapter D. Limitations

• 40 TAC §35.402

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§35.402. Prescription Requirements.

(a) (No change.)

(b) The pharmacist must ensure that the original prescription conforms to the Texas State Board of Pharmacy rules concerning the records to be maintained by a pharmacy. [To be reimbursed by the Vendor Drug Program, a prescription must be dispensed within 10 days of the date it is written. The date of issue is the first day.] A signed prescription must be maintained in the dispenser's file and available for audit at any reasonable time. Telephone orders, where legal, must be documented in writing. The name of the prescribing physician and the signature of the dispensing pharmacist must be documented. If a pharmacy maintains prescription records in a data processing system, a hard copy of the prescription must be retained on file unless the daily log includes all the information required in §35.701 of this title (relating to Pharmacy Claims). The provider must conform to all regulations issued by the Drug Enforcement Agency and Texas State

Board of Pharmacy concerning the recording of prescriptions in a data processing system.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213062 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: January 1, 1993

For further information, please call: (512) 450-3765

Subchapter F. Reimbursements

• 40 TAC §35.606

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§35.606. Brand-Name Drugs.

(a) Physicians, who want to dispense a brand name on a prescription for a multisource drug with a maximum allowable cost, handwrite the phrase "Brand necessary" on the face of the prescription. This procedure enables payment for the drug at the more expensive brand name estimated acquisition cost. To indicate this certification (override) on the pharmacy claim form, the provider must enter "6" in the field [block] for "Dispense as Written." [the "Physician Override."] For telephone orders involving physician overrides, a written prescription must be obtained from the prescribing physician within 30 days from the time the order was placed.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213063 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: January 1, 1993

For further information, please call: (512) 450-3765

Subchapter G. Pharmacy

Claims

• 40 TAC §§35.701, 35.702, 35.704, 35.705, 35.707, 35.708

The amendments and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§35.701. Pharmacy Claims [Form].

(a) To receive payment from the department, the provider must [complete and] submit a pharmacy claim through the electronic adjudication system. A separate [form or] entry is submitted for each prescription or refill. For the original dispensing and each subsequent refill, the provider indicates on the prescription the price and reimbursement method (wholesale estimated acquisition cost, direct estimated acquisition cost, or maximum allowable cost) and National [Texas] Drug Code number (NDC), which is submitted to the department on the corresponding pharmacy claim. [All criteria for pharmacy claims set forth in the pharmacy claim instructions apply to the information required on magnetic tape input. All tape service bureaus and vendors generating their own tapes must use the department's magnetic tape format. Claims may be submitted on magnetic tape through an approved tape service or approved vendor's magnetic tape system.] Claims received over 90 [180] days after the date of service are rejected. For claims on behalf of an individual who has applied for Medicaid coverage but has not yet been assigned a recipient number on the date of service, the filing period does not commence until the date the individual has been assigned a number. The requirements in §35.402 of this title (relating to Prescription Requirements) are also waived for retroactive claims. The provider must ensure, however, that a prescription for a prior eligibility claim conformed to Texas State Board of Pharmacy and Texas Department of Human Services regulations on the date of service, or a claim cannot be submitted.

(b) Quantity of drugs, as prescribed by the physician, always must be entered in the metric quantity field [pricing unit box]. The quantity shown as the metric quantity [pricing] unit must be calculated after referencing the pricing unit shown in the Texas Drug Code Index. [When the drug is dispensed in the original package intended for a single prescription, pricing unit is the quantity of the original package.]

(c) (No change.)

(d) The provider must submit claims as the prescription is dispensed through the on-line system; however, some providers who supply a large volume of medications to nursing facility recipients may submit these claims through their data transmission company after the point of sale.

§35.702. *Overcharged Claims.* Overcharged prescription claims are not denied [returned to the provider]. The appropriate drug cost (wholesale estimated acquisition cost, direct estimated acquisition cost, or maximum allowable cost) listed in the computer drug file, plus the provider's assigned dispensing fee is paid. The amount claimed and the amount paid are shown on the payment register.

§35.704. *Claim Adjustments.* The pharmacy provider must completely reverse the original submission and resubmit the claims to receive an adjustment for an overpayment or underpayment of a pharmacy claim. The Texas Department of Human Services (DHS) must receive an adjustment within 90 days of the date of adjudication.

§35.705. *Unacknowledged Claims.* The Texas Department of Human Services (DHS) must receive a request for research on unacknowledged claims within 90 days of the date of service.

§35.707. *Submittal of Special Claims.* Providers must bill for compounds using the drug code and quantity for the most expensive legend drug in the compound and the compound flag. Payment requests for additional ingredients in the compound must be submitted to the regional pharmacist.

§35.708. *Electronic Data Transmission Vendors (Switches).* Providers must use contracted data transmission companies (switches) to send claims to the Texas Department of Human Services (DHS). The provider is responsible for the information supplied to DHS through the switch.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213064 Nancy Murphy
Agency Liaison, Policy and
Document Support

Proposed date of adoption: January 1, 1993
For further information, please call: (512)
450-3765

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**Subchapter G. Pharmacy
Claims**

• **40 TAC §§35.703-35.708**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and

32, which authorizes the department to administer public and medical assistance programs.

§35.703. *Rejected Claims.*

§35.704. *Claim Adjustments.*

§35.705. *Unacknowledged Claims.*

§35.706. *Pharmacy Claims Correction Report.*

§35.707. *Submittal of Special Claims.*

§35.708. *Pharmacy Claim Magnetic Tape Input.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 28, 1992.

TRD-8213065

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

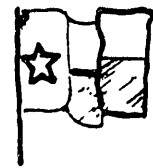
Proposed date of adoption: January 1, 1993

For further information, please call: (512)
450-3765

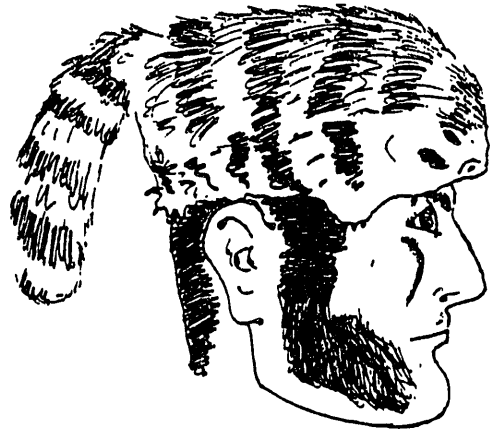
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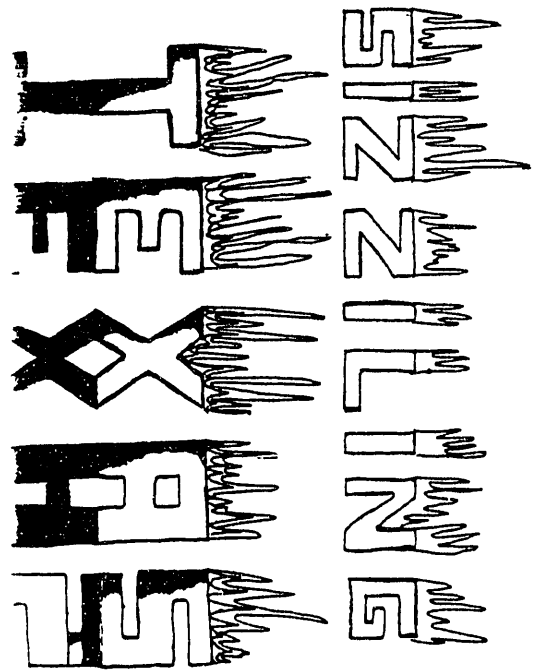


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Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Dental Laser Use

• 22 TAC §109.301

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption a proposed new §109.31 which appeared in the August 14, 1992, issue of the *Texas Register* (17 TexReg 5663). The effective date of this withdrawal is September 28, 1992.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213071 Mel Ling Clendennen
 Administrative Secretary
 State Board of Dental
 Examiners

Effective date: September 28, 1992

For further information, please call: (512)
477-2985



• 22 TAC §109.302

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption a proposed new §109.302 which appeared in the August 14, 1992, issue of the *Texas Register* (17 TexReg 5662). The effective date of this withdrawal is September 28, 1992.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213072 Mel Ling Clendennen
 Administrative Secretary
 State Board of Dental
 Examiners

Effective date: September 28, 1992

For further information, please call: (512)
477-2985



• 22 TAC §109.303

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption a proposed new §109.303 which appeared in the August 14, 1992, issue of the *Texas Register* (17 TexReg 5663). The effective date of this withdrawal is September 28, 1992.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213070 Mel Ling Clendennen
 Administrative Secretary
 State Board of Dental
 Examiners

Effective date: September 28, 1992

For further information, please call: (512)
477-2985



TITLE 31. NATURAL RE- SOURCES AND CON- SERVATION

Part IX. Texas Water Commission

Chapter 298. Edwards Underground River

Subchapter H. Permanent Man- agement Plan

• 31 TAC §298.71

The Texas Water Commission has withdrawn from consideration for permanent adoption proposed new §298.71 which appeared in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2958). The effective date of this withdrawal is October 16, 1992.

Issued in Austin, Texas, on September 25, 1992.

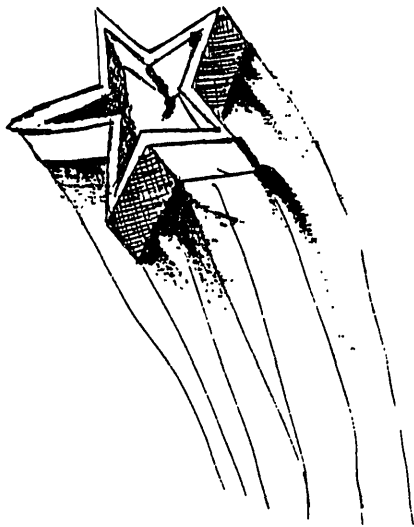
TRD-9213050 Mary Ruth Holder
 Director, Legal Division
 Texas Water Commission

Effective date: October 16, 1992

For further information, please call: (512)
463-8069



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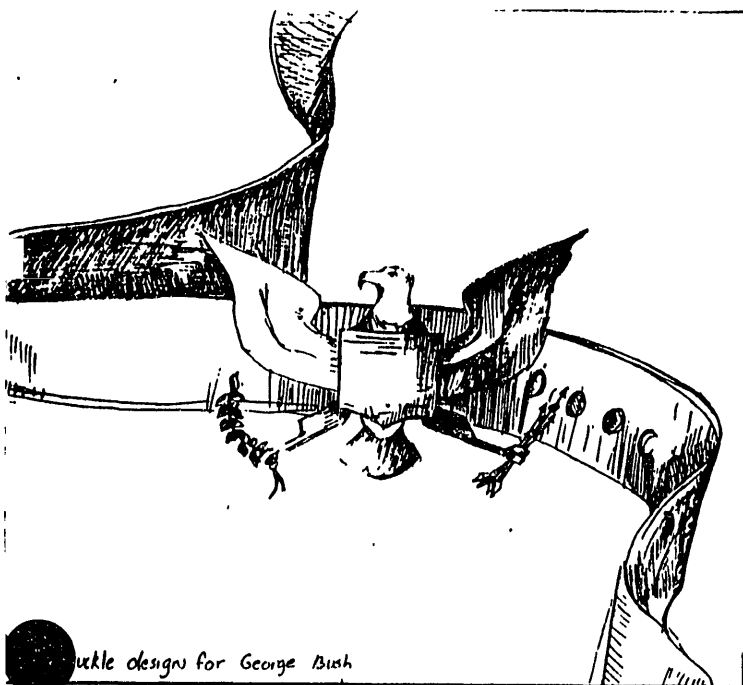
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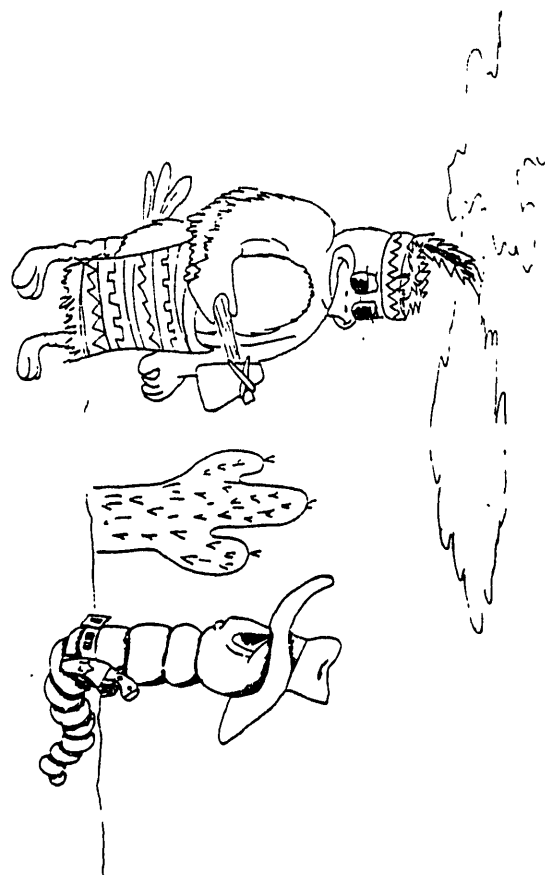
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Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resource Technology

• 1 TAC §201.5

The Department of Information Resources Board of Directors adopts an amendment to §201.5 concerning agency planning, with changes to the proposed text as published in the June 26, 1992, issue of the *Texas Register* (17 TexReg 4587).

The amendment establishes implementation standards for the "DIR Review Required" rider in the General Appropriations Act of the 72nd Legislature. Guidelines for analysis and reporting of project acquisition alternatives are adopted by reference in this section.

The section specifies standards for applicability and implementation which will result in increased accountability and productivity as well as improved cost efficiency for information resources technology acquisitions.

Comments were received on the following topics: Detailed Costs and Timing; Potential Implementation Costs; Number and Type of Alternatives; Waiver Criteria, Advisory Committee; Amending Rules; RFI's and RFP's Technical Foundation; Step 8 Recertification Process; and the Calculation of Fringe Benefits.

The UT Health Science Center at Houston; UT System; Texas Water Commission; Department of Human Services; Attorney General's Office; and Comptroller's Office commented on the amendment.

Most comments were clarified by reference to proposed rules and guidelines. One emergency provision was changed as a result of a comment.

The amendment is adopted under Texas Civil Statutes, Article 4413(32), §9(a), which provide the Department of Information Resources with the authority to adopt rules as necessary to ensure the cost-effective implementation of information resources technologies by state agencies.

§201.5. Agency Planning.

- (a)-(d) (No change.)
- (e) Appeal procedures.

(1) Submittal procedures. A state agency that disagrees with the department's disapproval of a plan, plan amendment, analysis of project acquisition alternatives, or procurement may submit a written request to the department for special review no later than 30 working days after notification of department disapproval.

(2) (No change.)

(f) (No change.)

(g) Review of state agency analyses of project acquisition alternatives.

(1) Applicability.

(A) Departmental review of analyses of project acquisition alternatives is required for:

(i) state agency information resources projects over the agency threshold as described in an agency's initial or final operating plan; or

(ii) any state agency information resources project or other activity as stipulated by the department in its approval of an initial or final operating plan; except

(iii) through August 31, 1993, these provisions shall not apply for any agency projects to expand or enhance existing information resources capacity with no significant change in technical environment.

(B) Through August 31, 1993, the provisions of this subsection shall only apply to any state agency with the general appropriation rider entitled "DIR Review Required."

(2) Waivers.

(A) A waiver shall be granted to any state agency on an emergency basis without first complying with the procedures prescribed by this section for any projects which may become necessary as a result of a natural or human disaster; any order of a court of competent jurisdiction when the ordered period of compliance is less than six months unless the agency has received prior approval for an emergency implementation period in excess of six months; any act of exemption by the Texas Legislature; or other documented emergency conditions. The agency must report and explain to the department any

emergency action within 30 days after the action is taken.

(B) Through August 31, 1993, a waiver shall automatically apply to any agency whose final operating plan projects are classified only as current operations, normal growth, baseline operations, or growth and expansion, or telecommunications and where the agency's total direct costs for all of those projects are less than \$750,000.

(C) Through August 31, 1993, a waiver shall apply for any agency projects in progress beyond the planning or feasibility study stage on or before May 1, 1992. Such waivers must be requested in writing by the Information Resources manager. The department will grant or deny waiver requests within 10 working days of receipt of the request, based on evidence of project status.

(3) Compliance; adoption by reference. Each analysis of project acquisition alternatives prepared by an agency and submitted to the department must include information in the format specified by the department in the Guide for the Analysis of Project Acquisition Alternatives (hereafter referred to as Guide). Information concerning the Guide adopted by reference may be obtained from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711.

(4) Submittal procedures.

(A) Before project initiation beyond the planning or feasibility stage, each state agency shall prepare and submit to the department an analysis of project acquisition alternatives for projects which meet the applicability requirements stated in paragraph (1) of this subsection and which do not qualify for a waiver under paragraph (2) of this subsection. Agency submissions of information for departmental review shall occur within the timeframes specified in the Guide.

(B) The Information Resources manager shall sign the transmittal document for the analysis of alternatives.

(5) Review procedures. The department may not approve an agency's analysis unless the agency has submitted, and

the department has approved, a current agency strategic and operating plan.

(A) The department will evaluate alternative analyses:

(i) for completeness with respect to published instructions in the Guide. The analysis shall address, but not be limited to, the following factors:

(I) start-up costs associated with the acquisition, including but not limited to the purchase price of the acquisition, site preparation costs, freight charges, and staff costs;

(II) estimated cost of maintenance;

(III) estimated cost of supplies;

(IV) estimated cost of employee training;

(V) estimated cost of additional long-term staff needed;

(VI) estimated increase in employee productivity;

(VII) consistency with agency plans approved by DIR;

(VIII) consistency with statewide standards and policies established in the statewide strategic plan;

(ii) for cost-effectiveness in accordance with published instructions in the Guide or other rule of the department; and

(iii) for any other information the department deems necessary and appropriate.

(B) The department will review and approve or disapprove each analysis of project acquisition alternatives in writing no later than 30 days after receipt of the documents. If the department does not act within the time allowed, the agency may proceed with its project; however, departmental inaction does not exempt the agency, its projects, or its activities from other procedural requirements of the department under this chapter.

(i) First review. If the department disapproves an agency's initial analysis, the agency may perform a recertification of the analysis by an independent reviewer and request a second review as specified in the Guide.

(ii) Second review. If the department disapproves an agency's second analysis, the agency may appeal the decision to the board, under the provisions of subsection (e) of this section, provided the request for appeal is accompanied by the department's disapproval notices and the independent certification of the analysis.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213056

Ann S. Fuelberg
Executive Director
Department of Information
Resources

Effective date: October 19, 1992

Proposal publication date: June 26, 1992

For further information, please call: (512) 475-4714

◆ ◆ ◆
• 1 TAC §201.13

The Department of Information Resources adopts new §201.13 concerning information resource standards, with changes to the proposed text as published in the June 26, 1992, issue of the *Texas Register* (17 TexReg 4591).

Adoption of this section is necessary to define technical standards for geographic information systems and information security standards for all state information resources.

For geographic information systems, the adopted section will function to reduce redundant data development efforts and facilitate data exchange among users. The information security standards establish a state information security policy and serve to create a consistent approach for agencies to follow in protecting the state's vital information resources.

