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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 emer gency basis
- **Proposed Sections** - sections proposed for adoption
- **Withdrawn Sections** - sections withdrawn by state agencies from con sideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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.

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 lished 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 abilitie 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.*

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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.

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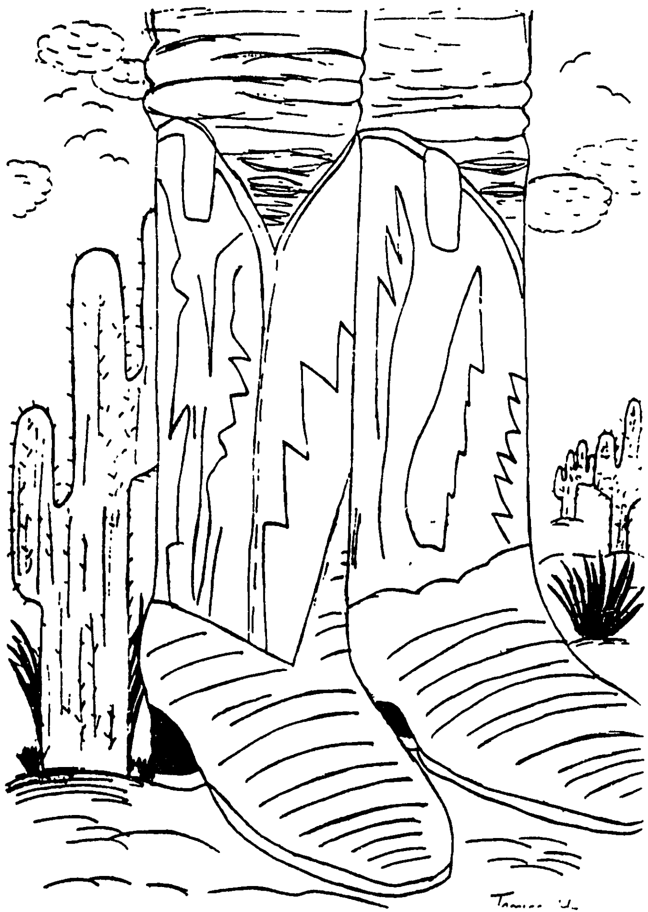

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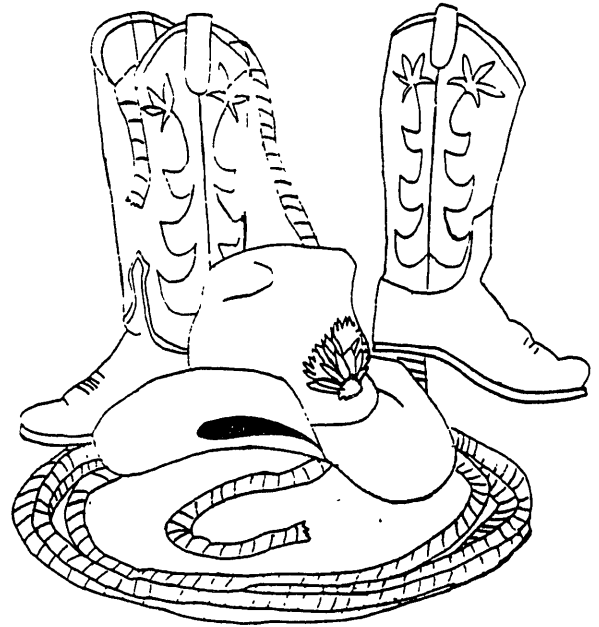

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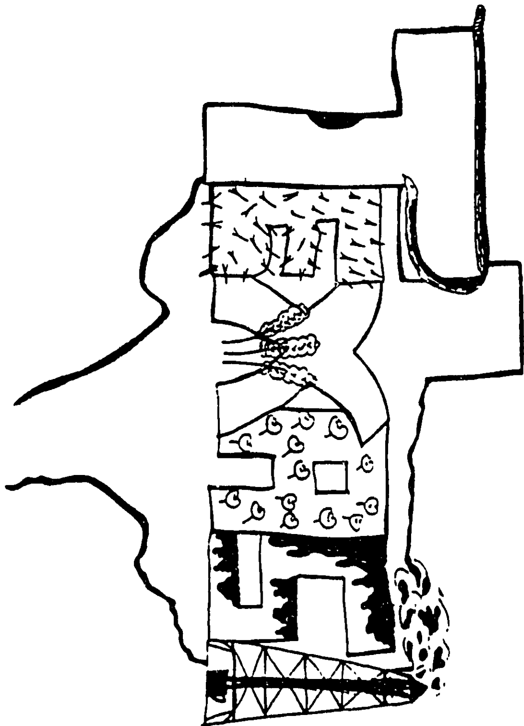