Comments were received on subsection (a), geographic information system standards, on issues relating to fiscal impact, university exemption, additions to the data layer classification schema, and clarification/definition of terms. It was requested that projections, map legend and map accuracy be made guidelines rather than standards. The department agreed with all comments on §201.13(a) and made changes accordingly. Universities will be exempted from these standards when geographic information systems are acquired solely for instructional purposes. Agencies and private businesses submitting comments on the geographic information system standards were: Comptroller of Public Accounts; Office of the Attorney General; Railroad Commission of Texas; Texas Department of Human Services; Texas Department of Transportation; Texas General Land Office; Texas Legislative Council; Texas National Research Laboratory Commission; Texas Rehabilitation Commission; Texas Water Development Board; Texas Water Commission; Texas Water Commission/Water Utilities Divi-

sion; Corpus Christi State University; Mississippi Institutions of Higher Learning; Prairie View A&M University; Southwest Texas State University; Texas A&M University/Dept of Agriculture Engineering; Texas A&M University/Remote Sensing/GIS Laboratory; University of North Texas; University of North Texas/Remote Sensing and Land Use Analysis; Lee County Appraisal District; National Institute of Standards and Technology; Tracor Applied Sciences; EDS/GDS Solutions; and Intergraph.

Comments received on subsection (b), information security standards, which the department agreed with and made changes accordingly, were on issues relating to fiscal impact, clarification and definition of terms, data encryption, audit requirements, personnel requirements, report requirements and implementation timeframe. Comments which the department disagrees with, and consequently made no substantive changes, dealt with adoption of guidelines rather than standards and on what agencies felt were extensive documentation requirements. The department feels that standards are required for consistency and that agency security procedures must be developed and maintained to ensure personnel awareness of policy, requirements and procedures. Agencies submitting comments on information security standards were: Texas Department of Insurance; Office of the Attorney General; Office of the State Auditor; Texas Employment Commission; Texas Parks and Wildlife Commission; Railroad Commission of Texas; Teacher Retirement System of Texas; University of Texas System; University of Texas Health Science Center/San Antonio; University of Texas Health Science Center/Houston; Texas Department of Health; Comptroller of Public Accounts; Texas Water Commission; Security Issues Group—An ad hoc association of agency security professionals.

The new section is adopted under the Information Resources Management Act, Texas Civil Statutes, Article 4413(i), §1, Subsection 9, which provide the department with the authority to adopt rules as necessary to carry out its responsibility under this article.

§201.13. Information Resource Standards.

(a) Geographic information systems standards.

(1) Applicability

(A) All digital spatial data users and developers of new geographic information systems in state agencies and universities must comply with the technical standards specified in the "Standards and Guidelines for Geographic Information Systems in the State of Texas".

(B) An institution of higher education, as defined by the Education Code, §61.003, will be exempted from these standards when Geographic Information Systems are acquired solely for instructional purposes.

(C) Currently operating systems which are structurally unable to comply are not required to retrofit to these standards.

(2) Waivers.

(A) A waiver shall be granted to any state agency due to any order of a court of competent jurisdiction when the ordered period of compliance is less than 90 days; or any act of exemption by the Texas Legislature.

(B) Letter applications for waivers will be made in writing to the department by the agency Information Resources Manager (IRM). Within 10 days after initial receipt of the waiver request, the department will notify the submitting state agency of all supporting information the department requires to conduct its review. The date of receipt of the waiver application is either the initial date of arrival of the request, or the date that any supporting or other information if requested, is received. Review shall commence on the date of receipt. The department will conduct its review within 30 days after the date of its receipt, evaluate the applications, and grant or deny these waiver requests based on an analysis of the particular circumstances or environment. Consultation with the Geographic Information Systems Standards Committee will be included in the waiver process on an as needed basis, and the Committee will review all waivers at their semi-annual meetings.

(C) The acquisition of software which cannot support these standards will not be grounds for a waiver.

(3) Adoption by reference. The "Standards and Guidelines for Geographic Information Systems in the State of Texas", herein adopted by reference, may be obtained from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711.

(4) Submittal procedures. The agency IRM will certify that geographic information systems development in the agency adheres to the "Standards and Guidelines for Geographic Information Systems in the State of Texas". The annual certification will be submitted to the department.

(5) Review procedures.

(A) The certification will be reviewed by the department and the Geographic Information Systems Standards Committee to determine compliance and

agency comprehension of the standards. Review procedures and any subsequent on-site assessment will be consistent with §7 of the "Standards and Guidelines for Geographic Information Systems in the State of Texas".

(B) The agencies may also request a peer review be performed at any time during the year. Upon receiving such a request, the department will schedule a review as soon as possible.

(b) Information security standards.

(1) Applicability. The following rule constitutes required minimum security standards for the protection of automated information resources for agencies of the State of Texas. The department requests each agency to complete implementation of an information resources security program consistent with these standards on or before September 1, 1997, in accordance with the implementation schedule of paragraph (12) of this subsection. Beginning with the agency information resources strategic plan to be submitted on January 1, 1993, agencies shall include in each biennial strategic plan for information resources an overview of their current information security posture and their future plans for completing development of a security program, consistent with these standards and implementation schedule, over each current strategic planning cycle. Completed implementation actions shall be reported to the department in agency annual performance reports. To assist in the interpretation and implementation of these standards, the department has developed the Information Resources Security and Risk Management Policy, Standards and Guidelines manual which is available on request from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711.

(2) Classification of information. The state's automated information files and databases are essential and vital public resources which must be protected from unauthorized modification, deletion, or disclosure. Subject to executive management review, agency program managers have responsibility for the information assets utilized in carrying out the programs under their direction and accordingly are responsible for classifying program information.

(A) For purposes of this subsection, two classifications of information are defined which require special protective precautions:

(i) confidential information—information maintained by state agencies that is exempt from disclosure under the provisions of the Texas Open Records Act or other state or federal law; and

(ii) sensitive information—information maintained by state agencies that requires special precautions, as

determined by agency standards and risk management decisions, to assure its accuracy and integrity by utilizing error checking, verification procedures and/or access control to protect it from unauthorized modification or deletion.

(B) As defined in subparagraph (A)(ii) of this paragraph, sensitive information may be either public or confidential and requires a higher than normal assurance of accuracy and completeness. Likewise, confidential information may also be considered sensitive, requiring special measures to ensure its accuracy. Thus, the controlling factor for confidential information is dissemination, while the controlling factor for sensitive information is that of integrity.

(3) Policy. It is the policy of the State of Texas that:

(A) Automated information and information resources residing in the various agencies of state government are strategic and vital assets belonging to the people of Texas. These assets require a degree of protection commensurate with their value. Measures shall be taken to protect these assets against accidental or unauthorized disclosure, modification, or destruction, as well as to assure the security, reliability, integrity, and availability of information.

(B) The protection of assets is a management responsibility.

(C) Access to state information resources must be strictly controlled. State law requires that state owned information resources be used only for official state purposes.

(D) Information which is sensitive or confidential must be protected from unauthorized access or modification. Data which is essential to critical state functions must be protected from loss, contamination, or destruction.

(E) Risks to information resources must be managed. The expense of security safeguards must be appropriate to the value of the assets being protected, considering value to both the state and a potential intruder.

(F) The integrity of data, its source, its destination, and processes applied to it must be assured. Changes to data must be made only in authorized and acceptable ways.

(G) In the event a disaster or catastrophe disables information processing and related telecommunication functions, the ability to continue critical governmental services must be assured. Information resources must be available when needed.

(H) Security needs must be considered and addressed in all phases of development or acquisition of new information processing systems.

(I) Security awareness and training of employees is one of the most effective means of reducing vulnerability to errors and fraud and must be continually emphasized and reinforced at all levels of management. All individuals must be accountable for their actions relating to information resources.

(J) Agency information security programs must be responsive and adaptable to changing vulnerabilities and technologies affecting state information resources.

(K) Agencies must ensure adequate separation of functions for tasks that are susceptible to fraudulent or other unauthorized activity.

(4) Management and staff responsibilities.

(A) The responsibilities of a position with respect to security and risk management shall be commensurate with its authority. Descriptions of security roles and responsibilities for agency personnel shall be included in written position descriptions and compiled in the agency security manual developed and maintained by the information security function.

(B) Each agency head, or the information resources manager acting on delegated authority, shall institute an information security function to administer the agency information security program. It shall be the duty and responsibility of this function to establish all procedures and practices necessary to ensure the security of information assets against unauthorized or accidental modification, destruction, or disclosure. The information security function within each agency shall document and maintain an up-to-date internal information security program. The agency security program shall include written internal policies and procedures for the protection of information resources, be an instrument implementing state information security policies and standards, be applicable to all elements of the agency, and be signed by the information resources manager or the agency head.

(C) The Information Resources Management Act makes it clear that information and information resources residing in the various agencies of state government are assets owned by the people of Texas. For the purpose of information resources security and risk management, the concept of owners, custodians and users of information resources, and their surrogate responsibilities to the people of Texas, is utilized in the development of an information security program. The effectiveness of the program depends to a large extent on the correct identification of those surrogate owners, custodians, and users of information. Owners, custodians, and users of data, software, and other information resources shall be identified, documented, and their responsibilities defined. All resources shall be assigned an owner. In cases where data or software is aggregated for purposes of ownership, the aggregation shall be at a level which assures individual accountability. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles.

(i) Owner responsibilities. The owner of information resources is the designated individual upon whom responsibility rests for carrying out the program that uses the resources. That person is referred to herein as a program manager. The owner, or program manager, is responsible and authorized to: approve access and formally assign custody of the asset; judge the asset's value; specify data control requirements and convey them to users and custodians; and ensure compliance with applicable controls. Ownership responsibilities apply in the development of outsourcing contracts with private firms or with other agencies. These contracts must specify appropriate controls, based on risk assessment, to ensure protection of the state's confidential or sensitive information files, databases and software from unauthorized modification, deletion or disclosure.

(ii) Custodian responsibilities. A custodian is the agent in charge of the organizational unit providing technical facilities, data processing and other support services to owners and users of automated information. The custodian of information resources is assigned the responsibility to: implement the controls specified by the owner; provide physical and procedural safeguards for the information resources within the facility; assist owners in evaluating the cost-effectiveness of controls; administer access to the information resources; and to make provisions for timely detection, reporting, and analysis of unauthorized attempts to gain access to information resources. Custodial responsibilities apply to all entities providing outsourcing services to state agencies.

(iii) User responsibilities. The users of information resources have the responsibility to: use the resource only for the purposes specified by its owner; comply with controls established by the owner; and prevent disclosure of confidential or sensitive information.

(D) The agency information security function acting on behalf of the agency head and with cooperation from program and technical management, shall assign information asset ownership and ownership responsibilities for all information resources within the agency.

(E) Program managers, having been assigned information resource ownership, shall assign custody of program assets to appropriate technical and data center managers and ensure they are provided the appropriate direction to implement the security controls and procedures that have been defined.

(F) Technical managers, assigned information resource custodianship, are charged with executing the monitoring techniques and procedures for detecting, reporting, and investigating breaches in information asset security.

(G) An internal audit of the information security function shall be performed periodically, based on risk assessment, as directed by the agency head or the information resources manager acting on delegated authority for risk management decisions.

(5) Risk analysis.

(A) The information security function within each agency shall require a comprehensive risk analysis of all information processing systems be performed on a periodic basis as set by agency standards. Risk analysis results shall be presented to the owner of the information resource for risk management. Each step of the risk analysis process must be documented. The degree of risk acceptance (i.e., the exposure remaining after implementation of the recommended protective measures) must be identified.

(B) A risk analysis report documenting the risk assessment must be submitted to the agency head. The risk analysis process provides the basis for preparing the agency's risk analysis report.

(C) All information resources determined by agency management to be essential to the agency's critical mission and functions, the loss of which would

have an unacceptable impact, shall have a written and cost effective contingency plan that will provide for the prompt and effective continuation of critical state missions in the event of a disaster. The contingency plan shall be tested and updated at least annually to assure that it is valid and remains current.

(D) Data and software essential to the continued operation of critical agency functions shall be backed up. The security controls over the backup resources shall be as stringent as the protection required of the primary resources.

(6) Personnel practices.

(A) Each agency shall prepare a security manual that lists the agency's security policies and procedures. All agency personnel shall be required to provide written acknowledgement that they have received, read, and understand the security policies and procedures. The agency head, or the information resources manager acting on delegated authority, shall determine how often this written acknowledgement must be renewed.

(B) Each agency shall establish procedures for reviewing information resource functions to determine which positions require special trust or responsibilities.

(C) Agencies shall use non-disclosure agreements to document the acceptance by employees and contractors of special information security requirements as defined by agency standards and risk management decisions.

(D) Agencies shall provide an ongoing awareness and training program in information security and in the protection of state information resources for all personnel whose duties bring them into contact with confidential or sensitive state information resources. Security training sessions for these personnel shall be held at least annually. Further, awareness and training in security shall not be limited to formal training sessions, but shall include periodic briefings and continual reinforcement of the value of security consciousness in all employees whose duties bring them into contact with confidential or sensitive state information resources.

(E) State agencies shall take advantage of new employee orientation to establish security awareness and inform new employees and contractors of information security policies and procedures. If an employee leaves the employment of any agency of the state, for whatever reason, all

security privileges shall be immediately revoked and the employee shall be prevented from having any opportunity to access information.

(7) Physical security.

(A) Management reviews of physical security measures shall be conducted annually, as well as whenever facilities or security procedures are significantly modified.

(B) Physical access to central computer rooms shall be restricted to only authorized personnel. Authorized visitors shall be recorded and supervised.

(C) Employees and information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(D) Confidential or sensitive information, when handled or processed by terminals, communication switches, and network components outside the central computer room, shall receive the level of protection necessary to ensure its integrity and confidentiality. The required protection may be achieved by physical or logical controls, or a mix thereof.

(E) Emergency procedures shall be developed and regularly tested.

(8) Information security.

(A) Authorized use and ownership

(i) All information and telecommunication resources leased or owned by the state and all time-sharing services billed to the state shall be used only to conduct state business.

(ii) All computer software programs, applications, source code, object code, and documentation shall be deemed to be a work made for hire and is state property and shall be protected as such if developed:

(I) by state employees in the course and scope of their employment or with the use of state equipment, materials, or other resources, with the exception of employees of universities and other institutions of higher education, provided such university or institution has an intellectual property policy in place which addresses ownership rights regarding software development; or

(II) by contract personnel acting under a contract with the state, unless the contract under which the software or documentation is developed specifically provides otherwise; or

(III) with state funds.

(iii) All computer software programs, applications, and documentation purchased for the use of the state is state property and shall be protected as such.

(B) Confidentiality of data and systems.

(i) Confidential information shall be accessible only to personnel who are authorized by the owner on a strict "need to know" basis in the performance of their duties. Data containing any confidential information shall be readily identifiable and treated as such in its entirety.

(ii) When confidential or sensitive information from one agency is received by another agency in connection with the transaction of official business, the receiving agency shall maintain the confidentiality or sensitivity of the information in accordance with the conditions imposed by the providing agency.

(C) Integrity. Controls shall be established to ensure the accuracy and completeness of data. User management shall ensure that data comes from the appropriate source for the intended use.

(D) Passwords.

(i) Except for public users of systems where such access is authorized, or for situations where risk analysis demonstrates no need for individual accountability of users, each user of a multiple-user automated system shall be assigned a unique personal identifier or user identification. User identification shall be authenticated before the system may grant that user access to automated information.

(ii) A user's access authorization shall be removed from the system when the user's employment is terminated or the user transfers to a position where access to the system is no longer required.

(iii) Systems which use passwords shall conform to the federal standard on password usage contained in the Federal Information Processing Standard Publication 112 (FIPS PUB 112), which specifies minimum criteria and provides guidance for selecting additional password security criteria, when appropriate. A current password standard compliance docu-

ment shall be maintained for each system which uses passwords, specifying the criteria to be met for the 10 factors which address design, implementation, and use of access control systems as contained in the FIPS PUB 112 standard.

(E) Auditability.

(i) Audit trails shall be maintained to provide accountability for all accesses to confidential or sensitive information and software and for all changes to automated security or access rules.

(ii) An auditable, continuous chain of custody shall record the transfer of confidential or sensitive information.

(iii) A sufficiently complete history of transactions shall be maintained for each session involving access to confidential or sensitive information to permit an audit of the system by tracing the activities of individuals through the system.

(iv) Automated systems which process confidential or sensitive information must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, or effect the release of the information.

(F) Access controls. Controls shall ensure that legitimate users of the computer cannot access stored software or data unless they have been authorized to do so.

(G) Security breaches.

(i) Security breaches shall be promptly investigated.

(ii) If criminal action is suspected, the agency must contact the appropriate local law enforcement and investigative authorities immediately. Laws governing the admissibility of evidence are very strict, and without professional advice the agency may be jeopardizing possible legal actions.

(H) Systems development and testing.

(i) Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all personnel involved in testing are otherwise authorized access to the data.

(ii) Appropriate information security and audit controls shall be incorporated into new systems. Each phase of systems acquisition shall incorporate corresponding development or assurances of security and auditability controls.

(iii) After a new system has been placed in operation, all program changes shall be approved before implementation to determine whether they have been authorized, tested, and documented.

(9) Authentication, data encryption, and key management.

(A) Systems shall implement authentication functions that are consistent with the level of confidentiality or sensitivity of the data they contain and process.

(B) It will not be a requirement at this time for agencies to use data encryption techniques for storage and transmission of data. However, those agencies who choose to employ data encryption shall adopt the data encryption standard, also referred to as the DES algorithm, which is defined in the Federal Information Processing Standard Publication 46-1 (FIPS PUB 46-1). It is highly recommended that electronic fund transfer (EFT) systems use the data encryption standard (DES). For systems employing encryption as described above, procedures shall be prescribed for secure handling, distribution, storage, and construction of data encryption standard (DES) key variables used for encryption and decryption. Protection of the key shall be at least as stringent as the protection required for the information encrypted with the key.

(10) Data communication systems.

(A) General network controls.

(i) Network resources participating in the access of confidential information shall assume the confidentiality level of that information for the duration of the session. Controls shall be implemented commensurate with the 18 highest risk.

(ii) All network components under state control must be identifiable and restricted to their intended use.

(B) Distributed network access security. Owners of distributed information resources served by distributed networks shall prescribe sufficient controls to ensure that access to those resources is restricted to authorized users and uses only. These controls shall selectively limit services based on:

(i) user identification and authentication (e.g., password, smart card/token); or

(ii) designation of other users, including the public where authorized, as a class (e.g., public access through dial-up or public switched networks), for the duration of a session, or

(iii) physical access controls.

(C) Application security. Network access to an application containing confidential or sensitive data, and data sharing between applications, shall be as authorized by the application owners and shall require authentication.

(D) Alternate procedures. If the agency utilizes a communication network to process critical applications or functions, it shall, as part of its contingency plan, provide for an alternate means of accomplishing its program objectives in case the system or its communication network becomes unavailable. Alternative procedures shall be established that enable agency personnel to continue critical day-to-day governmental operations in spite of the loss of the communication network.

(E) Dial-up access. For services other than those authorized for the public, users of dial-up terminals shall be positively and uniquely identifiable and their identity authenticated (e.g., by password) to the systems being accessed.

(F) Warning statements. System identification screens shall include the following warning statements:

(i) unauthorized use is prohibited;

(ii) usage may be subject to security testing and monitoring; and

(iii) abuse is subject to criminal prosecution.

(11) Personal computers and word processors. Personal computer systems and word processors used to store, process and/or access confidential or sensitive data, shall undergo risk analysis as required by the information security function. Risk analysis results shall be presented to the owner of the information resources for risk management. The degree of risk acceptance (i.e., the exposure remaining after implementation of the recommended protective measures) must be identified. The information security function must be prepared to demonstrate that security precautions have been established to ensure data confidentiality and the maintenance of information integrity.