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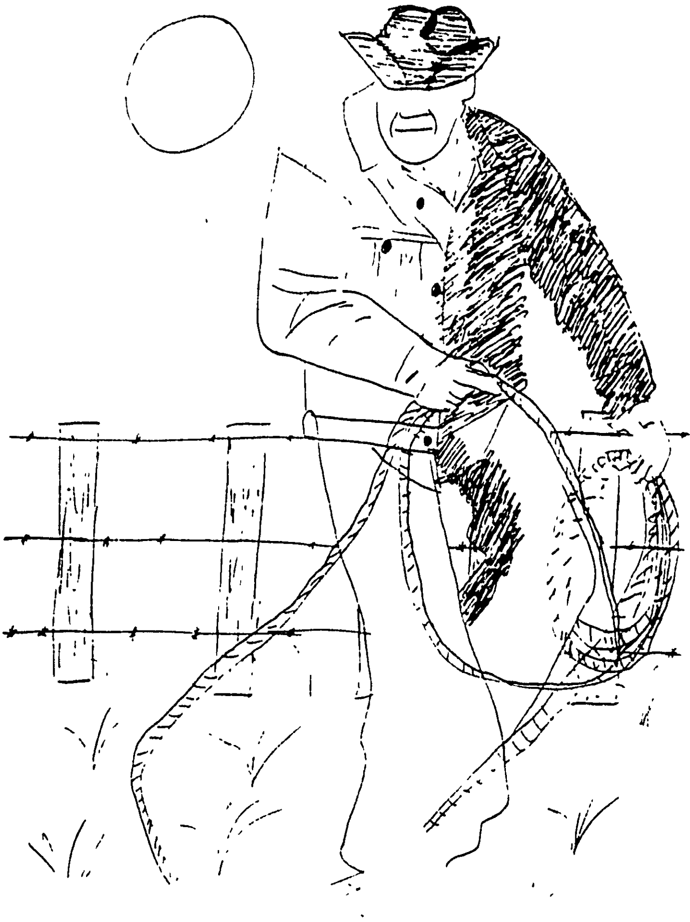

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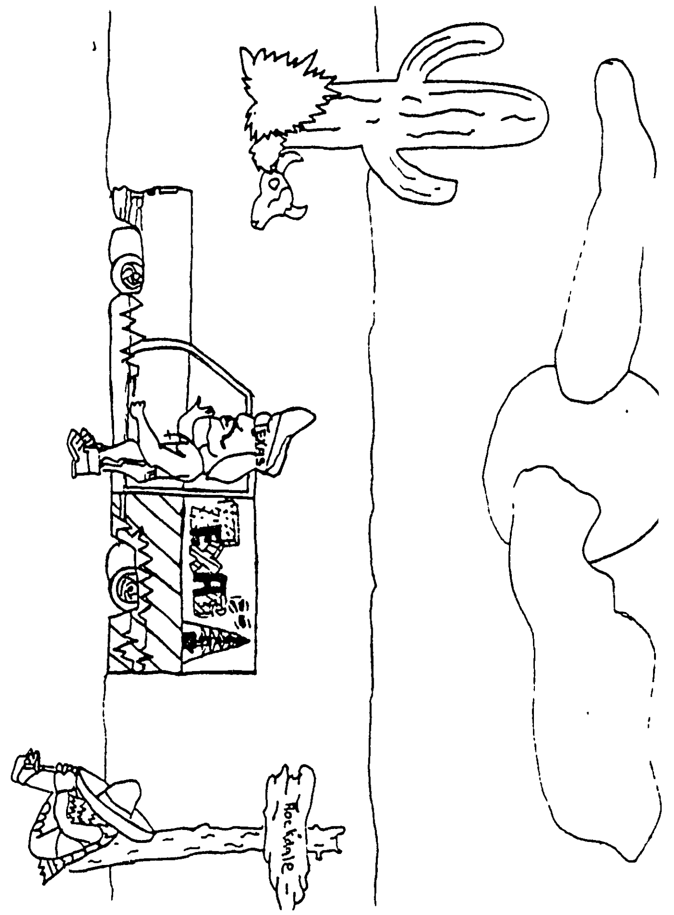

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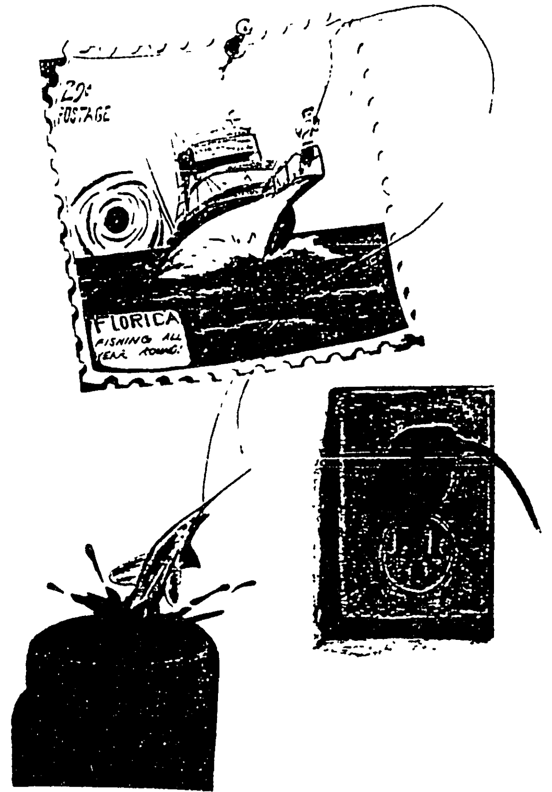

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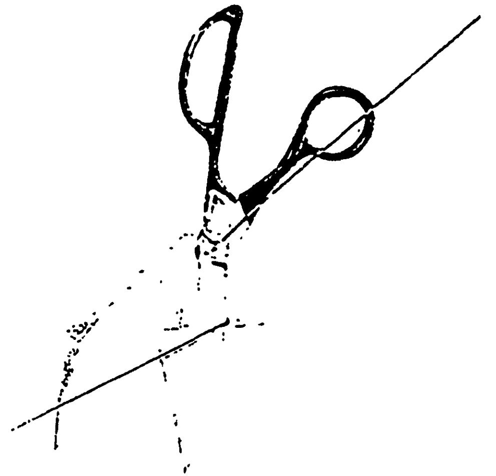

The Governor

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 30, 1992

To be a member of the **Texas Department of Commerce Policy Board** for a term to expire February 1, 1997: Gerald Grinstein, 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102-5384. Mr. Grinstein will be filling the unexpired term of Alan R. Kahn of Dallas who resigned.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1995: Raymond J. Snokhous, 12411 Boheme Street, Houston, Texas 77024. Mr. Snokhous is being appointed to a new position pursuant to Senate Bill 1460, 72nd Legislature.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1995: Sydney Dale Colvill, 5100 San Felipe, #158E, Houston, Texas 77056. Ms. Colvill is being appointed to a new position pursuant to Senate Bill 1460, 72nd Legislature.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1994: Leonarado De La Garza, Ph.D., 10220 Woodway Drive, El Paso, Texas 79925. Dr. Garza is being appointed to a new position pursuant to Senate Bill Number 1460, 72nd Legislature.

Appointments Made October 2, 1992

To be a member of the **Teachers' Professional Practices Commission** for a term to expire August 31, 1994: Daniel Hernandez, P.O. Box 1081, Elsa, Texas 78543. Mr. Hernandez will be replacing Robert William Caster of Fredericksburg whose term expired.

To be a member of the **Teachers' Professional Practices Commission** for a term to expire August 31, 1994: Joyce L. Mosley, P.O. Box 1093, Kingsville, Texas 78364. Ms. Mosley will be replacing Irene Rieck of Brownfield whose term expired.

To be a member of the **Family Practice Residency Advisory Committee** for a term to expire August 29, 1995: Judith A. Youngs, 11710 Pine Forest Drive, Dallas, Texas 75230-2833. Ms. Youngs will be replacing Georgia Swift of Amarillo whose term expired.

To be a member of the **Hospital Licensing Advisory Council** for a term to expire December 7, 1997: Jane Perez, P.O. Box 61, Hempstead, Texas 77445. Dr. Perez will be replacing Mayola Elizabeth Lasater of Aledo whose term expired.

To be a member of the **Maternal and Child Health Advisory Committee** for a term to expire August 31, 1997: Roland J. Dominguez, M.D., 1034 East Matz, Harlingen, Texas 78550. Dr. Dominquez will be replacing Dr. Jacob Kay of Austin whose term expired.

To be a member of the **Maternal and Child Health Advisory Committee** for a term to expire August 31, 1997: Catherina Jo Clardy, M.D., 2309 Greenlee Drive, Austin, Texas 78703. Dr. Clardy will be replacing Dr. William McGanity of Galveston whose term expired.

To be a member of the **Texas Inter-Agency Council on Minority Health Affairs** for a term to expire January 31, 1994: Bala N. Aiyer, M.D., 3119 Stephen's Creek, Sugar Land, Texas 77478-4268. Dr. Aiyer will be replacing Linda Lopez of San Antonio whose term expired.

To be a member of the **Texas Council on Alzheimer's Disease and Related Disorders** for a term to expire September 1, 1994: Betty Key Haisten, 3590 Brentwood Drive, Beaumont, Texas 77706. Ms. Haisten is being reappointed.

To be a member of the **Texas Council on Alzheimer's Disease and Related Disorders** for a term to expire September 1, 1994: Fredericka G. Younger, 336 Terrell Road, San Antonio, Texas 78209. Ms. Younger will be replacing Dr. J. Howard Frederick of San Antonio whose term expired.

To be a member of the **State Pension Review Board** for a term to expire January 31, 1997: Cheryl L. Dotson, 4126 Harbour Circle, Missouri City, Texas 77459. Ms. Dotson will be replacing Gary L. Hughes of Lubbock who resigned.

To be a member of the **Texas Surplus Property Agency Board** for a term to expire March 19, 1997: Travis R. Cooper, 12507 Leitrim Way, Houston, Texas 77047. Mr. Cooper will be replacing Franklin Pete Adams of Richardson whose term expired.

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 1995: Olga M. (Cookie) Mapula, 5837 Kingsfield, El Paso, Texas 79912. Ms. Mapula will be filling the unexpired term of Kenneth K. Brimer, Sr. of Livingston who resigned.

To be a member of the **Trinity River Authority of Texas Board of Directors** for a term to expire March 15, 1997: Anton B. Brucks, M.D., 9601 Trailhill, Dallas, Texas 75238. Dr. Brucks will be filling the unexpired term of Joycie L. Burns of Teague whose name was withdrawn.

To be a member of the **Texas Board of Professional Land Surveying** for a term to expire January 31, 1997: Char Presnell Rothrock, 2504-4 Mandell, Houston, Texas 77006. Ms. Rothrock will be replacing Fern Maddera of Levelland who resigned.

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1997: Melba Lee-Hosey, 6046 Wortham Way, Houston, Texas 77033. Mrs. Lee-Hosey will be replacing Annie Mae Parker of Temple whose term expired.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1997: Dick L. Auld, Ph.D., P.O. Box 42122, Lubbock, Texas 79409-2122. Dr. Auld will be replacing Dr. William L. Bennett, Sr. who resigned.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1997: Aubrey James Allison, P.O. Box 68, Tulia, Texas 79088. Dr. Allison will be replacing George B. Babcock who is deceased.

To be a member of the **Texas Juvenile Probation Commission** for a term to expire September 31, 1997: Theresa B. Lyons, 4101 Longmeadow Way, Fort Worth, Texas 76133. Ms. Lyons will be filling the unexpired term of Arthur Beatrice Williams of Wichita Falls whose name was withdrawn.