(12) Implementation schedule. Implementation of this rule shall be in accordance with the following schedule. Earlier implementation of any item would be advantageous to the protection of state information resources.

(A) September 1, 1993—Establish an information security function, (reference paragraph (4) of this subsection), to administer the agency information security program which shall include:

(i) written internal policies and procedures for the protection of information resources;

(ii) assignment of information asset ownership and custodianship and the attendant responsibilities for all information resources within the agency.

(B) September 1, 1993—Implementation of all required personnel practices (reference paragraph (6) of this subsection).

(C) September 1, 1994—Completion of risk analysis, (reference paragraph (5) of this subsection), of all information resources (including mainframes, minicomputers, personal computers, local area networks and distributed processing systems) used to collect, record, process, store, retrieve, display and transmit confidential or sensitive information, including:

(i) documentation of risk analysis results;

(ii) recommended protective measures;

(iii) the degree of risk acceptance after such measures would be implemented;

(iv) a written disaster recovery plan.

(D) September 1, 1994—Implementation of all physical security requirements (reference paragraph (7) of this subsection):

(i) physical access controls;

(ii) identification of environmental hazards;

(iii) development of environmental control procedures;

(iv) emergency response training.

(E) September 1, 1995—Implementation and testing of agency disaster recovery plans (reference paragraph (5)(C) of this subsection).

(F) September 1, 1996—Implementation of information resources protective measures as identified by risk analysis including those for mainframes, minicomputers, personal computers, local

area networks and distributed processing systems (reference paragraph (8) of this subsection):

(i) logical and/or physical access controls to all information resources on a "need to know" basis;

(ii) user authentication (passwords);

(iii) data integrity controls;

(iv) audit trails;

(v) periodic internal audits;

(vi) documentation and investigation of security breaches.

(G) September 1, 1997—All remaining requirements consistent with these standards.

(H) Waivers. The executive director of the department is hereby delegated authority by the board to grant a requesting state agency a compliance waiver from any implementation date of the schedule in paragraph 12 of this subsection. Application for waiver will be made in writing to the department by the agency information resources manager. The agency must clearly demonstrate to the department through written justification that the overall economic interests of the state in matters of information security are best served by granting the compliance waiver and the requesting agency must submit a new written implementation schedule. The department will act on requests for waivers based on the agency's compliance with other information security standards not affected by the waiver, the agency's newly submitted implementation schedule and the provision that the executive director of the department will notify the board when requests for waivers are received.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213057
Ann S. Fuelberg
Executive Director
Department of Information Resources

Effective date: October 19, 1992

Proposal publication date: June 26, 1992

For further information, please call: (512) 475-4714

TITLE 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 55. Bingo Regulation

Bingo Regulation and Tax

• 16 TAC §55.550

The Texas Alcoholic Beverage Commission adopts an amendment to §55.550, concerning bingo reports, without changes to the proposed text as published in the August 18, 1992, issue of the *Texas Register* (17 TexReg 5629). The amendment will allow licensed authorized organizations to continue conducting bingo and carrying out their charitable activities until the legislature has had an opportunity to review and act on any amendments it considers necessary to the bingo gross receipts tax. The amendment amends subsections (b), (c), and (f) to change the reporting period for and the payment of the bingo gross receipts tax and the bingo prize fee from monthly to semi-monthly, and specifies an effective date of October 16, 1992-May 31, 1993.

A public hearing on the proposed amendment was held at the commission's monthly meeting on September 22, 1992. Seven persons testified at that hearing, and one written comment was also received at that time. Representatives of Harris, Dallas, and Tarrant Counties testified against the rule and the Texas Association of Counties submitted a written comment against the rule. They variously urged that the commission leave the rule unamended, wait to amend the rule until after the special session of the legislature, wait until an Attorney General's Opinion has been received concerning the commission's authority to change reporting periods, or return to quarterly reporting. They described the loss of revenue they believed would result from adoption of the amendment. A representative of the City of Dallas predicted a similar loss of revenue but did not make any recommendations. The commission disagrees with these comments on the grounds that the predictions of revenue losses are based on an assumption that the number of licensees conducting bingo will remain the same if the amendment is not adopted, while anecdotal evidence previously submitted to the commission indicates that without this proposed tax relief many licensees will cease conducting bingo and would then not be paying any state or local taxes or carrying out charitable activities supported by bingo proceeds. The commission believes its authority to change reporting periods is clearly set out in Texas Civil Statutes, Article 179d, §23(e).

The president of the Texas Association of Bingo Licensees opposed the rule to the extent that, while licensees must have tax relief, he believed that they must not be taxed at all. The commission disagrees with that comment on the grounds that the tax is imposed by statute and that the constitutionality of that tax is presently in litigation. Representatives of two licensed organizations testified that the proposed tax relief was needed by licensees

in order for them to continue conducting bingo.

The amendment is proposed under Texas Civil Statutes, Article 179d, §16(a) and §23(e), which provide the commission with the authority to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1992.

TRD-9212966
Emmitt Robens
General Counsel
Texas Alcoholic Beverage
Commission

Effective date: October 16, 1992

Proposal publication date: August 18, 1992

For further information, please call: (512) 206-3485

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 331. Underground Injection Control

Subchapter I. Financial Responsibility

• 31 TAC §§331.141-331.146

The Texas Water Commission (TWC) adopts new §§331.141-331.146, concerning underground injection control. Sections §§331.142-331.144 are adopted with changes to the proposed text as published in the March 27, 1992, issue of the *Texas Register* (17 TexReg 2249). Sections 331.141, 331.145, and 331.146 are adopted without changes and will not be republished.

These sections are adopted in order to promulgate a new Subchapter I, entitled "Financial Responsibility," which provides specific regulations concerning the financial responsibilities of owners and operators of underground injection control wells. Subchapter I is patterned after rules promulgated by the Environmental Protection Agency pursuant to its authority under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA).

These new sections are intended to replace existing §305.153, which will be repealed.

TWC received one written comment on the proposed regulations. The commenter requested that TWC provide a reference in §331.142, concerning financial responsibility, which states that the financial assurance mechanisms delineated in §331.144, concerning financial assurance for plugging and abandonment, are approved forms of finan-

cial assurance for purposes of complying with §331.142. The commenter is concerned that §331.142 did not specifically identify which financial assurance mechanisms TWC deemed to be equivalent to a performance bond. TWC intended the financial assurance mechanisms specifically identified in §331.144 to be the forms of financial assurance determined to be equivalent to a performance bond. Therefore, TWC will insert a cross-reference regarding §331.144 in §331.142 in order to clarify this intent.

TWC is designated the state agency which manages injection wells which are not within the jurisdiction of the Railroad Commission. As such, TWC is required to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare, the operation of existing industries and the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

The new sections are adopted under the Texas Water Code, §5.103 and §5.105, which provides TWC with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission. In addition, the Texas Water Code, §27.109, authorizes TWC to adopt rules and procedures reasonably required for the performance of its powers and duties under Chapter 27.

§331.142. Financial Responsibility.

(a) The permittee shall secure and maintain a performance bond or other equivalent form of financial assurance or guarantee approved by the commission as identified in §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) to ensure the closing, plugging, abandonment, and post-closure care of the injection operation in the manner prescribed by the commission. The assurance may cover more than one well or operation. For new hazardous waste disposal wells, financial security shall be obtained at least 60 days prior to the commencement of drilling operations for the well. For other injection wells, financial security shall be obtained prior to the injection of fluids.

(b) The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

§331.143. Cost Estimate for Plugging and Abandonment.

(a) The owner or operator must prepare a written estimate, in current dollars, of the cost of plugging the injection well in accordance with the plugging and abandonment plan as specified in this chapter. The plugging and abandonment cost estimate must equal the cost of plugging and abandonment at the point in the facili-

ty's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.

(b) The owner or operator must adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment must be made as specified in paragraphs (1) and (2) of this subsection, using an inflation factor derived from the most recent implicit price deflator for gross national product published by the United States Department of Commerce in its *Survey of Current Business*. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) The owner or operator must revise the plugging and abandonment cost estimate whenever a change in the plugging and abandonment plan increases the cost of plugging and abandonment. The revised plugging and abandonment cost estimate must be adjusted for inflation as specified in subsection (b) of this section.

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest plugging and abandonment cost estimate prepared in accordance with subsections (a) and (c) of this section and, when this estimate has been adjusted in accordance with subsection (b) of this section, the latest adjusted plugging and abandonment cost estimate.

(e) All financial assurance documents shall be filed with the executive director.

§331.144. Financial Assurance for Plugging and Abandonment. An owner or operator of each facility must establish financial assurance for the plugging and abandonment of each existing and new Class I, III, IV, and/or V well(s) hazardous waste injection well. For new wells, financial security shall be obtained at least 60 days prior to the commencement of drilling operations for the well. For the other injection wells, financial security shall be obtained at least 60 days prior to the injection of fluids. He may choose from the options as specified in paragraphs (1)-(6) of this section.

(1) Plugging and abandonment trust fund.

(A) An owner or operator may satisfy the requirements of this section by establishing a plugging and abandonment trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the executive director. An owner or operator of a Class I well injecting hazardous waste must submit the originally signed duplicate of the trust agreement to the executive director with the permit application or for approval to operate under rule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(B) The wording of the trust agreement must be identical to the wording specified in §331.147(a)(1) of this title (relating to Wording of the Instruments), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see §331.147(a)(2) of this title). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current plugging and abandonment cost estimate covered by the agreement.

(C) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the injection well as estimated in the plugging and abandonment plan, whichever

period is shorter. This period is hereafter referred to as the "pay-in period." The payments into the plugging and abandonment trust fund must be made as follows.

(i) For a new well, the first payment must be made before the initial injection of waste(s). A receipt from the trustee for this payment must be submitted by the owner or operator to the executive director 60 days before this initial injection of waste(s). The first payment must be at least equal to the current plugging and abandonment cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula.

PE-CV

$$\text{Next payment} = Y$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(ii) If an owner or operator establishes a trust fund as specified in

this paragraph, and the value of that trust fund is less than the current plugging and abandonment cost estimate when a permit is awarded for the injection well, the amount of the current plugging and abandonment cost estimate still to be paid into the trust fund must be paid in over the pay-in period

as defined in this subparagraph. Payment must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to this chapter. The amount of each payment must be determined by this formula:

PE-CV

$$\text{Next payment} = Y$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current plugging and abandonment cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subparagraph (C) of this paragraph.

(E) If the owner or operator establishes a plugging and abandonment trust fund after having used one or more alternate mechanisms specified in this section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph.

(F) After the pay-in period is completed, whenever the current plugging and abandonment cost estimate changes, the owner or operator must com-

pare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current plugging and abandonment cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(G) If the value of the trust fund is greater than the total amount of the current plugging and abandonment cost esti-

mate, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current plugging and abandonment cost estimate.

(H) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for release of the amount in excess of the current plugging and abandonment cost estimate covered by the trust fund.

(I) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subparagraphs (G) or (H) of this paragraph, the executive director may instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

(J) After beginning final plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for plugging and abandonment activities, the executive director will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of plugging and abandonment will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (9) of this section, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment.

(K) The executive director will agree to termination of the trust when:

(i) an owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(2) Surety bond guaranteeing payment into a plugging and abandonment trust fund.

(A) An owner or operator

must satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the executive director with the application for a permit or for approval to operate under rule. The bond must be effective at least 60 days before the initial injection of hazardous waste. The bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of Treasury.

(B) The wording of the surety bond must be identical to the wording in §331.147(b) of this title.

(C) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements specified in paragraph (1) of this section, except that:

(i) an originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and

(ii) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these requirements:

(I) payments into the trust fund as specified in paragraph (1) of this section;

(II) updating of Schedule A of the trust agreement (see §331.147(a) of this title) to show current plugging and abandonment cost estimates;

(III) annual valuations as required by the trust agreement; and

(IV) notices of non-payment as required by the trust agreement.

(D) The bond must guarantee that the owner or operator will:

(i) fund the standby trust fund in an amount equal to the penal sum of the bond before beginning of plugging and abandonment of the injection well; or

(ii) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin plugging and abandonment is issued by the executive director or a United States district

court or other court of competent jurisdiction; or

(iii) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(E) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(F) The penal sum of the bond must be in amount at least equal to the current plugging and abandonment cost estimate, except as provided in paragraph (7) of this section.

(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(H) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the executive director as evidenced by the returned receipts.

(I) The owner or operator may cancel the bond if the executive director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(3) Surety bond guaranteeing performance of plugging and abandonment.

(A) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the bond to the executive director. An owner or operator of a new facility

must submit the bond to the executive director with the permit application or for approval to operate under rule. The bond must be effective before injection of waste(s) is started. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury.

(B) The wording of the surety bond must be identical to the wording specified in §331.147(d) of this title.

(C) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. The standby trust must meet the requirements specified in paragraph (1) of this section, except that:

(i) an original signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and

(ii) unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(I) payments into the trust fund as specified in paragraph (1) of this section;

(II) updating of Schedule A of the trust agreement (see §331.147(a) of this title) to show current plugging and abandonment cost estimates;

(III) annual valuations as required by the trust agreement; and

(IV) notices of non-payment as required by the trust agreement.

(D) The bond must guarantee that the owner or operator will:

(i) perform plugging and abandonment in accordance with the plugging and abandonment plan and other requirements of the permit for the injection well whenever required to do so; or

(ii) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(E) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination that the owner or operator has failed to perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, under terms of the bond the surety will perform plugging and abandonment as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(F) The penal sum of the bond must be in an amount at least equal to the current plugging and abandonment cost estimate.

(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section. Whenever the plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(H) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(I) The owner or operator may cancel the bond if the executive director has given prior written consent. The executive director will provide such written consent when:

(i) an owner or operator substitute alternate financial assurance as specified in this section; or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(J) The surety will not be liable for deficiencies in the performance of plugging and abandonment by the owner or

operator after the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(4) Plugging and abandonment letter of credit.

(A) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the executive director. An owner or operator of an injection well must submit the letter of credit to the executive director during submission of the permit application or for approval to operate under rule. The letter of credit must be effective before initial injection of waste(s). The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(B) The wording of the letter of credit must be identical to the wording specified in §331.147(d) of this title.

(C) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements of the trust fund specified in paragraph (1) of this section, except that:

(i) an originally signed duplicate of the trust agreement must be submitted to the executive director with the letter of credit; and

(ii) unless the standby trust fund is funded pursuant to the requirements of this sections, the following are not required by these regulations:

(I) payments into the trust fund as specified in paragraph (1) of this section;

(II) updating of Schedule A of the trust agreement (see §331.147(a) of this title) to show current plugging and abandonment cost estimates;

(III) annual valuations as required by the trust agreement; and

(IV) notices of non-payment as required by the trust agreement.

(D) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name, and address of the facility, and the amount of funds assured for plugging and abandonment of the well by the letter of credit.

(E) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(F) The letter of credit must be issued in an amount at least equal to the current plugging and abandonment cost estimate, except as provided in paragraph (7) of this section.

(G) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the amount of credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current plugging and abandonment cost estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the amount of the credit may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(H) Following a determination that the owner or operator has failed to perform final plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, the executive director may draw on the letter of credit.

(I) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator

and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the executive director.

(J) The executive director will return the letter of credit to the issuing institution for termination when:

(i) an owner or operator substitutes and receives approval from the executive director of TWC for alternate financial assurance as specified in this section; or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(5) Plugging and abandonment insurance.

(A) An owner or operator may satisfy the requirements of this section by obtaining plugging and abandonment insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the executive director. An owner or operator of a new injection well must submit the certificate of insurance to the executive director with the permit application or for approval to operate under rule. The insurance must be effective at least 60 days before injection starts. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(B) The wording of the certificate of insurance must be identical to the wording specified in §331.147(e) of this title.

(C) The plugging and abandonment insurance policy must be issued for a face amount at least equal to the current plugging and abandonment estimate, except as provided in paragraph (7) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(D) The plugging and abandonment insurance policy must guarantee that funds will be available whenever final

plugging and abandonment occurs. The policy must also guarantee that once plugging and abandonment begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(E) After beginning plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for plugging and abandonment activities, the executive director will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of plugging and abandonment will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with paragraph (9) of this section, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment of the injection well.

(F) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in subparagraph (J) of this paragraph. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(G) Each policy must contain provisions allowing assignment to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(H) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the

face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) the executive director deems the injection well abandoned; or

(ii) the permit is terminated or revoked or a new permit is denied; or

(iii) plugging and abandonment is ordered by the executive director or a United States district court or other court of competent jurisdiction; or

(iv) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(v) the premium due is paid.

(I) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current plugging and abandonment estimate and submit evidence of such increase to the executive director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the face amount may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the executive director.

(J) The executive director will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) an owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(6) Financial test and corporate guarantee for plugging and abandonment.

(A) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either clause (i) or (ii) of this subparagraph.

(i) The owner or operator must have:

(I) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) net working capital and tangible net worth each at least six times the sum of the current plugging and abandonment cost estimate; and

(III) tangible net worth of at least \$10 million; and

(IV) assets in the United States amounting to at least 90% of his total assets or at least six times the sum of the current plugging and abandonment cost estimate.

(ii) The owner or operator must have:

(I) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) tangible net worth at least six times the sum of the current plugging and abandonment cost estimate; and

(III) tangible net worth of at least \$10 million; and

(IV) assets located in the United States amounting to at least 90% of his total assets or at least six times the sum of the current plugging and abandonment cost estimates.

(B) The phrase "current plugging and abandonment cost estimate" as used in subparagraph (A) of this paragraph refers to the cost estimate required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer in §331.147(f) of this title.

(C) To demonstrate that he meets this test, the owner or operator must submit the following items to the executive director:

(i) a letter signed by the owner's or operator's chief financial officer and worded as specified in §331.147(f) of this title; and

(ii) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(D) An owner or operator of a new injection well must submit the items specified in subparagraph (C) of this paragraph to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (C) of this paragraph.

(E) After the initial submission of items specified in subparagraph (C) of this paragraph, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (C) of this paragraph.

(F) If the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(G) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph (A) of this paragraph, require reports of financial con-

dition at any time from the owner or operator in addition to those specified in subparagraph (C) of this paragraph. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(H) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subparagraph (C)(ii) of this paragraph). An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(I) The owner or operator is no longer required to submit the items specified in subparagraph (C) of this paragraph when:

(i) an owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with paragraph (9) of this section.

(J) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantee must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in subparagraphs (A)-(H) of this paragraph and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §331.147(g) of this title. The corporate guarantee must accompany the items sent to the executive director as specified in subparagraph (C) of this paragraph. The terms of the corporate guarantee must provide the following.

(i) If the owner or operator fails to perform plugging and abandonment of the injection well covered by the corporate guarantee in accordance with the plugging and abandonment plan and other permit requirements whenever required to do so, the guarantee will do so or establish a trust fund as specified in paragraph (1) of this section in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(7) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per injection well. These mechanisms are limited to trust funds, surety bonds, guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (2), (4), and (5), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the adjusted plugging and abandonment cost. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use that trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The executive director may invoke any or all of the mechanisms to provide for plugging and abandonment of the injection well.

(8) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one injection well. Evidence of financial assurance submitted to the executive director must include a list showing, for each injection well, the EPA identification number, name, address, and the amount of funds for plugging and abandonment assured by the mechanism. If the injection wells covered by the mechanism are in more than once EPA region, identical evidence of financial assurance must be submitted to the executive director. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each injection well. In directing

funds available through the mechanism for plugging and abandonment of any of the injection wells covered by the mechanism, the executive director may direct only the amount of funds designated for that injection well, unless the owner or operator agrees to use additional funds available under the mechanism.