To be a member of the **State Board of Examiners of Dietitians** for a term to expire September 1, 1997: Maxine Billinger Freeman, 10218 Crescent Moon Drive, Houston, Texas 77064. Ms. Freeman will be replacing James T. Moore of Austin whose term expired.

To be a member of the **Family Practice Residency Advisory Committee** for a term to expire September 29, 1994: Lillie Aguilar, 4427 Kemper, Lubbock, Texas 79416. Ms. Aguilar will be replacing Charles Allen Britch of Castroville whose term expired.

Issued in Austin, Texas, on October 2, 1992.

TRD-9213341 Ann W. Richards
Governor of Texas

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 'nmediately 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 I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter E. Interim Approval of Local Government Dune Protection and Beach Acess Plans

• **31 TAC §§15.70-15.79**

The General Land Office adopts on an emergency basis new §§15.70-15. 79, concerning the approval of the Nueces County and Cameron County dune protection and beach access plans, the identification and preservation of critical dune areas, and the preservation and enhancement of public beach access '- those counties as required by recent amendments to state law. The section is adopted on an emergency basis due to the imminent peril to the public health, safety, and welfare caused by ongoing human activities which, if left unregulated by Nueces County and Cameron County, are likely to alter or destroy critical dune areas, minimize or impair public beach access, and increase the potential for flood damage on the Texas coast.

Amendments to the Dune Protection Act and the Open Beaches Act require any local government with dune complexes and public beaches within its jurisdiction to manage development and other land uses in the beach/dune system through issuance of permits and certificates. The geographic scope of this authority generally includes an area extending landward 1,000 feet from the mean high tide line, though in some cases it extends beyond that to the closest public road. The legislation also addresses local government's adoption of beach traffic ordinances and beach user fees.

The legislation places the General Land Office in an oversight role and gives local governments new powers to manage dunes and beaches. It requires the General Land Office to promulgate rules that local governments must observe in exercising these new management powers. The General Land Office recently proposed permanent rules at §§15.1-15.10 (17 TexReg 6417) on management of he beach/dune system.

Nueces County and Cameron County have preceded the General Land Office in developing beach/dune system management programs. These counties have worked in close cooperation with the General Land Office and the Attorney General's Office. They have developed interim plans that basically meet the spirit and intent of the Open Beaches Act and Dune Protection Act. Because of the leadership role that Nueces County and Cameron County have played by pursuing early development of beach access and dune protection plans, and because their plans serve the purposes set out by the Texas Legislature, the General Land Office will grant interim approval of the plans.

Approval is granted on an interim basis because the plans will require further refinements and may also need revisions to be consistent with the permanent rules. These permanent rules will take effect early in '993 and require local governments to have permanent plans by June 1, 1993. The General Land Office's approval of the Nueces County and Cameron County plans under this interim rule will therefore expire at midnight on May 31, 1993. Nueces County and Cameron County will then resubmit their interim plans, with changes, if any, for certification under the permanent rules on management of the beach/dune system by that time.

The new sections are adopted on an emergency basis under the Natural Resources Code, §§61.011, 61.015(b), and 63.121 and the Water Code, §16. 321, which provides the General Land Office with the authority to identify and protect critical dune areas and to preserve and enhance public beach access. Section 16.321 provides the General Land Office with the authority to adopt rules on coastal flood protection.

§15.70. Policy. The General Land Office has identified the following policies as a basis for managing and regulating the beach/dune system:

(1) to assist coastal citizens and local governments in protecting, preserving, restoring, and enhancing coastal natural resources including barrier islands and peninsulas, mainland areas bordering the Gulf of Mexico, and the floodplains, beaches and dunes located there;

(2) to aid coastal landowners in using beachfront property in a manner compatible with preserving public property, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing loss of life and property due to inappropriate coastal development and the destruction of protective coastal natural features;

(3) to foster mutual respect between the public and private property owners and assist local governments in managing the Texas coast so that the interests of both the public and private landowners are protected;

(4) to promote dune protection and ensure that damage and destruction of dunes and dune vegetation is avoided whenever practicable. If damage cannot be avoided and has been minimized, every effort must be made to repair damaged dunes and their vegetation, to restore dunes and plant indigenous vegetation, and to rehabilitate existing dunes and dune vegetation;

(5) to encourage the use of environmentally sound erosion response methods and discourage those methods such as rigid shorefront structures which can have a harmful impact on the environment and public and private property;

(6) to aid communities located on barrier islands, peninsulas, and mainland areas bordering the open Gulf of Mexico which are extremely vulnerable to violent storms and flooding by working to reduce flood losses, minimizing any waste of public funds in the federal flood insurance program, and ensuring that the insurance remains available and affordable;

(7) to protect the public's right to access, use, and enjoy the public beach and associated facilities and services as established by state common law and statutes. The public has vested property rights in Texas' public beaches, and free use and access on and to the beaches are guaranteed. The Open Beaches Act requires local governments to preserve and enhance access between the beaches and public roads. If an access point must be closed, then it must be replaced with equal or better access. Whenever practicable, local governments should establish new public beach access;

(8) to provide coordinated, consistent, responsive, and predictable governmental decision making and permitting processes;

(9) to recognize that the beach/dune system contains resources of statewide value and concern, and that local governments are in the best position to manage coastal resources on a daily basis. These rules are designed to provide local

governments with the necessary tools for effective coastal management and are regarded as a minimum standard; local governments are encouraged to develop procedures that provide greater protection for the beach/dune system;

(10) to educate the public about coastal issues such as dune protection, beach access, erosion, and flood protection, and provide for public participation in the protection of the beach/dune system and in the development and implementation of the Texas Coastal Management Program.

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

Applicant–Any person applying to a local government for a permit, certificate or preliminary approval of any construction, or development plan.

Backdunes–The dunes located landward of the foredune ridge which are usually well vegetated, but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

Beach access–The right to use and enjoy the public beach including the right of free ingress and egress to and from the public beach.

Beach/dune system–The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

Beachfront construction certificate or certificate–The document issued by a local government that authorizes beachfront construction adjacent to and landward of a public beach, based on the requirements of this subsection; the certificate must include a finding by the local government that the construction will preserve and enhance public access to the public beach as required by the Texas Natural Resources Code, §61.015(c)-h).

Beach maintenance–The cleaning or removal of debris from the beach by hand picking, raking, or mechanical means.

Beach profile–The shape and elevation of the beach as determined by surveying a cross section of the beach.

Beach user fee–A fee collected by a local government in order to provide and maintain beach-related services to enhance access to and safe and healthy use of public beaches by the public.

Blowout–A breach in the dunes caused by wind erosion.

Coastal and shore protection project–A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, dune creation, and dune revegetation.

Commercial facility–Any structure used for producing, manufacturing, distributing, and selling goods or services in commerce including, but not limited to hotels, restaurants, bars, rental operations, and rental properties.

Construction–Any building, bulkheading, filling, clearing, excavating, scraping, or substantial alteration of a site or increasing the size of any structure located on the site. Construction includes the removal or alteration of a dune or dune vegetation, clearing or grading a site, placing construction materials on a site, site work extending beyond the limits of the foundation, creation of vehicular or pedestrian trails, and landscape work. Activities such as building canals or channels, and any dredging or disposal of dredged spoil is also considered construction.

Coppice mounds–The initial stages of dune growth, formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach.

Critical dune areas–Those portions of the beach/dune system within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that protect public roads, public beaches, coastal public lands, and similar property from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include the dunes that store sand in the beach/dune system to replenish eroding public beaches.

Cumulative impact–The impact on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Dune–An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the open Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be man-made. Natural dunes are usually found adjacent to the uppermost limit of wave action and are marked by an abrupt change in slope landward of the beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, and backdunes.

Dune Protection Act–Texas Natural Resources Code, §63. 001, et seq.

Dune protection and beach access plan or plan–A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and preserving and enhancing access to and use of public beaches.

Dune protection line–A line established by a county commissioners court or the governing body of a municipality for the purpose of preserving sand dunes. Such line will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

Dune protection permit or permit–The document issued by a local government to authorize construction in a specified location seaward of a dune protection line or within the critical dune area, as provided in the Texas Natural Resources Code, §63.051.

Erosion–The wearing away of land or the removal of beach and/or dune material by wave action, tidal currents, wave currents, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

Erosion response structure–A hard or rigid technique used for shoreline stabilization which includes, but is not limited to, a jetty, retaining wall, groin, breakwater, bulkhead, seawall, riprap, rubble mound, or revetment.

FEMA–The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and promulgates the official flood insurance rate maps.

Foredunes–The first clearly distinguishable, usually grass-covered, stabilized large dunes encountered landward of the open Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous foredunes are typically hummocky and discontinuous and are often interrupted by breaks and washover channels. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the open Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

Foredune ridge–The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

Indirect impacts–The impacts on beach use and access or on a critical dune area and areas seaward of the dune protection line which are caused by an action and are later in time or farther removed in distance than a direct impact, but are still reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Indirect impacts may also include those resulting from actions which may have both beneficial and detrimental

effects, even if on the balance the local government believes that the effect will be beneficial.

Industrial facilities-Any structure used for generation, storage, treatment, management, transport, or disposal of waste including, but not limited to, solid and hazardous waste management facilities, medical waste management facilities, and landfills.

Line of vegetation-The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

Local government-Nueces County or Cameron County and any branch of county government.

Mitigation sequence-The series of steps which must be taken to restore and replace dunes and dune vegetation damaged by permitted or certified activities.

National Flood Insurance Act-42 United States Code, §§4001 et seq.

Natural resources-Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

Open Beaches Act-Texas Natural Resources Code, §§61. 001, et seq.

Owner or operator-Any person owning, operating, or responsible for operating commercial or industrial facilities.

Permit or certificate condition-A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, and property which a permittee satisfies in order to be in compliance with the permit or certificate.

Permittee-Any person authorized to act under a permit or a certificate issued by a local government.

Person-An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

Practicable-Achievable using the best available technology or technique which provides the protection of public beaches, dunes and dune vegetation as required under this subchapter. In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique as it relates to the scope of the project.

Public beach-Any beach that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area, to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. A beach that is not accessible by a public road or ferry as provided in the Natural Resources Code, §61.021, is not a "public beach" for as long as the condition exists.

Recreational vehicle-A dune buggy, marsh buggy, motorcycle, minibike, trail bike, jeep, or any other mechanized or humanly propelled vehicle being used for recreational purposes.

Sand budget-The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

Seaward of a dune protection line-The area between a dune protection line and the line of mean high tide.

Structure-Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

Variance-Any grant or approval issued by a local government not conforming to the rules of the FEMA.

Washover areas-Low areas that channel storm tides across barrier islands and peninsulas into bay areas. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or weakened due to storm tides and wind erosion.