(9) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the executive director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the injection well, unless the executive director has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213051

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: October 16, 1992

Proposal publication date: March 27, 1992

For further information, please call: (512) 463-8069

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

• 34 TAC §3.412

The Comptroller of Public Accounts adopts the repeal of §3.412, concerning survivors of mergers, without changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4432).

This section is being repealed in order that it can be adopted under the 34 TAC, Part I, Chapter 3, Subchapter V. The section will be replaced with a new 34 TAC §3.565, concerning survivors of mergers.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212949

Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: October 14, 1992

Proposal publication date: June 19, 1992

For further information, please call: (512) 463-4028

Subchapter AA. Automotive Oil Sales Fee

• 34 TAC §3.702

The Comptroller of Public Accounts adopts new §3.702, concerning definitions and exemptions, with changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4071).

Senate Bill 1340, adopted in the 72nd Legislature, 1991, requires the comptroller to administer and enforce the collection of the automotive oil fee imposed on the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer.

The changes were made to subsections (a)(2) and (b)(2). The last sentence in subsection (a)(2) was deleted. The word "exclusively" was added to the phrase "vessels engaged in foreign and interstate commerce" in each subsection. If a vessel is not engaged exclusively in foreign and interstate commerce, but moves goods transported in interstate commerce with goods moving in intrastate commerce, the fee must be paid on the oil. A comma was removed in (a)(1)(A) for clarity.

Two comments were received on the proposed new section.

An attorney with the law firm of Clark, Thomas, Winters & Newton of Austin, expressed the opinion that the proposed rule's attempt to tax oil used by vessels is contrary to the intent of the statute. It was the attorney's opinion that the rule should allow the sale of oil without the fee to a vessel engaged in interstate commerce even if a significant amount of the vessel's activity is in intrastate commerce. In the alternative, the attorney requested that the rule include a 5.0% de minimis provision for a vessel engaged in intrastate commerce as a part of its interstate journey. The attorney disagreed with the comptroller's authority to determine that a vessel participating in a segment of an interstate journey is not engaged in interstate commerce.

The comptroller responded that the statute describes a type of oil, not how the oil is used. The comptroller believes this opinion is supported by the exemption for interstate

vessels. If the legislature had intended to exclude all vessels from the fee, this provision would have been unnecessary. The comptroller concluded that a reasonable interpretation is that the fee applies to all oil which could be used in automobiles, buses, or trucks unless labeled for non-vehicle use regardless of the use to which the oil is actually placed. The comptroller has concluded that the provision excluding first sales of oil to vessels engaged in interstate commerce should be strictly construed. Lastly, the comptroller stated that a vessel transporting goods on a portion of an interstate journey is engaged in interstate commerce even though the vessel may move only between points within Texas. Therefore, oil sold to such a vessel is not subject to the fee. However, if the vessel moves such goods together with goods moving in intrastate commerce, the fee must be paid on the oil.

The second comment was made by Texaco Inc. of Bellaire. It was Texaco's opinion that the intent of the legislature was to place a fee on automotive oil used solely in automobiles, buses, or trucks. The rule should not expand the fee to include oil used in construction equipment, stationary equipment, or by marine vessels.

The comptroller rejected this argument for the same reasons as are stated in the preceding paragraph. The statute describes the type of oil, not how the oil is used.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.702. Definitions and Exemptions.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Automotive oil—Any lubricating oils that can be used in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck.

(A) Automotive oil includes natural or synthetic engine oil, transmission fluid, and gear oil of any type that can be used, according to the labeling, in the engine of an automobile, truck, or bus, and includes oil that is not labeled specifically for this use, but is suitable for this use according to generally accepted industry specifications.

(B) Automotive oil does not include:

- (i) chain oil;
- (ii) turbine oil;
- (iii) waste oil;
- (iv) outboard motor oil;
- (v) refrigerant oil;

(vi) cotton spray oil;

(vii) form oil; and

(viii) oil additives as they exist prior to blending.

(2) First sale—The first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. First sale does not include the sale of automotive oil exported from this state, to a location outside this state, for the purpose of sale or use outside this state, or for resale to or use by vessels engaged exclusively in foreign or interstate commerce.

(3) Importer—Any person who imports, or causes to be imported, automotive oil into this state for sale, use, or consumption. For purposes of this subsection first sale includes the use or consumption of automotive oil in this state.

(4) Oil manufacturer—Any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. Oil manufacturer includes any person packaging or repackaging automotive oil.

(5) Out-of-state seller—A person or entity engaged in business in this state will be defined as in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(b) Exemptions.

(1) Sales of automotive oil to an oil manufacturer are exempted from the automotive oil fee.

(2) Sales of automotive oil that is to be used by vessels engaged exclusively in foreign and interstate commerce are exempted from this fee.

(3) Out-of-state sales of automotive oil delivered to a location in another state for the purpose of sale or use outside the State of Texas are exempted from this fee if shipment is made by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state;

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions; or

(D) the facilities of the purchaser if proof of delivery outside of Texas is provided.

(4) Exports beyond the territorial limits of the United States are exempted from this fee if proof of export can be shown by:

(A) a copy of the bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States custom broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the automotive oil was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized number issued by Mexican customs officials; or

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas.

(c) Credit or refund of fee paid—A purchaser of automotive oil who makes an exempt sale of the oil as provided in this rule, may obtain a refund or credit for the fee previously paid. The purchaser requesting a refund or credit from their supplier must furnish documentation that verifies the exemption.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213040
Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: October 16, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 463-4028

Subchapter CC. Waste Tire Recycling Fee

• 34 TAC §3.721

The Comptroller of Public Accounts adopts an amendment to §3.721, concerning collection and reporting requirements, without changes to the proposed text as published in the August 21, 1992, issue of the *Texas Register* (17 TexReg 5728).

This amendment excludes tires purchased as original equipment in the manufacture of new vehicles.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212948
Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: October 14, 1992

Proposal publication date: August 21, 1992

For further information, please call: (512) 463-4028

Subchapter EE. Boat and Motor Sales and Use Tax

• 34 TAC §3.743

The Comptroller of Public Accounts adopts new §3.743, concerning the purchase of accessories attached to a boat or boat motor, without changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4433).

The new section is necessary so that persons in the business of selling boats and boat motor accessories will be aware of the manner in which the tax is collected.

The Tax Code, Chapter 160, was passed by the 72nd Legislature, 1991. The tax is assessed on certain boats and motors formerly taxed under the Tax Code, Chapter 151.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212950
Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: October 14, 1992

Proposal publication date: June 19, 1992

For further information, please call: (512) 463-4028

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Provisions

Subchapter A. Institutional Division Admissions

• 37 TAC §152.3

The Texas Department of Criminal Justice adopts an amendment to 37 TAC §152.3, concerning allocation formulas, with changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5426). Section 152.3(f) is adopted with changes. Section 152.3(c)(9) and (10) are adopted without changes.

The purpose of the allocation formula is to equitably allocate admissions at the Institutional Division, and to fairly apportion Community Corrections Program State Aid to local probation departments in accordance with the Texas Code of Criminal Procedure, Article 42.12, §11(a)(3).

Annual revision of the allocation formula is required by the Texas Government Code, §499.071(c).

The adopted formula allocates to each county a prorated share of available Institutional Division Admissions, and apportions Community Corrections Program State Aid to local probation departments in conformity with the requirements of the Texas Government Code, §499.071.

Under that statute, the Texas Board of Criminal Justice is required to give some weight to each of seven statutory factors, and has discretion to give weight to other factors which would reward "community effort" in reducing admissions to the Institutional Division.

The department received written comments on the proposed rule changes from officials in the following counties: Collin, Concho, Delta, Franklin, Hopkins, Kerr, Kimble, McCulloch, Menard, Morris, Rains, and Ward.

Comments from seven of the counties represented did not specifically address formula elements, but expressed concerns that the projected admissions from their counties would not suffice to reduce the overcrowded conditions of their jails.

Comments from six of the counties complained that the uniform crime rate data used

in formula computations was not accurate with respect to their counties, because of the manner in which that data is compiled.

In addition to the written comments specifically addressing this proposed rule, the department has received communications from Harris County officials suggesting that the statutory formula elements should be revised in a fashion that will ensure that the persons convicted of the most serious offenses shall be given priority admissions to the Institutional Division.

At their meeting on September 11, 1992, the Criminal Justice Board articulated its awareness of the acute problems of overcrowding in jails statewide. This situation affects not only the counties who submitted written comments, but also almost all of the jails in the state.

The problem of projected admissions as set out in the Texas Register publication of August 4, 1992, were addressed by board member Judge Clarence Stevenson. He noted that the number of projected admissions varies depending upon a number of factors which neither the board nor the institutional division can control or predict. For example, the recent precipitant decline in the number of parole releases has significantly reduced the number of institutional division beds available for allocation to the counties.

Since it is impossible to predict with accuracy the number of beds that will become available during the coming year, Judge Stevenson moved that the board delete from its final adopted rule the language in 37 TAC §152.3(f) which refers to an estimated number of annual admissions to the Institutional Division. The explained purpose of the amendment was to avoid "the creation of false expectations through the publication of projected admissions numbers which the board cannot control." That motion was adopted, and the final rule as published herein deletes all reference to projected numbers of future admissions. Instead, the final rule merely sets out the percentage of all admissions that will be assigned to each county.

The Texas Department of Criminal Justice cannot correct the difficulties with the Uniform Crime Rate data, because we neither collect that data nor control the manner in which it is collected. Therefore, the complaints as to the inaccuracies in that data are a local data collection problem. The suggestion that the formula should be rewritten entirely is within the province of the Legislature.

The amendment is adopted under the Texas Government Code, §499.071, and by the Texas Code of Criminal Procedure, Article 42.13, §11, which requires that Texas Board

of Criminal Justice to adopt rules relating to the allocation of prison admissions, and the authority to use additional factors in the formula computation.

§152.3. Allocation Formula.

(a)-(b) (No change.)

(c) The board assigns the following weights to each statutory and discretionary factor:

STATUTORY FACTORS

(1)-(7) (No change.)

DISCRETIONARY FACTORS

(8) (No change.)

(9) Section 152.3(b)(2)-(probation completions)-5.

(10) Section 152.3(b)(3)-(juvenile probation funding)-10.

(d)-(e) (No change.)

(f) This formula gives each county a fixed percentage of total institutional division admissions, as follows:

TOP TEXAS COUNTIES

COUNTY	PERCENTAGE
HARRIS	0.206961
DALLAS	0.171881
TARRANT	0.079399
BEXAR	0.069323
TRAVIS	0.041903
EL PASO	0.033340
JEFFERSON	0.018855
NUECES	0.018509
HIDALGO	0.017424
GALVESTON	0.013360
CAMERON	0.012895
LUBBOCK	0.011019
MCLENNAN	0.010091

OTHER TEXAS COUNTIES

COUNTY	PERCENTAGE
ANDERSON	0.001891
ANDREWS	0.000679
ANGELINA	0.003371
ARANSAS	0.001024
ARCHER	0.000129
ARMSTRONG	0.000023
ATASCOSA	0.000990
AUSTIN	0.000633
BAILEY	0.000251
BANDERA	0.000321
BASTROP	0.001298
BAYLOR	0.000108
BEE	0.000994
BELL	0.008976
BLANCO	0.000140
BORDEN	0.000010
BOSQUE	0.000393
BOWIE	0.003996
BRAZORIA	0.007715
BRAZOS	0.006562
BREWSTER	0.000284
BRISCOE	0.000016
BROOKS	0.000729
BROWN	0.001390
BURLESON	0.000612
BURNET	0.000816
CALDWELL	0.001128
CALHOUN	0.000797
CALLAHAN	0.000218
CAMP	0.000426
CARSON	0.000246
CASS	0.001200
CASTRO	0.000288
CHAMBERS	0.001316
CHEROKEE	0.001585
CHILDRESS	0.000303
CLAY	0.000192
COCHRAN	0.000136
COKE	0.000077
COLEMAN	0.000282
COLLIN	0.008697
COLLINGSWORTH	0.000151
COLORADO	0.000770
COMAL	0.002355
COMANCHE	0.000367
CONCHO	0.000083
COOKE	0.001047
CORYELL	0.001172
COTTLE	0.000057
CRANE	0.000175

OTHER TEXAS COUNTIES

COUNTY	PERCENTAGE
CROCKETT	0.000163
CROSBY	0.000145
CULBERSON	0.000087
DALLAM	0.000260
DAWSON	0.000775
DEAF SMITH	0.000776
DELTA	0.000137
DENTON	0.008443
DEWITT	0.000500
DICKENS	0.000074
DIMITT	0.000212
DONLEY	0.000162
DUVAL	0.000505
EASTLAND	0.000715
ECTOR	0.007385
EDWARDS	0.000060
ELLIS	0.003346
ERATH	0.000919
FALLS	0.000710
FANNIN	0.000740
FAYETTE	0.000560
FISHER	0.000112
FLOYD	0.000233
FOARD	0.000036
FORT BEND	0.008085
FRANKLIN	0.000294
FREESTONE	0.000604
FRIO	0.000582
GAINES	0.000469
GARZA	0.000254
GILLESPIE	0.000423
GLASSCOCK	0.000013
GOLIAD	0.000301
GONZALES	0.000619
GRAY	0.001184
GRAYSON	0.004316
GREGG	0.006733
GRIMES	0.000669
GUADALUPE	0.002306
HALE	0.001409
HALL	0.000163
HAMILTON	0.000228
HANSFORD	0.000093
HARDEMAN	0.000191
HARDIN	0.001482
HARRISON	0.002776
HARTLEY	0.000076
HASKELL	0.000177
HAYS	0.002331
HEMPHILL	0.000057

OTHER TEXAS COUNTIES

COUNTY	PERCENTAGE
HENDERSON	0.002572
HILL	0.000944
HOCKLEY	0.000866
HOOD	0.001058
HOPKINS	0.001191
HOUSTON	0.000677
HOWARD	0.001312
HUDSPETH	0.000361
HUNT	0.004240
HUTCHINSON	0.000950
IRION	0.000036
JACK	0.000166
JACKSON	0.000376
JASPER	0.001006
JEFF DAVIS	0.000033
JIM HOGG	0.000319
JIM WELLS	0.001718
JOHNSON	0.003242
JONES	0.000550
KARNES	0.000409
KAUFMAN	0.002735
KENDALL	0.000410
KENEDY	0.000031
KENT	0.000009
KERR	0.001669
KIMBLE	0.000152
KING	0.000005
KINNEY	0.000079
KLEBERG	0.002303
KNOX	0.000124
LAMAR	0.002922
LAMB	0.000357
LAMPASAS	0.000534
LA SALLE	0.000224
LAVACA	0.000377
LEE	0.000475
LEON	0.000320
LIBERTY	0.002450
LIMESTONE	0.000989
LIPSCOMB	0.000049
LIVE OAK	0.000286
LLANO	0.000267
LOVING	0.000002
LYNN	0.000199
MCCULLOCH	0.000319
MCMULLEN	0.000007
MADISON	0.000486
MARION	0.000571
MARTIN	0.000098
MASON	0.000069

OTHER TEXAS COUNTIES

COUNTY	PERCENTAGE
MATAGORDA	0.002229
MAVERICK	0.001155
MEDINA	0.001174
MENARD	0.000096
MIDLAND	0.005894
MILAM	0.000744
MILLS	0.000058
MITCHELL	0.000350
MONTAGUE	0.000484
MONTGOMERY	0.007792
MOORE	0.000568
MORRIS	0.000533
MOTLEY	0.000014
NACOGDOCHES	0.002168
NAVARRO	0.002228
NEWTON	0.000331
NOLAN	0.000823
OCHILTREE	0.000294
OLDHAM	0.000089
ORANGE	0.003914
PALO PINTO	0.001118
PANOLA	0.001143
PARKER	0.001717
PARMER	0.000242
PECOS	0.000712
POLK	0.001516
POTTER	0.007826
PRESIDIO	0.000194
RAINS	0.000210
RANDALL	0.001967
REAGAN	0.000111
REAL	0.000125
RED RIVER	0.000601
REEVES	0.000806
REFUGIO	0.000359
ROBERTS	0.000013
ROBERTSON	0.000954
ROCKWALL	0.000937
RUNNELS	0.000345
RUSK	0.001702
SABINE	0.000210
SAN AUGUSTINE	0.000353
SAN JACINTO	0.000652
SAN PATRICIO	0.002455
SAN SABA	0.000180
SCHLEICHER	0.000074
SCURRY	0.000632
SHACKELFORD	0.000066
SHELBY	0.000978
SHERMAN	0.000102

OTHER TEXAS COUNTIES

COUNTY	PERCENTAGE
SMITH	0.007787
SOMERVELL	0.000241
STARR	0.001424
STEPHENS	0.000275
STERLING	0.000020
STONEWALL	0.000050
SUTTON	0.000149
SWISHER	0.000332
TAYLOR	0.006121
TERRELL	0.000034
TERRY	0.000764
THROCKMORTON	0.000028
TITUS	0.000911
TOM GREEN	0.005271
TRINITY	0.000408
TYLER	0.000689
UPSHUR	0.001052
UPTON	0.000145
UVALDE	0.001066
VAL VERDE	0.001833
VAN ZANDT	0.001000
VICTORIA	0.003615
WALKER	0.001993
WALLER	0.001244
WARD	0.000538
WASHINGTON	0.001071
WEBB	0.007567
WHARTON	0.001819
WHEELER	0.000120
WICHITA	0.007247
WILBARGER	0.000804
WILLACY	0.000672
WILLIAMSON	0.004808
WILSON	0.000693
WINKLER	0.000424
WISE	0.001090
WOOD	0.000946
YOAKUM	0.000344
YOUNG	0.000650
ZAPATA	0.000295
ZAVALA	0.000408

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212945

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Effective date: November 1, 1992

Proposal publication date: August 4, 1992

For further information, please call: (512) 463-9988

Chapter 192. Parole Board and Parole Division Administrative Matters

• 37 TAC §192.1

The Texas Department of Criminal Justice adopts new §192.1, concerning administrative review of parole panel actions, without changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5435).

The purpose for the new section will be to require the entire 18-member Board of Pardons and Paroles to provide an administrative review of any parole panel decision to release a person convicted of a capital offense.

Although the rule requires the Parole Board to conduct an administrative review of decisions to release persons convicted of a capital offense, implementation of the rule is left to the discretion of the Parole Board, through its rule-making authority over its own procedures.

Comments in support of the rule were received from Parole Board members, and from the chairman of that board. A citizens group styled "Agenda for Action" requested a rule revision "to mandate the unanimous approval of parole by all members present at an official meeting of the Board of Pardons and Paroles after personal review by every member of the Board of Pardons and Paroles."

The agency believes that the rule as adopted properly leaves the Parole Board discretion to conduct its proceedings in conformity with the provisions of law governing the Parole Board.

The new section is adopted under the Texas Code of Criminal Procedures, Article 42.18, §7(d), which provides the Texas Board of Criminal Justice with authority to promulgate written plans for administrative review of actions taken by a parole panel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212944

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Effective date: October 14, 1992

Proposal publication date: August 4, 1992

For further information, please call: (512) 463-9988

Part XI. Texas Juvenile Probation Commission

Chapter 341. Policies and Procedures

• 37 TAC §341.21

The Texas Juvenile Probation Commission adopts an amendment to §341.21, concerning memorandum of understanding on service delivery to runaways, without changes to the proposed text as published in the August 11, 1992, issue of the *Texas Register* (17 TexReg 5618).

The amendment will eliminate the need for annual publication of the rule for changes of the formula to calculate high number of runaways.