§15.72. Administration.

(a) Approval of Nueces County and Cameron County plans. This rule applies only to those areas regulated under the Nueces County and Cameron County dune protection and beach access plans. In this rule the General Land Office is approving the Nueces County dune protection and beach access plan, adopted by order of the Nueces County Commissioners' Court on March 25, 1992, and the Cameron County dune protection and beach access plan, adopted by order of the Cameron County Commissioners' Court on August 3, 1992. Approval under this section will expire at midnight on May 31, 1993, and both the Nueces County and Cameron County plans will be subject to revision in accordance with the Management of the Beach/Dune System rules to be adopted by the General Land Office. The revised plans must be submitted to the General Land Office by June 1, 1993, as required by the Management of the Beach/Dune System rules.

(b) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall integrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. Such plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(c) Dune protection lines and critical dune areas. The commissioner of the General Land Office, as trustee of the public land of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, §63.121 and §63.012 respectively limit the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(d) Beachfront construction certification areas. The General Land Office, in conjunction with the Attorney General's office, has the responsibility to protect the public's right to use and access the public beach and to provide standards to the local governments certifying construction on land adjacent to the open Gulf of Mexico consistent with such public rights. The Open Beaches Act, §61.011(d)(6) limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road or the area up to 1,000 feet of mean high tide, whichever distance is greater.

(e) Establishment of dune protection lines. Local governments shall establish dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. Local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon notification of the establishment or change in the location of the dune protection line, the General Land Office shall review the location of the line. If the General Land Office is satisfied that all critical dune areas are seaward of the dune protection line, the General Land Office will notify the local government of this finding in writing. If the local government does not locate the dune protection line landward of critical dune areas, the General Land Office

will assist and advise the local government in adjusting the line. Local governments are required to file a map and description of their dune protection lines with the clerk of the county or municipality establishing the line and with the General Land Office.

(f) Notice of establishment of a dune protection line. Local governments shall provide notice of a public hearing to consider establishing a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less that one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing.

(g) Local government authority. Local governments shall include in the plans submitted to the General Land Office and the Attorney General's office all policies and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs. Local governments shall integrate these programs into one plan. The General Land Office will provide written guidance on the form and content of plans upon written request by a local government.

(h) Submission of local government plans to state agencies. Local governments shall submit dune protection and beach access plans to the General Land Office for review, comment, and certification as to compliance with the policies and rules of this subchapter and to the Attorney General's office for review and comment. The local government's governing body must formally approve the plan prior to submission to the state agencies. The General Land Office shall either grant or deny certification of a local government's proposed dune protection and beach access plan within 60 days of receipt of the plan. In the event of denial, the General Land Office shall send the proposed plan back to the local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for state agency review as provided in this section. The General Land Office shall grant or deny certification of a local government's revised plan within 60 days of receipt of the plan. The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, §61.011.

(i) Areas exempt from local government plans. Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

(1) lands owned by the federal government, unless federal law provides otherwise;

(2) state parks, wildlife refuges, or other areas owned by the state for conservation purposes;

(3) areas not accessible by public road or common carrier ferry for as long as that condition exists.

(j) State-owned land not exempt from local government plans. Local government plans shall apply to all state-owned land other than parks and refuges subject to the provisions of the Natural Resources Code, §§31.161, et seq.

(k) Acts prohibited without a dune protection permit or beach access certificate. An activity requiring a dune protection permit will typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by Nueces County or Cameron County authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from permit requirements. Pursuant to the Texas Natural Resources Code, §63. 052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act:

(A) production of oil and gas and reasonable and necessary activities directly related to that production;

(B) grazing livestock and reasonable and necessary activities directly related to grazing; and

(C) private recreational activities of the person owning the land and the social guests of the owner. Private recreational activities include, but are not limited to, hiking, sunbathing, and camping for less than 21 days. Operation of recreational vehicles is not exempt.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction in Nueces County or Cameron County landward of a public beach and within 1,000 feet of mean high tide or up to the first public road, whichever distance is greater, in a manner that affects or may affect public access to and use of the public beach unless the construction is properly certified by the appropriate county as consistent with this subchapter and the Open Beaches Act.

(4) Permit and certificate application requirements. Nueces County and Cameron County shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to determine whether it should grant or deny a permit or certificate. Nueces County and Cameron County may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information:

(A) the name, address, phone number, and, if applicable, fax number of the applicant;

(B) a detailed description of the proposed construction and the construction site including, but not limited to:

(i) a legal description of the lot;

(ii) the total acreage or square footage of the lot;

(iii) the total acreage of the subdivision if the applicant is the owner of the subdivision;

(iv) existing and finished elevation range;

(v) the number of structures, and, in the case of multiple dwellings, the number of units proposed;

(vi) the number of parking spaces;

(vii) the approximate percentage of existing and finished open space;

(viii) the type of building material and the type of construction (floor plan and view);

(ix) blueprints;

(x) plats;

(xi) site/location maps identifying:

(I) the subdivision, block, and lot of the proposed construction;

(II) the location of any seawalls or any other structures on the property or within 300 feet of the boundaries of the property; and

(III) the location and extent of any reconstructed dunes, dune promotion efforts, fill activities, or any other preexisting human modifications to the beach/dune system;

(xii) a description of any existing or proposed walkways or dune walkovers;

(xiii) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction; and

(xiv) a grading and layout plan identifying the existing and the finished elevation of the site;

(C) photographs of the site which clearly show the current location of the vegetation line, the existing dunes, and all areas on the site which will be affected by the proposed activity;

(D) a copy of any topographical survey of the site, if the applicant has had such a survey performed;

(E) the name and address of any contractor(s) hired to perform the activity;

(F) approximate duration of the construction;

(G) alternatives to the proposed activity, site, or methods;

(H) a comprehensive mitigation plan which includes a detailed description of the methods which will be used to avoid, minimize, and compensate for any damage to dunes or dune vegetation;

(I) a detailed description of the following:

(i) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots;

(ii) the cumulative and indirect impact of the proposed activity on public beach use and access;

(iii) the cumulative and indirect impact of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation and alteration of dune size and shape;

(iv) any irreversible and irretrievable loss of natural resources which would be caused by the proposed activity;

(v) the local historical erosion rate and the activity's impact on coastal erosion; and

(vi) the activity's impact on flood protection and protection from storm surge. In addition to the requirements in clauses (i)-(v) of this subparagraph, each beachfront construction application shall describe how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly the dune protection and beach access plan's provisions relating to ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion.

(5) Preliminary land use planning approvals. Local governments having approval authority of preliminary land use or construction plans such as plats, site plans, beach maintenance programs, and zoning for land uses permitting construction shall determine whether the plan will subsequently require a dune protection permit or a beachfront construction certificate. When considering approval of preliminary land use or construction plans, Nueces County and Cameron County shall consider the following factors:

(A) the applicant's ability to mitigate effects on dunes and dune vegetation and effects on beach use and access throughout the construction;

(B) the overall purpose of the plan;

(C) whether any component of the plan will subsequently require a dune protection permit or a beachfront construction certificate, such as an application for plat approval locating roads or utilities intended to service structures to be located in critical dune areas or seaward of the local government's dune protection line. If any preliminary land use or construction plan will preclude alternatives to locating the structures in the critical dune areas or seaward of the dune protection line, the local government shall not issue approval of the plan without requiring a dune protection permit or beachfront construction certificate.

(6) State agency comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local government shall forward the complete application, including any associated materials, to the General Land office. The local government shall forward a copy of all complete beachfront construction certificate applications to the Attorney General's office. The applications, any documents associated with the applications and a copy of the notice of the public hearing must be received by the General Land office and the Attorney General's office no later than 10 working days before the public hearing at which the local government is first scheduled to consider the permit or certificate. Local governments shall not issue a permit or certificate if the General Land Office and the Attorney General's office have not received the applications for those permits and certificates at least 10 working days before the local government is first scheduled to consider the permit or certificate.

(B) The General Land Office and the Attorney General's office may submit comments on the proposed activity to the local government. The authority of the General Land Office and the Attorney General's office to enforce any provision of this subchapter is not affected by either state agency failing to comment on the proposed construction.

(7) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate applications;

(B) this subchapter;

(C) any other law which affects the activity under review;

(D) the comments of the General Land Office and the Attorney General's office; and

(E) any other information the local government may consider useful to determine consistency with the local government's dune protection and beach access plan. Local governments shall not issue a dune protection permit or beachfront construction certificate that is inconsistent its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(l) Term and renewal of permits and certificates.

(l) A local government's dune protection permits or beachfront construction certificates shall only be valid for one year from the date of issuance. Local governments may renew a dune protection permit and beachfront construction certificate if the permittee provides the information required in the original permit or certificate application supplemented by additional information indicating any changes to the original information provided by the applicant. A permittee must apply for a new permit or a certificate if the permittee changes one or more of the following: the construction methods and materials; the scope or purpose of the construction; the location of any structure; and the access ways to the construction site. Each renewal of a permit and certificate shall be valid for no more than one year. A local government shall issue only two renewals for a permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate.

(2) Any permit or certificate issued by a local government shall be void if inconsistent with the local government's plan or this subchapter or if a material change occurs after the permit or certificate is issued or if a permittee fails to disclose any material fact in the application.

(3) A local government shall require that a permittee apply for a new permit or certificate in the event of any material changes. Material changes include human or natural conditions which have impacted dunes, dune vegetation, or beach access and use that either:

(A) did not exist at the time the permittee prepared the original permit or certificate application; or

(B) which were not considered by the local government making the permitting decision because the permittee failed to provide information regarding the site condition in the original application for a permit or certificate.

(4) A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any point in time.

(m) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each decision made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) all materials the local government received from the applicant as part of or regarding the permit or certificate application;

(B) the minutes of the local government's meetings during which the decision to issue the permit or certificate was made; and

(C) all comments received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of two years from the date of a final decision on a permit or certificate. Local governments shall send a copy of the administrativerecord to the General Land Office or the Attorney General's office upon request by either agency. The record must be received by the appropriate agency no later than 10 working days after the local government receives the request.

§15.73. Dune Protection Standards.

(a) Dune protection required. This section provides the standards local governments shall follow in issuing denying or conditioning dune protection permits. Nueces County and Cameron County shall protect dunes and dune vegetation from damage resulting directly or indirectly from construction in or seaward of a critical dune area or its dune protection line, as cumulatively required by the Dune Protection Act, this subsection, and that local government's dune protection and beach access plan.