The amendment will improve coordination for runaway children's services at the community level.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resource Code, §141.0475, which provides the Texas Juvenile Probation Commission with the authority to develop a memorandum of understanding and model cooperative agreement.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212957

Bernard Licarione, Ph.D.
Executive Director
Texas Juvenile Probation
Commission

Effective date: October 14, 1992

Proposal publication date: August 11, 1992

For further information, please call: (512) 443-2001

Chapter 347. Title IV-E Federal Foster Care Program

• 37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21

The Texas Juvenile Probation Commission adopts new §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, and 347.21. Section 347.5 and §347.15 are adopted with changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5513). Sections 347.1, 347.3, 347.7,

347.9, 347.11, 347.13, 347.17, 347.19, and 347.21 are adopted without changes and will not be republished.

More comprehensive foster care services will be provided to juvenile offenders referred to juvenile probation departments.

The sections will improve the effectiveness of juvenile probation services and provide alternative to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services, and to adopt rules for these purposes.

The Texas Department of Regulatory and Protective Services (TDRPS) raised two objections to the proposed rule. First, TDRPS suggested that §347.5(e)(1)-(3) could cause an audit exception with the federal government and that inclusion of the statement in the rules could jeopardize the upcoming IV-E contract between TJPC and TDRPS. They are also changing their policy to be more restrictive in the payments to facilities when a child runs away. Next, TDRPS suggested that the word "caregiver" be included as one who should be invited to the six-month review.

The names of groups or association making comments for the sections was as follows: Texas Department of Regulatory and Protective Services.

The new sections are adopted under the Texas Human Resources Code, §§141.001, 141.04, and 141.02, which provide the Texas Juvenile Probation Commission with the authority to improve the effectiveness of juvenile probation services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services, and to adopt rules for these purposes.

§347.5. Eligibility Requirements Documented In the Initial Court Order That Removes the Child from Home or the Subsequent Court Order.

(a) If a juvenile court finds that it is in a child's best interest to be removed from home, and includes this finding in the initial court order that removes the child from the home, then the child may be eligible for federal foster care payments. In addition, the court must find that reasonable efforts were made to prevent the child's removal from the home, and must order that responsibility for the child's care and placement rests with the juvenile probation department. The court may make the reasonable efforts finding at any time, but federal foster care payments may not begin until the finding is made. The order that places responsibility for the child's care and placement with the juvenile probation department must be entered within the first six months after the last day on which the child lived with a specified relative.

(b) The juvenile board must seek to ensure that the juvenile court determines whether it is in a child's best interest to be removed from home, or that continuation in

the home is contrary to the child's welfare; whether responsibility for the child's care and placement should be given to the juvenile probation department; and whether reasonable efforts have been made to prevent the child's removal from the home. The juvenile board must seek to ensure that the juvenile court uses the following language to express its findings about best interest, responsibility for care and placement, and reasonable efforts in the initial court order that removes the child from home:

(1) "The court finds that it is in the best interest of the child for the child to be placed outside of (his or her) home;" or

(2) "The court finds that continuation in the home is contrary to the child's welfare;" and

(3) "It is ordered that the (name of county in which the court's jurisdiction arises) juvenile probation department be responsible for the child's placement, care, and control;" and

(4) "The court finds that reasonable efforts have been made to prevent or eliminate the need for the child to be removed from (his or her) home, and to make it possible for the child to return to (his or her) home."

(c) IV-E eligibility begins the month:

(1) the juvenile court enters into court orders the reasonable efforts, best interest, and care and placement responsibility findings as described in subsections (a) and (b) of this section; and

(2) all other IV-E eligibility requirements are met, as specified in the rule of the Texas Department of Human Services, 40 TAC §49.316(3), (5), (6), (7), and (8); §49.317(1)(A) and (B), (3), and (4); §49.320(1), (3), and (4); §49.322; §49.323(1)-(4); §49.329(a)-(c); and §49.332.

(d) The effective date for discontinuing IV-E payments for substitute care is the date before the day the child leaves the facility.

(e) A child is eligible for IV-E reimbursement during an absence from a substitute care facility, except an emergency shelter, if the following conditions are met:

(1) the absence does not exceed 10 days. The child may be absent for up to 30 days if the chief juvenile probation officer, or his designee, approves the extended absence in writing;

(2) the child plans to return to the facility;

(3) the facility is retaining space for the child; and

(4) the juvenile probation department is not paying someone else or another facility for the child's care.

§347.15. Case Plan and Review System.

(a) The juvenile board must ensure that the juvenile probation department develops a service plan that meets the requirements of the child's service plan and family service plan within 30 working days of the child's date of actual placement.

(b) The juvenile board must seek to ensure that the juvenile probation department or the juvenile court conducts an administrative review or a judicial review, for each IV-E eligible child six months from the child's date of actual placement and every six months thereafter during the child's stay in the substitute care.

(c) If the six-month review is an administrative review, the juvenile board must ensure that the juvenile probation department accomplishes the following:

(1) prior to the review, the juvenile probation officer completes the review of child's service plan and the review of family service plan and provides a copy of each to the designated facilitator;

(2) designates a facilitator who:

(A) develops and maintains a tracking system to schedule timely reviews;

(B) schedules the review at least three weeks prior to the actual review date;

(C) arranges the review by:

(i) informing parents, caregiver, and all persons who are listed in the administrative review definition about when and where the review will be conducted;

(ii) invites them;

(iii) documents the notice in the case record; and

(D) documents in the case record who participated in the review;

(3) during the review, the designated facilitator ensures that the following are discussed:

(A) continuing necessity for the child's placement;

(B) appropriateness of the child's placement;

(C) extent of compliance with the service plan;

(D) extent of progress which has been made toward solving or reducing

the causes necessitating the child's placement in substitute care; and

(E) a likely date by which the child may be returned to the home; or

(F) a likely date by which the child's permanency plan will be achieved.

(4) the facilitator documents the results of the review on the six-month administrative case review form.

(d) If the six-month review is a judicial review, the juvenile court performs the functions of the designated facilitator that are described in subsection (c) of this section, except that instead of documenting the results of the review on the six-month administrative case review form, the juvenile court documents the results in a court order. The juvenile court may delegate to its staff any responsibilities of the designated facilitator except documenting the results of the review in a court order.

(e) The juvenile board must seek to ensure that the juvenile court holds a hearing on a motion to modify the child's disposition 12 months after the child's date of actual placement and every 12 months thereafter during the child's stay in substitute care. For the hearing to qualify as a IV-E disposition hearing, the juvenile court must review the child's service plan and enter an order that finds:

(1) the child's plan for permanent placement discusses the child's future status, and is appropriate;

(2) the projected time frame for accomplishment of the child's plan for permanent placement is appropriate;

(3) the juvenile probation department has made reasonable efforts to reunite the child with the family; and

(4) if the child is 16 years of age or older, whether an independent living plan has been developed to assist the child with the transition into adulthood;

(5) the parents' rights to be notified of the following have been protected:

(A) removal of the child from the home of his parents;

(B) change in the child's placement; and

(C) determination affecting visitation privileges for the parents.

(6) the child's service plan was reviewed and updated and supplied to the caregivers each time the child was placed in substitute care, including medical and education information.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212858

Bernard Licarione, Ph.D.
Executive Director
Texas Juvenile Probation
Commission

Effective date: October 14, 1992

Proposal publication date: August 7, 1992

For further information, please call: (512) 443-2001



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

Welfare Reform Waiver Project

• 40 TAC §§10.7001-10.7008

The Texas Department of Human Services (DHS) adopts the repeal of §§10.7001-10.7008, concerning welfare reform waiver projects, without changes to the proposed text as published in the August 18, 1992, issue of the *Texas Register*.

The repeals are justified to delete obsolete rules from the rule base.

The repeals will function by deleting the rules for the welfare reform waiver project that has been completed.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 24, 1992.

TRD-9212881

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: November 1, 1992

Proposal publication date: August 18, 1992

For further information, please call: (512) 450-3765



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Tuesday, October 6, 1992, 9 a.m. The Texas Agricultural Finance Authority of the Texas Department of Agriculture will meet at the 1700 North Congress Avenue, Stephen F. Austin Building, Room 924-A, Austin. According to the agenda summary, the department will discuss and possibly act on: approval of the minutes of the previous meeting; loan applications recommended by Credit Review Committee; applications requesting extensions or other actions; presentations of financial advisor; discuss and possibly act on: financial advisory, senior managing underwriter, legal counsel, and request for bid for Rural Microenterprise Program; and discuss other business.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: September 28, 1992, 1:57 p.m.

TRD-9213092

Tuesday, October 6, 1992, 1 p.m. The Texas Soybean Producers Board of the Texas Department of Agriculture will meet at the Food and Fiber Pavilion of the State Fair, 2300 Washington Street, Dallas. According to the complete agenda, the board will discuss approval of minutes-Blacketer; financial report-Blacketer; USB Report-Pyle; research priorities for Fiscal Year 1993; discuss new business/swearing in T. P. Rotello; discuss old business; and adjourn.

Contact: Trent Roberts, Department 1068, P.O. Box 650290, Dallas, Texas 75265-0290, 1-800-247-8691.

Filed: September 29, 1992, 1:56 p.m.

TRD-9213091

State Aircraft Pooling Board

Wednesday, October 7, 1992, 3:30 p.m. The State Aircraft Pooling Board will meet at 4900 Old Manor Road, Austin. According to the complete agenda, the board will call the meeting to order; make introductions; discuss approval of the minutes of the board meeting, August 5, 1992; discuss Senate Bill 3; hear executive director's report; setting of time and place for next meeting; and adjourn.

Contact: Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: September 28, 1992, 11:28 a.m.

TRD-9213083

Texas Department of Commerce

Monday, October 5, 1992, 8:30 a.m. The State Job Training Coordinating Council Oversight Committee of the Texas Department of Commerce will meet at the Omni Hotel, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comment; briefing on: Quality Assurance Division; SDA/SSA Technical Assistance Plan Status; PY 1991 Fourth Quarter Monitoring report; PY 1991 Fourth Quarter fiscal report; action item: Texas Department of Commerce internal monitoring unit policy and procedures; PY 1992 application of reorganization policy; and ad-

ourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Kevin Faulkner, (512) 320-9885, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: September 25, 1992, 12:31 p.m.

TRD-9213027

Monday, October 5, 1992, 1:30 p.m. The State Job Training Coordination Council (Smart Jobs Plan Informational Session) of the Texas Department of Commerce will meet at The Omni Hotel, 700 San Jacinto Street, Austin. According to the complete agenda, the council will give a Smart Jobs Training Plan introduction and background; presentation of recommendations; SJTCC discussion; update on education policy issues: Sonia Hernandez, Director of Education, Governor's Office; hear public comment; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Kevin Faulkner, (512) 320-9885, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: September 25, 1992, 12:33 p.m.

TRD-9213029

Tuesday, October 6, 1992, 8:30 a.m. The State Job Training Coordination Council of the Texas Department of Commerce will meet at the Omni Hotel, 700 San Jacinto

Street, Austin. According to the agenda summary, the council will hear committee action items; standard reports and briefings on the PY 1991 year-end JTPA performance and fiscal reports and a background session on Carl Perkins Vocational Education and Applied Technology Act; and action on SJTCC comment on the JTPA amendments. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Kevin Faulkner, (512) 320-9885, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: September 25, 1992, 12:32 p.m.

TRD-9213028

Interagency Council on Early Childhood Intervention

Wednesday, October 7, 1992, 9 a.m. The Interagency Council on Early Childhood Intervention will meet at 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the council will have public comments; discuss approval of the minutes of previous meeting; discuss and possibly act on: public hearings and federal application; funding alternatives for entitlement/approval of preliminary plan to study alternatives; plan to review and revise monitoring cycle; report and recommendations from advisory committee; medicaid efforts; legal opinions related to financial disclosure; rule amendment to 25 TAC §621.23 regarding eligibility of children who exhibit atypical behaviors and/or prenatally exposed to drugs; impact of the Texas Department of Mental Health and Mental Retardation Plan to close residential facility; and Fiscal Year 1994-1995 legislative appropriations request through public hearing with the Legislative Budget Board and the Governor's Budget Office.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1992, 1 p.m.

TRD-9213088

Texas Education Agency

Friday, October 2, 1992, 10 a.m. The State Board of Education Committee on School Finance of the Texas Education Agency will meet at Room 1-104, William

B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will review the proposed school finance plan and options which will be presented to the board for consideration at the October board meeting. All members of the board have been invited to participate in this work session.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 24, 1992, 3:27 p.m.

TRD-9212996

Tuesday, October 6, 1992, 9 a.m. The Proprietary School Advisory Commission of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will act on proposed legislative items: minimum renewal fee of \$500; five-year registration of instructors; tuition protection fund; additional bond requirement for student records retention when schools close; suspension of enrollments; criminal penalties for operating a school without a license; expansion of prohibited acts; discuss other business; and the Texas Education Agency as a post-secondary review entity as it pertains to recent federal legislation amendments to Title IV of the Higher Education Act on proprietary schools.

Contact: Dee Bednar, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-3454.

Filed: September 25, 1992, 4:58 p.m.

TRD-9213054

Advisory Commission on State Emergency Communications

Thursday, October 1, 1992, 10 a.m. The Addressing Committee of the Advisory Commission on State Emergency Communications held an emergency meeting at the North Central Texas Council of Governments, 616 Six Flags Drive, Boardroom, Second Floor, Arlington. According to the complete agenda, the committee called the meeting to order; recognized guests; heard public comment (individuals were encouraged to provide comment after each agenda item or before committee action); reviewed and discussed policy guidelines on the distribution of addressing funds; and adjourned. The emergency status was necessary to review policy prior to considering addressing plan amendments at the November meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin,

Texas 78746, (512) 327-1911.

Filed: September 24, 1992, 4:28 p.m.

TRD-9213003

Office of the Governor

Thursday-Friday, October 8-9, 1992, 9:15 a.m. and 9 a.m. respectively. The Governor's Commission for Women of the Governor's Office will meet at 401 West 15th Street, Texas Medical Association, Austin. According to the agenda summary, the commission will call the meeting to order; the Health Policy Task Force will present an update on their healthcare report; and hear committee reports. On Friday, the commission will discuss approval of the minutes; letters of support; and resolution. A representative from the Legislative Division of the Governor's Office will make a presentation; reports may be given by the Commission for Women chairperson and executive director; approval of committee reports; and adjourn.

Contact: Cynthia Wise Galvan, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: September 28, 1992, 3:24 p.m.

TRD-9213107

Texas Growth Fund

Tuesday, October 6, 1992, 9:30 a.m. The Board of Directors of the Texas Growth Fund will meet at the Teacher Retirement System Building, Fifth Floor, 1000 Red River Street, Austin. According to the complete agenda, the board will review and discuss approval of the minutes of the special meeting of the Board of Trustees held on September 2, 1992; review and approve treasurer's report; review and approve for reimbursement expense reports from the current and former trustees of the Texas Growth Fund and authorize transfer notice for same; receive a report on the activities of TGF Management Corporation; review and approve expenses incurred or to be incurred by TGF Management Corporation in initially retaining employees to fulfill its obligations and authorize transfer notice for same; receive a report on the acquisition of directors and officers, errors and omissions, and mutual fund liability insurance; and such other matters as may come before the Board of Trustees.

Contact: Jerry E. Turner, 816 Congress Avenue, First City Centre, Austin, Texas 78701, (512) 495-8430.

Filed: September 25, 1992, 1:13 p.m.

TRD-9213031

Statewide Health Coordinating Council

Tuesday, October 6, 1992, 10 a.m. The Plan Development Committee of the Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on report from previous meeting; and revised preliminary 1993-94 Texas State Health Plan.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1992, 4:33 p.m.

TRD-9213170

Tuesday, October 6, 1992, 2 p.m. The Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the council will discuss approval of the minutes of previous meetings; discuss and possibly act on plan development committee report; and adoption of the final state health plan.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1992, 4:32 p.m.

TRD-9213169

Texas Department of Health

Wednesday, October 7, 1992, 3 p.m. The Case Management Subcommittee of the Maternal and Child Health Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-418, Austin. According to the complete agenda, the subcommittee will discuss and approve minutes of last meeting; discuss and possibly act on status of targeted case management by the Texas Education Agency and the Texas Department of Health (family health services, chronically ill and disabled children, and early childhood intervention programs); federally mandated case management; and report for maternal and child health advisory committee.

Contact: Scott Simpson, M.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1992, 4:32 p.m.

TRD-9213168

Thursday, October 8, 1992, 8:30 a.m. The Maternal and Child Health Advisory Committee of the Texas Department of Health will meet at the 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the July 9, 1992 meeting; discuss and possibly act on subcommittee reports concerning integrated eligibility, case management, and data/legislative report; report on Texas Department of Health, Maternal and Child Health activities concerning school health, vaccine initiatives, access initiatives, Texas children's agenda, and Title V CSHCN goals; and report on Texas Department of Human Services, Maternal and Child Health activities.

Contact: Madelin Walls, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1992, 12:59 p.m.

TRD-9213086

Thursday, October 8, 1992, 1 p.m. The Subcommittee on Integrated Eligibility of the Maternal and Child Health Advisory Committee of the Texas Department of Health will meet at 1100 West 49th Street, Room M-418, Austin. According to the complete agenda, the subcommittee will discuss and possibly act on Harris County Hospital District T-Pass Project; integrated eligibility House Bill 7 status report; and potential eligibility pre-screener.

Contact: Scott Simpson, M.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1992, 1 p.m.

TRD-9213087

Texas Higher Education Coordinating Board

Monday, October 5, 1992, 9:30 a.m. The Community and Technical Colleges Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive, Austin. According to the complete agenda, the committee will give a report of the Coordinating Board's Advisory Committee on Technical Education.

Contact: Dale Campbell, P.O. Box 12788, Austin, Texas 78711, (512) 483-6250.

Filed: September 28, 1992, 9:38 a.m.

TRD-9213066

Texas Department of Human Services

Tuesday, October 6, 1992, 9 a.m. The Drug Use Review Board of the Texas Department of Human Services will meet at 701 West 51st Street, Fourth Floor, West Tower, Conference Room 4W, Austin. According to the complete agenda, the board will review OBRA 90 mandated role of the DUR board; election of chair; drawing for membership terms; discuss retrospective DUR agreement with the University of Texas College of Pharmacy; discuss criteria and standard development and application to prospective DUR in the on-line system; general discussion of the retrospective program; schedule next meeting; and adjourn.

Contact: Curtis Burch, P.O. Box 149030, Austin, Texas 78714-9030, (512) 338-6988.

Filed: September 28, 1992, 8:28 a.m.

TRD-9213055

Texas Department of Insurance

Wednesday, September 30, 1992, 2 p.m. The State Board of Insurance of the Texas Department of Insurance held an emergency meeting at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board considered the appeal and request for stay from Commissioner's Order Number 92-0914, dated September 18, 1992, by United Security Life Insurance Company, Amarillo, placing United Security into a state of conservation. Docket Number 1937. The emergency status was necessary due to an unforeseeable situation requiring immediate review by the board in accordance with Texas Civil Statutes, Article 6252-17, §3A, and Article 21.28, §7.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: September 28, 1992, 4:07 p.m.

TRD-9213120

Tuesday, October 6, 1992, 8 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, 13th Floor, Board Conference Room, Austin. According to the complete agenda, the session will discuss and analyze agency planning and budgetary concepts and review of internal policies for the current and next fiscal year.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 28, 1992, 4:07 p.m.

TRD-9213119

Wednesday, October 7, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will discuss personnel; litigation; solvency; commissioner orders; budget; consider to adopt new 28 TAC §§5.6702-5.6707 concerning workers' compensation subscriber notices; consider to grant a meeting or hearing to consider a petition to amend various property insurance manuals and to consider a petition to amend manual rules and policy forms and endorsements for various types of property insurance; consider filings by Vigilant Insurance Company, Texas Pacific Indemnity Company, United Community Insurance Company, Millers Mutual Insurance Association of Illinois, The Millers Casualty Insurance of Texas, Insurance Company of North America, Hartford Insurance Group, Frontier Insurance Company of New York; consider excess of loss policy filings and municipal bond individual risk filings by AMBAC Indemnity Corporation.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-5627.

Filed: September 25, 1992, 2:46 p.m.

TRD-9213042

Wednesday, October 7, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the proposed plan of merger of USAA Annuity and Life Insurance Company, San Antonio, into USAA Life Insurance Company, San Antonio, with USAA Life Insurance Company being the survivor. Docket Number 11567.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: September 28, 1992, 2:52 p.m.

TRD-9213105

Wednesday, October 7, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Thomas F. Walton, Jr., Abilene, for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11568.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: September 28, 1992, 2:51 p.m.

TRD-9213103

Monday, October 12, 1992, 1:30 p.m. The Commissioner's Hearing Section of the

Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Adan Alejandro Alvarez, McAllen, for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11570.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: September 28, 1992, 2:52 p.m.

TRD-9213104

Thursday, October 15, 1992, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public meeting to consider possible adoption of new 28 TAC §7.410 concerning the regulation of risk-based capital and surplus requirements for all insurers subject to Articles 2.02, 2.20, and 21.44 of the Texas Insurance Code. The new section requires a minimum level of policyholders' surplus appropriate to the underwriting, financial and investment risks of a property/casualty insurer.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-5627.

Filed: September 25, 1992, 2:46 p.m.

TRD-9213041

Lamar University System

Thursday, September 24, 1992, 5:30 p.m. The Board of Regents of the Lamar University System held an emergency meeting at the John Gray Institute, Map Room, 855 Florida, Beaumont. According to the complete agenda, the board met in executive session-pursuant to the provisions of Vernon's Civil Statutes, Article 6252-17, Section 2(e) legal; discussed lawsuit with attorney; discussed and issued statement. The emergency meeting was necessary due to urgent public necessity.

Contact: Hubert Oxford, III, P.O. Box 11900, Beaumont, Texas 77705, (409) 880-2304.

Filed: September 24, 1992, 2:36 p.m.

TRD-9212988

Texas Parks and Wildlife Department

Wednesday, October 7, 1992, 9 a.m. The Land Acquisition and Development Committee, Texas Parks and Wildlife Commis-

sion of the Texas Parks and Wildlife Department will meet at the Washington-on-the-Brazos Auditorium, Washington-on-the-Brazos State Historical Park, Washington. According to the agenda summary, the committee will discuss approval of minutes; walking tour of Washington-on-the-Brazos State Historical Park; Washington-on-the-Brazos planning update; report on six-year capital plan; staff update; meet in executive session; and land acquisition program update.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: September 28, 1992, 2:20 p.m.

TRD-9213101

Wednesday, October 7, 1992, 9 a.m. The Land Acquisition and Development Committee of the Texas Parks and Wildlife Department will meet at the Washington-on-the-Brazos Auditorium, Washington-on-the-Brazos State Historical Park, Washington. According to the agenda summary, the committee will discuss approval of the minutes; and land acquisition program update.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: September 28, 1992, 2:21 p.m.

TRD-9213102

Public Utility Commission of Texas

Thursday, October 8, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11456-petition of the general counsel to inquire into the reasonableness of the rates and services of Texas-Alltel, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 24, 1992, 2:51 p.m.

TRD-9212990

Wednesday, October 21, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10760-complaint of Laila M. Asmar against Marvin Myers and M. Myers Properties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 28, 1992, 3:29 p.m.

TRD-9213108

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Railroad Commission of Texas

Monday, October 5, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, First Floor Conference Room, Room 1-111, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: September 25, 1992, 1:02 p.m.

TRD-9213017

The commission will consider and/or decide various applications and other matters within the jurisdiction of the agency including oral argument at the time specified. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: September 25, 1992, 11:09 a.m.

TRD-9213025

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: September 25, 1992, 11:02 p.m.

TRD-9213018

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

Filed: September 25, 1992, 11:02 p.m.

TRD-9213019

The commission will consider category de-termination under Sections 102(c)(1) (B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: September 25, 1992, 11:03 p.m.

TRD-9213020

The commission will consider and act on the division director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: September 25, 1992, 11:04 p.m.

TRD-9213021

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. The commission will discuss a proposed training agreement for the Gas Utility Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation; and consider a contract for public information services.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: September 25, 1992, 11:05 p.m.

TRD-9213022

The commission will consider and act on administrative services division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: September 25, 1992, 11:05 p.m.

TRD-9213023

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251. September 25, 1992, 11:06 p.m.

TRD-9213024

Texas Real Estate Commission

Monday, October 5, 1992, 9:30 a.m. The Texas Real Estate Commission will meet at the College Station Hilton Hotel, Board Room, 801 University Drive East, College Station. According to the agenda summary, the commission will discuss and possibly act on the following items: proposed amendments to 22 TAC §535.71 concerning MCE correspondence courses, to §535.122 concerning change of sponsoring broker and to §535.226 concerning sponsorship of apprentices and inspectors-in-training; new §535.221 concerning inspector advertisements; proposed amendment to §541.1 concerning criminal offense guidelines; RQ-431 concerning inspector eligibility; recommendations from the Inspector Committee; request from broker-lawyer committee concerning promulgation process; agency disclosure forms; approval of education providers and courses; Masters Institute, Inc.'s application for accreditation; meet in executive session to discuss pending litigation; payments from recovery funds; motions for rehearing; and entry of orders.

Contact: Camilla Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: September 24, 1992, 4:20 p.m.

TRD-9213001

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School Land Board

Tuesday, October 6, 1992, 10 a.m. The School Land Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Rooms 118 and 831, Austin. According to the agenda summary, the board will discuss approval of the previous board minutes; opening and consideration of bids received for the October 6, 1992 oil, gas and other minerals lease sale; lease suspension applications, Kleberg County; and Aransas County; pooling applications, Lassater (Travis Peak) Field, Marion County; Sugg Ranch Field, Sterling County; Howe (Devonian) Field, Ward County; Calabria (3700) Field, Palo Pinto County; Wildcat Field, Crockett County; Giddings (Austin Chalk-3), Fayette County; State Tract 444-S, Brazoria County; East Picoso, Webb County; applications to lease highway rights of way for oil and gas, Bexar County, Fayette County, and Jackson County; consideration of bids received for oil and condensate bid sale; direct land sales, Lipscomb County; applications to purchase excess acreage, King County; and Lynn County; coastal public lands, commercial easement assignment, Lower Laguna Madre, Cameron County; easement applications, Aransas Bay, Aransas County; Bastrop Bayou, Brazoria County; Galveston

Bay, Chambers County; structure permit terminations, Chocolate Bay, Brazoria County; Laguna Madre, Kleberg County; Laguna Madre, Willacy County; Titlum-Tatum Bayou, Brazoria County; two structure permit requests, Laguna Madre, Kleberg County; Titlum-Tatum Bayou, Brazoria County; structure permit renewal, Laguna Madre, Kenedy County; coastal public lands-consideration of a modification in the rate structure for coastal public lands-consideration of a modification in the rate structure for coastal easements held by a homeowner's association; meet in executive session-direct land sale, 16 acres, El Paso County; consideration of direct land sale, 16 acres, El Paso County; land trade, El Paso County; consideration of land trade, El Paso County; lease, El Paso County; consideration of lease, El Paso County; direct land sale, 60 acres, El Paso County; consideration of direct land sale, 60 acres, El Paso County; option to purchase 300 acres, El Paso County; consideration of option to purchase 300 acres, El Paso County; consideration of option to purchase 300 acres, El Paso County; and to discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 28, 1992, 4:28 p.m.

TRD-9213159

Board for Lease of State-owned Lands

Tuesday, October 6, 1992, 11:30 a.m. The Board for Lease of Texas Parks and Wildlife Lands of the Board for Lease of State-owned Lands will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; and consider bids received at the October 6, 1992 oil, gas and other minerals lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 28, 1992, 4:28 p.m.

TRD-9213160

Wednesday, October 7, 1992, 9:30 a.m. The Board for Lease of Texas Department of Criminal Justice of the Board for Lease of State-owned Lands will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous meeting; and consider bids received at the October 6, 1992 oil, gas and other mineral lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 28, 1992, 4:28 p.m.

TRD-9213161

The Texas A&M University System, Board of Regents

Friday, October 2, 1992, 2:30 p.m. The Executive Committee of the Texas A&M University System will meet in the Board of Regents Meeting Room, College Station. According to the complete agenda, the committee will consider matters that will impact legislative affairs during the 73rd Legislative Session.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: September 28, 1992, 9:53 a.m.

TRD-9213076

Texas Southern University

Tuesday, September 29, 1992, 4 p.m. The Student Services Committee of the Texas Southern University met at the Texas Southern University, 3100 Cleburne Avenue, Hannah Hall Room 117, Houston. According to the complete agenda, the committee met to receive informational items only.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: September 24, 1992, 3:18 p.m.

TRD-9212995

Friday, October 2, 1992, 8:30 a.m. The Board of Regents of Texas Southern University will meet at the Texas Southern University, University Library, Fifth Floor, Houston. According to the complete agenda, the board will consider approval of the minutes; report of the president; report from standing committees; and meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: September 28, 1992, 9:42 a.m.

TRD-9213073

Texas Title Insurance Guaranty Association

Thursday, October 8, 1992, 10 a.m. The Board of Directors of the Texas Title Insurance Guaranty Association will meet at the William P. Hobby Building, 333 Guadalupe

Street, Tower I, Suite 1250, Austin. According to the agenda summary, the board will discuss approval of the minutes of last meeting; discuss and possibly take action regarding House Bill 62 transition; discuss and possibly take action regarding assumption of liability or reinsurance of Title USA; hear status report of Reliance Title Company in supervision; hear liquidation report; estate manager's report; guaranty fund report; and set date and time for next meeting.

Contact: Sandra Autry, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 322-0223.

Filed: September 29, 1992, 10:04 a.m.

TRD-9213183

Texas Department of Transportation

Tuesday, September 29, 1992, 9:30 a.m. The Texas Transportation Commission of the Texas Department of Transportation met at the Dewitt C. Greer Building, 125 East 11th Street, First Floor, Austin. According to the emergency revised agenda summary, the commission added a supplement to the agenda, page 5 which reads as follows: 7.b. Harris County-a minute order to authorize the executive director to enter into an agreement with Harris County and/or Beltway Transportation Corporation for design, construction, and operation of a county tollway facility on a portion of the state's right-of-way for Beltway 8, from SH 225 to SH 3, and also to authorize a state construction project from SH 3 to IH 45. (MO) The emergency status was necessary due to immediate emergency action required to avoid severe adverse impact on the state's financial rating and the economic well being of its citizens and taxpayers.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: September 28, 1992, 9:48 a.m.

TRD-9213075

University of Texas at Arlington

Wednesday, October 14, 1992, noon. The Institutional Animal Care and Use Committee of the University of Texas at Arlington will meet at the Life Science Building, U. T. Arlington, Psychology Department, Room 323, Arlington. According to the complete agenda, the committee will discuss approval of the minutes of December 11, 1991 meeting; discuss findings of September 23, 1992 facilities inspection; and current policies and procedures.

Contact: Verne C. Cox, P.O. Box 19528, Arlington, Texas 76011, (817) 273-3164.

Filed: September 28, 1992, 1:52 p.m.

TRD-9213090

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**University of Texas System,
M.D. Anderson Cancer
Center**

Tuesday, July 21, 1992, 9 a.m. The Institutional Animal Care and Use Committee of the University of Texas System, M.D. Anderson Cancer Center met at 1515 Holcombe Boulevard, M.D. Anderson Cancer Center, Conference Room AW7.707, Seventh Floor, Houston. According to the agenda summary, the committee reviewed protocols of animal care and use and modifications thereof.

Contact: Anthony Mastromarino, 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3991.

Filed: July 16, 1992, 3:10 p.m.

TRD-9209797

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Texas Water Commission

Friday, October 2, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 119, Austin. According to the agenda summary, the commission will receive a briefing concerning; development of water conservation policy and related administrated rules; development of the hazardous waste needs assessment and permit processing; development of the hazardous waste facility siting rules; EPA hazardous waste identification rule; development of risk reduction standards for cleanup of contaminated sites and general internal policies regarding coordination of activities between the various offices and divisions within the agency.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: September 24, 1992, 2:55 p.m.

TRD-9212992

Friday, October 23, 1992, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 618, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a hearing before a hearing examiner on Midway Properties, Inc.'s application for a Certificate of Convenience and Necessity (CCN) to allow it to provide water utility service in Denton County and to decertify portions of Roanoke Hills Water Supply Corporation's CCN Number 11708, Town of Flower Mound's CCN Number 10982, and North Shore Water Supply C-

orporation's CCN Number 10168. The proposed water utility service area is located approximately five miles south of downtown Argyle, Texas and includes 35 current customers. Docket Number 9443-C.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 29, 1992, 9:13 a.m.

TRD-9213178

Friday, October 30, 1992, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 1149A and 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a hearing before a hearing examiner on Dessau Supply Company, Inc.'s water rate increase effective August 1, 1992, for its service area located in Travis County, Texas. Docket Number 9570-G.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 29, 1992, 9:13 a.m.

TRD-9213177

Monday, November 16, 1992, 9 a.m. (Rescheduled from Thursday, October 29, 1992). The Office of Hearings Examiner of the Texas Water Commission will meet at the City Council Chambers, City Hall, 215 East McKinney, Denton. According to the agenda summary, the commission will consider an application by Trophy Club Municipal Utility District for a renewal of Permit Number 11593-01 which authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 1,400,000 gallons per day. The plant site is approximately 0.9 miles north of the intersection of FM Road 114 and Trophy Club Drive, approximately 2.5 miles east of the intersection of U.S. Highway 377 and FM Road 114 in Denton County.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 28, 1992, 9:41 a.m.

TRD-9213069

Wednesday, November 18, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing to determine whether to affirm, modify or set aside Emergency Order Number 92-17E granted on September 16, 1992 to Dow Chemical Company. The order authorizes Dow Chemical to handle and dispose of certain hazardous wastes from Angleton High School, the Brazoria County Mosquito Control District and several stations of the Texas Department of Parks and Wildlife.

Dow Chemical operates a storage, processing, and disposal facility in Freeport, and Brazoria County.

Contact: Carlos Celestino, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 28, 1992, 2:08 p.m.

TRD-9213093

Wednesday, November 18, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an agenda hearing on Henry Constable Beck, III's application for an extension of time to commence and complete modifications of a dam and reservoir on Walnut Creek, tributary of the Neches River, Neches River Basin, and to impound therein not to exceed 1962 acre-feet of water for domestic and livestock purposes, approximately 13 miles north of Palestine, Anderson County, Texas.

Contact: Arlette Capehart, P.O. Box 13087, Austin, Texas 78711, (512) 475-2347.

Filed: September 29, 1992, 9:14 a.m.

TRD-9213181

Wednesday, November 18, 1992, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 211, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a hearing before a hearing examiner on Harris County Municipal Utility District Number 221's application requesting approval of standby fees.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 29, 1992, 9:14 a.m.

TRD-9213182

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an agenda hearing on Phibro Energy USA, Inc.'s application Number 5430 for a permit to divert 500 acre-feet of water per annum from the Houston Ship Channel, tributary of the San Jacinto River, San Jacinto River Basin. The water will be used for industrial use (fire water) in the City of Houston, Harris County, Texas.

Contact: Arlette Capehart, P.O. Box 13087, Austin, Texas 78711, (512) 475-2347.

Filed: September 29, 1992, 9:13 a.m.

TRD-9213179

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an agenda hearing on Texas Agricultural Extension Service, Wildlife and Fisheries Sciences, Texas A & M University's Application Number 5429 for a permit to divert 70 acre-feet of water per annum from Cottonwood Bayou, tributary of Chocolate Bayou, tributary of Chocolate Bay, tributary of West Bay, San Jacinto-Brazos Coastal Basin into a waterfowl habitat area adjacent to Chocolate Bayou. The water will be used for maintenance of the waterfowl habitat located on the applicant's property, approximately 11.5 miles southwest of Angleton, Brazoria County, Texas.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: September 29, 1992, 9:13 a.m.

TRD-9213180

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Texas Workers' Compensation Commission

Thursday, October 1, 1992, 9 a.m. The Texas Workers' Compensation Commission met at the Southfield Building, 4000 South IH-35, Rooms 910-911, Austin. According to the agenda summary, the commission called the meeting to order; conducted a public hearing to receive comments on Chapter 164 rules; extra-hazardous employer program; discussed approval of the minutes for the meeting of September 3, 1992; discussed, considered and possibly acted on rules for adoption: Chapter 114-Self-Insurance, Chapter 164 Extra-Hazardous employer program, and Chapter 134-Guidelines for Medical Services, Charges and Payments; met in executive session; acted on matters considered in executive session; heard general reports; discussed and possibly acted on issues relating to commission activities which may include, but are not limited to the following: discussed future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: September 25, 1992, 3:25 p.m.

TRD-9213047

Texas Workers' Compensation Insurance Facility

Monday, October 5, 1992, 8 a.m. The Governing Committee of the Texas Workers' Compensation Insurance Facility will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the committee will discuss approval of the September 3, 1992, minutes; consider and possibly act on 1991 financial audit report; on discount rate for use in calculation of deficit/surplus position for 1991 and/or other years and determination of amount of assessments on or rebates to member companies for such years; hear executive director's report; and executive session(s) regarding personnel matters and pending legal matters.

Contact: Russell R. Oliver, 8303 MoPac Expressway North, #310, Austin, Texas 78759, (512) 345-1222.

Filed: September 25, 1992, 10:35 a.m.

TRD-9213015

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Regional Meetings

Meetings Filed September 24, 1992

The Alamo Area Council of Governments Area Judges met at 118 Broadway, Suite 420, San Antonio, September 29, 1992, at 11 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9213002.

The Angelina and Neches River Authority Board of Directors met at the Azalea Room at Crown Colony, 900 Crown Colony Drive, Lufkin, September 30, 1992, at 10:30 a.m. Information may be obtained from Gary L. Neighbors, P. O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795. TRD-9213000.

The Brazos Valley Solid Waste Management Agency Board of Trustees met at College Station Public Services Training Room, 2613 Texas Avenue S, College Station, September 29, 1992, at 1:15 p.m. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3507. TRD-9212983.

The Dallas Central Appraisal District Appraisal Review Board met at 2949 North Stemmons Freeway, Dallas, September 30, 1992, at 10 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9212982.

The Hays County Appraisal District Appraisal Review Board met at 632 A. E. Hopkins, Municipal Building, San Marcos,

October 1, 1992, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 A. E. Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9212980.

The Hunt County Appraisal District Hunt County Appraisal Review Board will meet at the Hunt County Appraisal District Board Room, 4801 King Street, Greenville, October 1-31, 1992, at 8:30 a.m. Information may be obtained from Shirley, 4801 King Street, Greenville, Texas 75401, (903) 454-3510. TRD-9212994.

The Johnson County Rural Water Supply Corporation met at the JCRWSC Office, Highway 171 South, Cleburne, September 29, 1992, at 6 p.m. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9213004.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, September 28, 1992, at 7:30 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833. TRD-9212985.

The Lubbock Regional MHMR Center Board of Trustees met at 3801 Avenue J, Board Room, Lubbock, September 28, 1992, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202. TRD-9212999.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the Holiday Inn, Rose Room, 920 East Main Street, Uvalde, September 30, 1992, at 4:30 p.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9213006.

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply, Route 5, Box 25-C-10, Winnsboro, September 28, 1992, at 7 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 25-C-10, Winnsboro, Texas 75494, (903) 342-3525. TRD-9212991.

The West Central Texas Council of Governments Private Industry Council met at 1025 East North 10th Street, Abilene, October 1, 1992, at 10:30 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79601, (915) 672-8544. TRD-9212998.

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Meetings Filed September 25, 1992

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, October 1-2, 5-9,

12-15, 19-23, 26-27, 1992, at 8:30 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9213007.

The Bosque Central Appraisal District Appraisal Review Board met at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, September 30, 1992, at 9 a.m. Information may be obtained from Billye L. McGehee, P.O. Box 393, Meridian, Texas 76665, (817) 435-2304. TRD-9213026.

The Bosque, Erath, Hill, Johnson, and Somervell County Education District 21 met at the Glen Rose Middle School Cafeteria, 812 College Street, Glen Rose, September 30, 1992, at 7:30 p.m. Information may be obtained from Jo Wilson, 726 North Clinton, Stephenville, Texas 76401, (817) 968-7990. TRD-9213030.

The Brazos River Authority Board of Directors, Lake Management Committee will meet at the Lubbock Plaza Hotel, 3201 Loop 289 South, Lubbock, October 2, 1992, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9213013.

The Brazos River Authority Board of Directors, Water Resource Development Committee will meet at the Lubbock Plaza Hotel, 3201 Loop 289 South, Lubbock, October 2, 1992, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9213014.

The East Texas Council of Governments Executive Committee met at the ETCOG Offices, Kilgore, October 1, 1992, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9213016.

The Golden Crescent Regional Planning Commission Board of Directors met at the GCRPC Board Room, Regional Airport, Building 102, Victoria, September 30, 1992, at 5 p.m. Information may be obtained from Patrick Kennedy, P.O. Box 2028, Victoria, Texas 77901, (512) 578-1587. TRD-9213012.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, September 29, 1992, at 9 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9213043.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the Holiday Inn, Rose Room, 920 East Main, Uvalde, September 30, 1992, at 4:30 p.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9213032.

The North Central Texas Council of Governments Local Government Investment Fund for Texas will meet at 400 East Las Colinas Boulevard, 9th Floor, Irving, October 2, 1992, at noon. Information may be obtained from Charles Cason, III, 400 East Las Colinas Boulevard, 9th Floor, Irving, Texas 75039, (817) 640-3300, extension 110. TRD-9213011.

The Texas Regional Planning Commission Employee Board of Trustees met at the Capital Area Planning Council, 2520 IH 35 South, Austin, September 30, 1992, at 10:30 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9213010.

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Meetings Filed September 28,
1992

The Angelina and Neches River Authority Pineywoods Solid Waste Agency Board of Directors met at the Jasper Municipal Building, City Hall in the DETCOG Conference Room, 274 East Lamar Street, Jasper, October 1, 1992, at 10 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, FAX (409) 632-2564. TRD-9213084.

The East Texas Council of Governments (Emergency revised agenda). Executive Committee met at the ETCOG Office, Kilgore, October 1, 1992, at 2 p.m. The emergency status was necessary as the deadline for submission of this plan was October 1, 1992. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9213085.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, October 6, 1992, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9213106.

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Texas Attorney General Texas Clean Air Act, Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. The Texas Health and Safety Code, §382.096, provides that before the state may settle a judicial enforcement action under the Clean Air Act, the state shall permit the public to comment in writing on the proposed judgment. The attorney general will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court. State of Texas and Hays County v. Texas Lehigh Cement Company, Cause Number 90-0283 in the 207th District Court of Hays County.

Nature of Defendant's Operations. Texas Lehigh Cement Company operates a cement plant two miles south of Buda, Texas in Hays County.

Proposed Agreed Judgment. The proposed Agreed Final Judgment contains provisions for injunctive relief, civil penalties, and attorneys' fees.

Injunctive Relief. The judgment contains numerous injunctive requirements, including a requirement that the Defendant comply with certain enumerated rules of the Texas Air Control Board, modify the transfer points at the top of the loadout and finish mill feed bins, install dust collection equipment, install an underground reclaim system in the clinker storage building, and meet other specified requirements.

Civil Penalties. The judgment requires the Defendant to pay a \$300,000 civil penalty to the state, and a \$25,000 civil penalty to Hays County.

Attorneys' Fees. The judgment requires the Defendant to pay \$30,000 in attorneys' fees to the state.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 440-8002. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas, on September 24, 1992.

TRD-9212984

Jerry Benedict
Assistant Attorney General
Office of the Texas Attorney General

Filed: September 24, 1992

Texas Department of Banking Notice of Hearing

To Jose Salvador Peralta dba El Paso, Applicant: I have been appointed hearings officer by the Banking Commissioner of the State of Texas to conduct evidentiary hearings and prepare the proposal for decision on your application for a license under the Currency Exchange Act, Texas Civil Statutes, Article 350, §21.

A hearing on the application is hereby scheduled to begin at 9:30 a.m. on November 3, 1992, at the Texas Department of Banking Hearing Room, Third Floor, 2601 North Lamar Boulevard, Austin, Texas 78705. The Texas Department of Banking will be represented by Brian Herrick, Assistant General Counsel, who may be contacted at the previous address or at (512) 475-1300.

All proceedings will be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Issued in Austin, Texas, on September 22, 1992.

TRD-9213034

Larry J. Craddock
Hearings Officer
Texas Department of Banking

Filed: September 25, 1992

Texas Education Agency Request for Applications Number 701-92-050

RFA# 701-92-050. This request for applications is filed in accordance with Public Law 100-297, Title 1, Chapter 1, Part B, as amended.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications (RFA# 701-92-050) from school districts, cooperatives of school districts, or regional education service centers applying in collaboration with a community-based organization, a public agency, an institution of higher education, or other nonprofit organization; or a community-based organization or other nonprofit organization of demonstrated quality applying in collaboration with a school district, a cooperative of school districts, or regional education service center for the development of a program to improve the educational opportunities of children and adults by integrating early childhood education and adult education for parents into a unified program.

Description. The overall objectives of the Even Start Family Literacy Program include the following: to provide family centered education projects that help parents become full partners in the education of their children; to assist children receiving early childhood education in

reaching their full potential as learners; to provide literacy training for parents of family units participating in the project; to improve the educational opportunities of the nation's children and adults by integrating early childhood education and adult education for parents into a unified program; to assist families with parenting strategies in child growth and development and educational process for children age 0-7; to coordinate efforts that build on existing community resources to create a new range of services.

For a family unit to qualify for this program, the family unit must be involved in all the elements of the program. To be eligible for this program, the family must reside in a Chapter 1 elementary school attendance area, and a parent of the child must be eligible to participate in an adult education program under the Adult Education Act.

Dates of Project. The Even Start Family Literacy Program will be implemented during the 1993 school year. Applicants should plan for a starting date of no earlier than January 4, 1993, and an ending date of not later than December 31, 1993.

Project Amount. Approximately \$949,677 is available for funding. Federal law requires that each grant be at least \$75,000 per year. Funding for continuation of the project each year, for up to four years, will be contingent upon satisfactory progress in carrying out objectives and activities and authorization by the State Board of Education. The applicant's share of the cost will be: Ten percent of the total cost of the program in the first year the eligible entity receives assistance; Twenty percent in the second year; Thirty percent in the third year; and Forty percent in the fourth year.

Selection Criteria. Applications will be reviewed in a competitive basis and approved based upon the ability of each applicant to carry out all requirements contained in the request for application. A complete list of specific selection criteria is included in the application packet. The TEA reserves the right to select from the highest ranking applications with a state representational level of urban and rural entities.

Requesting the Application. A copy of the complete request for application (RFA# 701-92-050) may be obtained by writing or calling the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Please refer to the RFA# 701-92-050 in your request.

Further Information. For clarifying information about this application, contact Dr. Ramona Jo DeValcourt or

Lilie Elizondo-Limas, Division of Adult and Community Education, Texas Education Agency, (512) 463-9294.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., Monday, November 20, 1992.

Issued in Austin, Texas, on September 25, 1992.

TRD-8213048

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: September 25, 1992

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Texas General Land Office
Corrections of Error

The General Land Office proposed new 31 TAC §§15.1-15.10, concerning identification of critical dune areas, dune preservation, and the preservation and enhancement of public beach access as required by recent amendments to state law. The rules appeared in the September 18, 1992, *Texas Register* (17 TexReg 6417). Due to typographical errors by the *Texas Register* and by the General Land Office, corrections are noted as follows.

In §15.4(d)(1)(A) on page 6424, the reference to "...requirements under §15.3(k)(2)(A) of this..." should read "...requirements under §15.3(1)(2) (A) of this...."

In §15.4(d)(1)(B), clauses (iii) and (iv) were incorrectly printed as one clause. Clause (iv) should begin as follows. "(iv) Local governments shall require permittees to minimize proliferation of excessive private access by allowing only one join use access route...."

In the last sentence of §15.4(g)(4) on page 6425, the word "to" was omitted. The sentence should read as follows. "However, in no event shall the permittee fail to achieve compensation,...."

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Texas Department of Health
Licensing Actions for Radioactive
Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing " Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED

Location	Name	License #	City	Amendment Number	Date of Action
Dallas	Southwest & Johnson X-Ray Co., Inc.	L04603	Dallas	0	09/04/92
Denton	Texas Dept of MHMR	L04605	Denton	0	09/03/92
Houston	Texas Tower	L04618	Houston	0	09/09/92
Pasadena	Air Products Mfg. Corp.	L04560	Pasadena	0	09/01/92
Throughout Texas	Blazer Inspection	L04619	Texas City	0	09/01/92

AMENDMENTS TO EXISTING LICENSES ISSUED

Location	Name	License #	City	Amendment Number	Date of Action
Arlington	HCA South Arlington Medical Center	L02228	Arlington	30	09/09/92
Austin	BF Goodrich Aerospace Component Overhaul and Repair	L03372	Austin	4	08/31/92
Austin	St. David's Community Hospital	L00740	Austin	51	09/03/92
Austin	Craven Laboratories, Inc.	L02773	Austin	6	09/03/92
Deer Park	Fina Oil and Chemical Company	L00302	Deer Park	26	09/08/92
Fort Worth	North Texas Diagnostic Center	L03807	Fort Worth	10	09/09/92
Jewett	Nucor Steel Corporation	L02504	Jewett	6	09/09/92
Midland	Isotech Laboratories, Inc.	L04283	Midland	5	08/25/92
Midlothian	Chaparral Steel Company	L02015	Midlothian	17	09/04/92
Point Comfort	Aluminum Company of America	L00032	Point Comfort	39	09/02/92
San Antonio	Humana Women's Hospital South Texas	L03656	San Antonio	11	09/01/92
Seguin	Structural Metals, Inc.	L02188	Seguin	10	08/31/92
Texas City	Phibro Energy USA, Inc.	L02578	Texas City	12	09/03/92
Throughout Texas	Computer Extension Systems, Inc.	L04312	Houston	3	08/31/92
Throughout Texas	SPL Wireline Services, Inc.	L01983	Granbury	34	09/09/92
Throughout Texas	Southwestern Laboratories Inc.	L00299	Houston	76	09/04/92
Throughout Texas	Longview Inspection, Inc.	L03720	Longview	39	09/04/92
Throughout Texas	Eagle X-Ray	L03246	Mont Belvieu	40	09/09/92
Throughout Texas	Global X-Ray & Testing Corp.	L03663	Houston	25	09/09/92
Throughout Texas	Coastal Wireline Services, Inc.	L04239	Pearland	1	09/08/92
Throughout Texas	Digital Surveys, Inc.	L01611	Alvin	20	09/04/92
Throughout Texas	Pro-Technics II, Inc.	L03835	Houston	14	09/03/92
Throughout Texas	ERM - Southwest, Inc.	L02936	Houston	10	08/28/92

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED

Location	Name	License #	City	Amendment Number	Date of Action
Throughout Texas	Independent Testing Laboratories	L03795	Houston	20	09/02/92
Throughout Texas	Schlumberger Technology Corporation	L01833	Houston	84	08/31/92
Throughout Texas	D-Arrow Inspection, Inc.	L03816	Houston	35	08/31/92
Throughout Texas	Alpha Technical Services, Inc.	L04505	Channelview	1	09/04/92
Throughout Texas	Halliburton Services	L01835	Duncan, OK	44	09/09/92
Throughout Texas	Gulf Materials Recycling Corporation	L02734	Houston	12	09/10/92
Throughout Texas	Basin Industrial X-Ray Inc.	L02280	Corpus Christi	41	09/10/92
Throughout Texas	H & G Inspection Company Inc.	L02181	Houston	69	09/09/92
Throughout Texas	B & R Inspection & Equipment Co., Inc.	L02564	Midland	11	09/10/92
Throughout Texas	San Antonio Development Agency	L04174	San Antonio	3	09/04/92
Waller	Progressive Metals	L02831	Waller	30	09/10/92
Woodville	S & T International, Inc.	L03652	Woodville	18	08/28/92

RENEWALS OF EXISTING LICENSES ISSUED

Location	Name	License #	City	Amendment Number	Date of Action
Check	Metalforms Inc.	L02261	Beaumont	18	08/31/92
Comanche	Comanche Community Hospital	L03234	Comanche	5	09/09/92
El Paso	Baxter Healthcare Corporation	L02407	El Paso	16	09/10/92
Houston	St. Joseph Hospital	L01070	Houston	19	09/04/92
Odessa	University of Texas of the Permian Basin	L02695	Odessa	7	09/09/92
Pasadena	Hoechst Celanese Chemical Company	L01130	Houston	39	09/02/92
Seadrift	Union Carbide Chemicals and Plastics Company, Inc.	L00051	Port Lavaca	57	09/03/92
Texas City	Amoco Oil Company	L00254	Texas City	42	09/09/92
Throughout Texas	Temperature Evaluation Logging Company, Inc.	L02219	Odessa	12	08/31/92
Throughout Texas	P & M Wireline Services	L04116	Odessa	2	08/31/92
Throughout Texas	BIX Testing Laboratories	L02143	Baytown	49	09/03/92

TERMINATIONS OF LICENSES ISSUED

Location	Name	License #	City	Amendment Number	Date of Action
Cleburne	GOEX International Inc.	L04511	Cleburne	1	08/31/92
Throughout Texas	IT Corporation	L04206	Houston	1	09/10/92
Tyler	Community Hospital of Tyler	L02057	Tyler	16	09/03/92

NEW LICENSES DENIED

Location	Name	License #	City	Amendment Number	Date of Action
Sprint	Emerald Biomedical Sciences, Inc.	0	Sprint	0	09/11/92

AMENDMENTS TO EXISTING LICENSES DENIED

Location	Name	License #	City	Amendment Number	Date of Action
Channelview	Phoenix Non-Destructive Testing Company, Inc.	L04454	Channelview	0	06/23/92
Humble	Triple G X-Ray & Testing Labs, Inc.	L03136	Humble	0	09/04/92

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on September 21, 1992.

TRD-9212852 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: September 23, 1992

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**Texas Commission on Jail Standards
Consultant Contract Award**

In compliance with the provisions of Texas Civil Statutes, Article 6252-11C, the Texas Commission on Jail Standards furnishes this notice of consultant contract award.

Publication Date. The request for proposals was published in the August 25, 1992, issue of the *Texas Register* (17 TexReg 5812).

Description of Services. The consultant will advise and assist the Texas Commission on Jail Standards in a survey of approximately 60 municipal and county jails to verify compliance information regarding the removal of juveniles from the facilities.

Consultant Name and Address. The consultant contract has been awarded to June Scogin, 212 Nuthatch, Buda, Texas 78610.

Value and Dates of Contract. The total value of the contract shall not exceed \$17,609. The contract period is October 5, 1992-March 1, 1993.

Due Dates. All jail analysis reports are due to the commission by March 2, 1993.

Issued in Austin, Texas, on September 24, 1992.

TRD-9213008 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Filed: September 25, 1992

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**Legislative Budget Office
Joint Budget and Strategic Plan Hearing
Schedule (For the period of October
5-9, 1992)**

EXECUTIVE AND LEGISLATIVE BUDGET OFFICES

Joint Budget and Strategic Plan Hearing Schedule* Appropriations Requests for the 1994-1995 Biennium

(For the period of Oct. 5-9, 1992)

<u>Agency</u>	<u>Date</u>	<u>Place</u>
Office of the State Prosecuting Attorney	Oct. 5--9:00 a.m.	Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas
University of Houston System University of Houston University of Houston - Clear Lake University of Houston - Victoria University of Houston - Downtown	Oct. 5--9:00 a.m.	University of Houston System Office, 1600 Smith, Suite 3400 Houston, Texas
Historical Commission	Oct. 5--2:00 p.m.	Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas
Texas Commission for the Deaf and Hearing Impaired	Oct. 5--2:00 p.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Workers' Compensation Commission	Oct. 5--2:00 p.m.	Room 106, John H. Reagan Building, 15th and North Congress, Austin, Texas
Texas Southern University	Oct. 5--3:30 p.m.	Texas Southern University Hannah Hall, Room 117 3100 Cleburne Houston, Texas

<p>The University of Texas M.D. Anderson Cancer Center The University of Texas Medical Branch at Galveston The University of Texas Health Science Center - San Antonio</p>	<p>Oct. 6--9:00 a.m.</p>	<p>The University of Texas M.D. Anderson Cancer Center Houston Main Building 1100 Holcombe Boulevard Tenth Floor Copeland Conference Room Houston, Texas</p>
<p>The University of Texas Health Science Center at Houston</p>	<p>Oct. 6--1:30 p.m.</p>	<p>The University of Texas M.D. Anderson Cancer Center Houston Main Building 1100 Holcombe Boulevard Tenth Floor Copeland Conference Room Houston, Texas</p>
<p>State Securities Board</p>	<p>Oct. 6--10:00 a.m.</p>	<p>Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas</p>
<p>Criminal Justice Policy Council</p>	<p>Oct. 6--2:00 p.m.</p>	<p>Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas</p>
<p>Department of Information Resources</p>	<p>Oct. 7--10:00 a.m.</p>	<p>Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas</p>
<p>Interagency Council on Early Childhood Intervention</p>	<p>Oct. 7--11:00 a.m.</p>	<p>Room 652, Texas Department of Health, Moreton Bldg., Austin, Texas</p>
<p>Texas Rehabilitation Commission</p>	<p>Oct. 7--2:00 p.m.</p>	<p>Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas</p>
<p>Office of State-Federal Relations</p>	<p>Oct. 8--9:00 a.m.</p>	<p>Room 106, John H. Reagan Building, 15th and North Congress, Austin, Texas</p>
<p>Railroad Commission</p>	<p>Oct. 8--9:30 a.m.</p>	<p>Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas</p>

Commission on Alcohol and Drug Abuse	Oct. 8--9:30 a.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Office of Court Administration	Oct. 8--9:30 a.m.	Texas Law Center 1414 Colorado Room 206/207 Austin, Texas
Supreme Court of Texas	Oct. 8--9:30 a.m.	Texas Law Center 1414 Colorado Room 206/207 Austin, Texas
Texas Tech University Texas Tech University Health Sciences Center Stephen F. Austin State University	Oct. 8--10:00 a.m.	Coordinating Board 7700 Chevy Chase Drive Board Room, Rm. 1.110, Building I Austin, Texas
General Land Office and Veterans Land Board	Oct. 8--2:00 p.m.	Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas
Department of Transportation	Oct. 9--9:00 a.m.	D. C. Greer Highway Bldg. 125 East 11th Street, Room 101A, 1st Floor, Austin, Texas
Texas Water Development Board	Oct. 9--9:00 a.m.	Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas
Lamar University System Lamar University - Beaumont Lamar University - Orange Lamar University - Port Arthur Texas State Technical College (all components)	Oct. 9--9:30 a.m.	Coordinating Board 7745 Chevy Chase Drive Room 5.139, Building V Austin, Texas
Office of the Public Utility Counsel	Oct. 9--1:30 p.m.	Room 104, John H. Reagan Building, 15th and North Congress, Austin, Texas

***NOTE:** Please confirm above dates, times and locations in the event you plan to attend a hearing, since experience has shown that some rescheduling always occurs.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213033

Larry Kopp
Assistant Director of Budgets
Legislative Budget Office

Filed: September 25, 1992

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Texas Parks and Wildlife Department
Notice of Public Hearing-Consider
Pipeline Easement Application

Notice is Hereby Given That Sanchez O'Brien Oil and Gas Corporation, P.O. Box 2986, Laredo, Texas 78044-2986, has applied to the Texas Parks and Wildlife Department for an easement to construct two drillsite pads for oil and gas exploration on the Falcon State Park in Starr County.

A hearing authorized by Chapter 26, Texas Parks and Wildlife Code, will be held as follows: October 29, 1992, 9 a.m., State Office of Administrative Hearings, 300 West 15th Street, Suite 408, Austin, Texas 78701.

The applicant may appear in person or by attorney to present evidence supporting its application. This hearing will be held under the authority of and in accordance with Chapter 26 of the Texas Parks and Wildlife Code and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1992).

The record of the proceeding will include evidence and testimony taken at the public hearing. Evidence or testimony may be presented orally or in writing, subject to the requirements of the Administrative Procedure and Texas Register Act. The hearing may be continued from time to time and place to place, if necessary, to develop all relevant evidence bearing on the subject of the hearing. The examiner retains the right to schedule or reschedule hearings as necessary. Further information concerning the basis of the proceeding, if available, may be obtained by contacting John Foshee, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4806.

Information concerning any procedures of the hearing or scheduling may be obtained by contacting the State Office of Administrative Hearings, Attention: Bertha Davis, 300 West 15th Street, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-4993.

Issued in Austin, Texas, on September 24, 1992.

TRD-9212987

Paul Shinkawa
General Counsel
Texas Parks and Wildlife Department

Filed: September 24, 1992

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Public Utility Commission of Texas
Notice of Application to Amend
Certificate of Convenience and
Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 18, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act,

§§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Rayburn Country Electric Cooperative, Inc. for certificate of convenience and necessity for proposed transmission line within Van Zandt County, Docket Number 11476 before the Public Utility Commission of Texas.

The Application. In Docket Number 11476, Rayburn Country Electric Cooperative, Inc. requests approval of its application to construct approximately 5.3 miles of 138 kV transmission line.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213044

John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 25, 1992

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Notice of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for AT&T Network Systems, Irving.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for AT&T Network Systems Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11480.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for AT&T Network Systems. The geographic service market for this specific service is the Irving area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212993

John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 24, 1992

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Tarrant County, Fort Worth.

Tariff Title and Number. Application of Southwestern

Bell Telephone Company for Approval of Plexar-Custom Service for Tarrant County Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11481.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Tarrant County. The geographic service market for this specific service is the Fort Worth area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212989 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 24, 1992

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific billing and collection services for North American InTelecom, Inc.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of billing and collection services for North American InTelecom, Inc. Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11461.

The Application. Southwestern Bell Telephone Company is requesting approval of billing and collection services for North American InTelecom, Inc. The geographic service market for this specific service is anywhere within the State of Texas where North American InTelecom, Inc. provides services to Southwestern Bell end use customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213045 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 25, 1992

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific billing and collection services for International Telecharge, Inc.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of billing and collection services for International Telecharge, Inc. Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11460.

The Application. Southwestern Bell Telephone Company is requesting approval of billing and collection services for

International Telecharge, Inc. The geographic service market for this specific service is anywhere within the State of Texas where International Telecharge, Inc. provides services to Southwestern Bell end use customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213046 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 25, 1992

Public Utility Commission Requests Comments on Rulemaking Procedures

The Public Utility Commission of Texas (PUC) is considering formalizing and making revisions to its rulemaking procedures. The commission solicits comments from all interested persons on whether its current rulemaking procedures are satisfactory, with specific comments on why they are or are not satisfactory. The commission also solicits comments on means by which the procedures can be improved.

Rulemaking procedures at the Public Utility Commission of Texas are conducted in accordance with the requirements of the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a. APTRA, §5, addresses procedures for adoption of rules. APTRA, §11, discusses petitions for adoption of rules. Section 21.23 of the commission's rules of practice and procedure applies to the contents of notice for rulemaking proceedings. Section 21.62(c) and (f) of those rules contain the requirements for the contents of rulemaking petitions.

Currently, the staff of PUC presents rule proposals to the commissioners for their consideration at a final order meeting. The rulemaking process may then be formally initiated by a commission vote to propose a rule. Notice of that proposal is given in the *Texas Register*, and all interested persons are given an opportunity to comment in writing on the proposed rule. In some instances, specific opportunity is given for written reply comments. In addition, the commission and staff receive and consider oral comments. Meetings or workshops may be held with commenters and other interested persons to receive additional information.

The staff reviews those comments it receives and prepares a recommendation to the commission. When the recommendation is for adoption, the staff prepares a preamble containing a summary of written comments and suggested responses. The commission at a final order meeting then votes to adopt, withdraw, or republish the rule.

Petitions for rulemaking are reviewed by the staff and a recommendation for approval or denial of the petition is made to the commission. The commission's rules require that a petition for rulemaking contain the text of the proposed rule. Within 60 days, the commission votes to either grant or deny the petition. If the petition is granted, the commission then votes to propose the rule and publish it for comment in the *Texas Register*. From that point

forward, the commission's standard rulemaking procedures apply. If the petition is denied, the commission issue a written order explaining its grounds for denial of the petition.

The commission is interested in assuring that all interested persons have an opportunity to participate in the development of rules. The commission also wishes to assure that the rulemaking process is conducted in a timely and efficient manner so that the commission can react as necessary to changing circumstances in the electric and telephone utility industries.

The commission specifically invites comments on the following matters relating to rulemaking: notice periods; opportunities for public participation (including, but not limited to, public hearings and the use of task forces or committees); petitions for rulemaking; and emergency rulemaking or use of other expedited processes.

The staff of the commission will review the comments and utilize them in preparing a recommendation to the commission for further action. The commission plans to formally propose amendments to its procedural rules governing rulemaking procedures at a later date.

Comments (13 copies) should be submitted to John M. Renfrow, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days of the date of publication of this notice. Comments should contain a reference to Project Number 11399. The names and mailing addresses of commenters will be used to compile a service list for this project. The service list will be used to notify commenters of future proceedings in this project. Commenters may also be asked in the future to exchange information with other persons on the service list.

Issued in Austin, Texas, on September 23, 1992.

TRD-9212960 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 23, 1992

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State Securities Board

Correction of Errors

The State Securities Board proposed amendments to 7 TAC §109.3, concerning sales to financial institutions and certain institutional investors under the Securities Act, Section 5.H. The rule was published in the September 18, 1992, *Texas Register* (17 *TexReg* 6413).

In §109.3(a) the word institution in proposed new text should be plural: institutions.

In §109.3(c)(1) the word "purchase" in the last line of text proposed for deletion should read "purchaser".

In §109.3(c)(1)(A) the figure "\$510,000" in the last line should read "\$150,000".

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Texas Water Commission

Enforcement Orders

An (agreed) enforcement order was entered regarding Dallas/Fort Worth International Airport (no permit) on September 15, 1992, assessing \$15,000 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8090.

Issued in Austin, Texas, on September 24, 1992.

TRD-9213038 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 25, 1992

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An (agreed) enforcement order was entered regarding Midland, City of (Permit 10223-01) on September 15, 1992, assessing \$83,600 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Laura Ray, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8072.

Issued in Austin, Texas, on September 24, 1992.

TRD-9213037 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 25, 1992

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An (agreed) enforcement order was entered regarding Mooney, Buford G. dba Longford Place (Permit 11155-001) on September 15, 1992, assessing \$3,920 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting John J. Carlton, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8097.

Issued in Austin, Texas, on September 24, 1992.

TRD-9213036 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 25, 1992

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An (agreed) enforcement order was entered regarding Portland, City of (Permit 10478-001) on September 15, 1992, assessing \$17,400 in administrative penalties with \$7,900 deferred. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Laura Ray, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8072.

Issued in Austin, Texas, on September 24, 1992.

TRD-9213035 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 25, 1992

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Meeting Notice

A meeting of the Policy Committee of the Galveston Bay National Estuary Program is scheduled for: Friday, Octo-

ber 9, 1992, 10 a.m., Board Conference Room, Fourth Floor, Houston-Galveston Area Council, 3555 Timmons, Houston.

Following opening remarks and approval of minutes, the committee will hear a program update from the program director. The committee will then consider the fiscal year 1993 annual work plan for ratification. The committee will then receive a briefing on the first draft of the comprehensive conservation and management plan (CCMP) for Galveston Bay and consider a charge to the management conference to review and release this document for public review. The committee will then consider appointment of a Financial Planning Committee to guide creation of a funding initiative for the CCMP. The committee will then consider approval in concept for a financial planning project. The committee will then consider approval in concept for a legislative needs assessment related to the CCMP. The committee will then consider approval for a recommendation to change the lead agency for the project entitled "Treated/Partially Treated Effluent Loading Study" from TDH to TWC. The committee will then consider approval of routine membership changes in the committees of the management conference. The committee will then consider any other business, a date for the next meeting, and will adjourn.

Issued in Houston, Texas, on September 25, 1992.

TRD-9213067 Frank S. Shipley
Director, Galveston Bay National Estuary
Program
Texas Water Commission

Filed: September 28, 1992

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**Notice of Application For Waste
Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of September 18-September 25, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Allied-Signal, Inc.; a plant that manufactures polyethylene and other polymers; the plant site is on the south side of

FM 1006, approximately one mile west of the intersection of FM 2177 in the City of Orange, Orange County; renewal; 00670.

Forest Hills Municipal Utility District; the wastewater treatment facilities; are located south of Frick Road, approximately 2.5 miles northwest of the intersection of Mount Houston Road and Veterans Memorial Drive (formerly Stuebner Airline Road) in Harris County; renewal; 11897-01.

Fort Bend County Municipal Utility District Number 106; The Fort Bend County Municipal Utility District Number 106 Regional Wastewater Treatment Facilities; are approximately 3,000 feet east of the Crabb River Road, approximately one mile south-southeast of the intersection of U.S. Highway 59 and Crabb River Road and east of Tara Boulevard on the north bank of Rabbs Bayou in Fort Bend County; amendment; 13355-01.

Green Industries, Inc.; a grease recovery and recycling facility; the plant site is at 9501 Lawndale Avenue about 0.03 mile southeast of the Intersection of Loop 610 and Lawndale in the City of Houston, Harris County; new; 03489.

City of Harlingen Waterworks System; Plan Number 3 Wastewater Treatment Facilities; the plant site is to be approximately 3,600 feet west of U.S. Highway 77 and 2,000 feet south of FM Road 2994 (Wilson Road) in Cameron County; renewal; 10490-04.

Houston Lighting and Power Company; Channelview Service Center plant; the plant site is immediately north of IH 10 between Dell Dale Street and Penn City Road and further defined as located approximately seven miles east of Loop 610 in the City of Houston, Harris County; renewal; 02499.

Ingleside Properties, Inc., Enprotech Plant; a blending terminal for drilling fluid chemicals and a treatment plant which will incinerate oil based cuttings and waste drilling fluid; the plant site is on Bishop Road east of the City of Ingleside, San Patricio County; renewal; 02717.

City of Meridian; the wastewater treatment facilities; the plant site is north of the North Bosque River, approximately 2,900 feet east-northeast of the intersection of State Highway 6 and State Highway 22, and approximately 1,800 feet south of the intersection of State Highway 22 and State Highway 144 in Bosque County; renewal; 10113-01.

Prairie View A&M University; the wastewater treatment facilities; the plant site is on the northwest section of Prairie View A&M Campus, approximately 1.0 mile north of U.S. Highway 290 and 500 feet east of FM Road 1098 in Waller County; new; 11275-01.

Ray Kelsey Feeders, Inc.; a dairy operation; the dairy is approximately 15 miles southwest of the City of Pecos at a point approximately four miles northeast of the intersection of FM Road 869 and State Highway 17 in Reeves County; amendment; 01828.

Steiner Utility Company, Inc.; the wastewater treatment facility and irrigation sites; are approximately two miles south of the intersection of Ranch Road 620 and Quinlan Park Road in Travis County; renewal; 13294-01.

Texas A&M University; the Main Campus Wastewater Treatment Facilities; the plant site is approximately 14,000 feet south of the intersection of FM Road 60 and FM Road 2818, 11,000 feet southwest of FM Road 2818 and 9,000

feet southeast of FM Road 60 in Brazos County; new; 10968-03.

City of Texline; the plant site and irrigation site; are southeast of and adjacent to FM Road 296, just north of the city limits of Texline in Dallam County; amendment; 11029-01.

Tejas Financial Corporation; The proposed wastewater treatment facilities will serve a private transient mobile home park and campground; the plant site is approximately 9.7 miles west of the intersection of State Highway 105 and Interstate 45; and 170 feet southeast of the intersection of State Highway 105 and Lake Conroe Village Boulevard on the south side of State Highway 105 in Montgomery County; new; 13626-01.

Texas Utilities Electric Company; Lake Creek Steam Electric Station; the plant site is adjacent to Lake Creek Reservoir which is approximately 4.3 miles via FM 1860 southwest of the City of Riesel, McLennan County; renewal; 00954.

The Woodlands Corporation; the proposed wastewater treatment facilities will serve the Wood Trace Development; the plant site is approximately 2,500 feet west of the Chicago Rock Island and Pacific Railroad, 1,500 feet northeast of the Missouri Pacific Railroad, 5,000 feet northeast of State Highway 149 (proposed State Highway 249), and approximately 1.5 miles east of Pinehurst in Montgomery County; new; 13614-01.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213068 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: September 28, 1992

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Notice of Awards

The Texas Water Commission (TWC) furnishes this notice of a consulting services contract award for the comprehensive conservation and management plan task force support.

The notice for request for proposals was published in the April 3, 1992, issue of the *Texas Register*.

Description of Services. The contractor will provide information regarding the development and preparation of CCMP action plans. The following major products will be produced: quarterly reports; final rep, August 31, 1993.

Effective Date and Value of Contract. The contract will be effective from September 1, 1992-August 31, 1993. The total cost of the contract is \$70,000.

Name of the Contractor. The contract has been awarded to Groundwater Services, Inc., 5252 Westchester, Suite 270, Houston, Texas 77005.

Persons who have questions concerning this award may contact Carol Ward, Galveston Bay National Estuary Program, 711 Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937.

Issued in Austin, Texas, on September 1, 1992.

TRD-9212954 Frank S. Shipley
Program Director, Galveston Bay National
Estuary Program
Texas Water Commission

Filed: September 23, 1992

The Texas Water Commission (TWC) furnishes this notice of a consulting services contract award for the comprehensive conservation and management plan action plan costing.

The notice for request for proposals was published in the April 3, 1992, issue of the *Texas Register*.

Description of Services. The contractor will provide information regarding cost estimates and analyses for each of the management alternatives proposed by the action plan task forces for the development of the comprehensive conservation and management plan for the Galveston Bay National Estuary Program. The following major products will be produced: quarterly reports; final rep, August 31, 1993.

Effective Date and Value of Contract. The contract will be effective from September 1, 1992-August 31, 1993. The total cost of the contract is \$60,000.

Name of the Contractor. The contract has been awarded to Apogee Research, Inc., 4340 East West Highway, Suite 600, Bethesda, Maryland 20814.

Persons who have questions concerning this award may contact Carol Ward, Galveston Bay National Estuary Program, 711 Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937.

Issued in Austin, Texas, on September 1, 1992.

TRD-9212955 Frank S. Shipley
Program Director, Galveston Bay National
Estuary Program
Texas Water Commission

Filed: September 23, 1992

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Request for Proposal

The Texas Water Commission (TWC) announces that it wishes to retain the services of a consultant to perform a remedial investigation/feasibility study (RI/FS) at the Pioneer Oil and Refining Company site located in Bexar County. Contingent upon approval by the TWC, the consultant's services may be extended to include follow-on architectural/engineering activities at the site if and when funds become available. This project will be conducted by the TWC pursuant to the Texas Solid Waste Disposal Act, §361.185, Texas Health and Safety Code, §361.001 et seq (Vernons Supplement 1990); as well as any rules promulgated pursuant to this section by the TWC in Chapter 335 of the Texas Administrative Code, concerning the hazardous waste facility assessment and remediation program, commonly referred to as State Superfund.

The TWC may negotiate with potentially responsible parties (PRPs) to execute activities in this solicitation. Accordingly, all future TWC activities are subject to the outcome of those negotiations with the PRPs.

Objective. The objectives of the remedial investigation and feasibility study are to: characterize and identify the site in terms of wastes present; lateral and vertical extent of contamination in surface waters, ground waters, sediments, and soils; rate and direction of waste migration; target receptors (population at risk, threatened resources, sensitive ecosystems); site geology and hydrology; and develop and evaluate alternative remedial measures considering economic feasibility, technological feasibility, environmental impacts, and timeliness of completion, and

offer recommendations regarding the most feasible remedial alternatives.

Budget and Schedule. The maximum budget allowable will be consistent with the specific scope of work as determined by the TWC. The budget to perform the RI/FS is \$553,000.

Submittal Information. Microfiche copies of relevant files are available through Beth Wigham, Records and Library Services Section, (512) 908-2920. A copy of the request for proposal (RFP) may be obtained in three ways: by sending a regular or certified letter requesting a copy of the RFP to: Susan Chmiel, Superfund Investigation Section, Pollution Cleanup Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Upon receipt, the TWC will transmit the RFP to the potential offeror by certified mail; by sending an overnight or expedited delivery letter requesting a copy of the RFP to Susan Chmiel, Superfund Investigation Section, Pollution Cleanup Division, Texas Water Commission, 1700 Congress, Austin, Texas 78701, with a prepaid self-addressed overnight or expedited delivery return envelope to accommodate approximately five pounds of 8-1/2" by 11" material; or in person with a signed letter of receipt at Suite 101, Technical Park Center, Messenger Building B, 12118 North IH 35, Austin.

Ms. Chmiel is the designated person to whom proposals may be made. Additional information may be obtained by calling (512) 908-2491. Six copies of each proposal must be received at the address listed in the above items before 5 p.m., November 13, 1992, which is the closing date for offers. All statements submitted in response to this request must address the items as described in the RFP. Any and all information submitted by an offeror in variance with the RFP instructions will not be reviewed or evaluated. All contracting procedures shall be conducted in accordance with all applicable state laws.

Upon submittal, the proposals shall become the property of the State of Texas. The contents of the proposal shall be considered as part of the public record unless otherwise identified by the consultant. The submittal of confidential or proprietary information should be made under separate cover on or before the due date. Confidential submittals should be limited and must include an explanation of the basis for confidentiality. TWC reserves the right to reject or return confidential information.

Issued in Austin, Texas, on September 29, 1992.

TRD-9212974 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: September 24, 1992

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the September-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8
70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15

95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 Friday, January 1	Monday, December 28	Tuesday, December 29

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is \$5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 1.9% service charge. For more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

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