(b) Findings required for dune protection permit issuance. A local government may approve a permit application only if it find; as a fact, after a full investigation, that the particular conduct proposed will not materially weaken or damage any dune or dune vegetation or reduce the effectiveness of any dune as a mean, of protection from erosion and high wind and water. In making this finding, a local government shall consider:

(1) all comments submitted to the local government by the General Land Office and the Attorney General's office;

(2) cumulative and indirect impacts of the proposed construction on all dunes and dune vegetation within the beach/dune system;

(3) cumulative and indirect impacts of other activities on dunes and dune vegetation located on the proposed construction site;

(4) the pre-construction type, height, width, slope, volume and continuity of the dunes, and the pre-construction condition of the dunes and the dune vegetation on the site;

(5) the local erosion rate and whether the proposed construction will alter dunes and dune vegetation in a manner that will aggravate erosion;

(6) the applicant's mitigation plan for any damage to dunes and dune vegetation and the effectiveness, feasibility, and desirability of any proposed dune reconstruction and revegetation;

(7) the impacts on the natural drainage patterns of the site and adjacent property;

(8) any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat for indigenous, migratory, threatened, and endangered species;

(9) the visual appearance of the dunes and the dune vegetation;

(10) wind and storm patterns including a history of washover patterns;

(11) location of the site on the flood insurance rate map; and

(12) success rates of dune stabilization projects in the area.

(c) Prohibited activities. Nueces County and Cameron County shall not permit or certify the following actions in or seaward of critical dune areas or that local government's dune protection line:

(1) activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

(A) moving sand to a location landward of the critical dune area or dune protection line; and

(B) temporarily or permanently moving sand off the site, except for purposes of permitted compensatory mitigation;

(2) depositing sand, soil, sediment, or dredged spoil which contains any of the toxic materials listed in volume 40 of the Code of Federal Regulations, Part 302.4, or other contaminants or is of a different mineralogy or grain size than the sediments found on the site;

(3) creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

(4) constructing or operating industrial facilities including, but not limited to, solid, hazardous, or medical waste management facilities and landfills not operating in full compliance with all relevant laws and permitting requirements prior to the effective date of this subchapter;

(5) operating recreational vehicles;

(6) mining dunes;

(7) constructing concrete slabs;

(8) depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks;

(9) constructing cisterns, septic tanks, and septic fields seaward of any structure; and

(10) detonating bombs and explosives.

(d) Mitigation. The mitigation sequence consists of three steps: avoid, minimize, and compensate for damage to dunes and dune vegetation. Nueces County and Cameron County shall require permit conditions consistent with the mitigation sequence if that local government finds, after the investigation required in subsection (b) of this section, that an activity will result in any damage to dunes or dune vegetation.

(1) Avoidance. Local governments shall require permittees to avoid damage to dunes and dune vegetation. Local governments shall not issue a permit allowing any damage to dunes or dune vegetation located in critical dune areas or seaward of the dune protection line unless there is no practicable alternative to the proposed activity, proposed site, or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those carrying oil and gas from an exploration and production facility that is exempt from permit requirements under §15. 72(k)(2)(A) of this title (relating to Administration).

(i) Local governments shall not allow permittees to construct pipelines across barrier islands or within critical dune areas unless there is no practicable alternative.

(ii) If a permittee demonstrates that there is no practicable alternative to crossing dune areas, the local government may allow a permittee to construct the pipelines across previously disturbed areas, such as washover channels and blowout areas. Where use of previously disturbed areas is not practicable, the local government shall require the permittee to avoid surface damage and not disturb dune surfaces.

(B) Location of construction and beach access.

(i) Local governments shall require permittees to locate all construction as far as practicable landward of foredunes.

(ii) Local governments shall require permittees to minimize pedestrian traffic on or across dune areas to the greatest extent practicable.

(iii) Local governments shall require permittees to route private pedestrian beach access to the public beach through washover channels or over elevated walkways. Nueces County and Cameron County shall route public pedestrian beach access through washover channels or over elevated walkways. All pedestrian access routes and walkways shall be clearly and conspicuously marked with permanent signs by Nueces County and Cameron County if the beach access is public.

(iv) Local governments shall require permittees to minimize proliferation of excessive private access by allowing only one joint use access route or walkway to the public beach from any proposed subdivision, multiple dwelling, or commercial facility. In determining the appropriate grouping of access points, the Nueces County and Cameron County shall consider the size and scope of the development.

(v) Nueces County and Cameron County and the owners and operators of commercial facilities, subdivisions, and multiple dwellings within Nueces County and Cameron County shall post signs in areas where pedestrian traffic is high, explaining the functions of dunes and the importance of vegetation in preserving dunes.

(C) Location of roads.

(i) Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward as practicable of critical dune areas and shall not allow a permittee to locate such roads seaward of the foredunes.

(ii) Wherever practicable, local governments shall require permittees to construct roads leading to beaches in washover channels, blowout areas, or other areas where dune vegetation has already been disturbed; local governments shall require permittees to build such roads so as to follow the natural land contour, and further require that permittees minimize the width of such roads. Where practicable, local governments shall require permittees to locate roads at an angle to the prevailing wind direction.

(iii) Wherever practicable, Nueces County and Cameron County shall provide vehicular access to beaches from existing roads or from roads constructed in accordance with clauses (i) and (ii) of this subparagraph.

(iv) Local governments shall require a permit condition prohibiting persons from using or parking any motor vehicle on, through, or across dunes in critical dune areas except along designated access ways.

(D) Artificial channels. Nueces County and Cameron County shall not permit construction of new artificial channels, including stormwater runoff channels, unless there is no practicable alternative and the channels are located in a manner which avoids erosion and unnecessary construction of additional channels. Local governments shall require that permittees make maximum use of natural or existing drainage patterns, whenever practicable, when locating new channels. However, if new channels are necessary, local governments shall require that permittees direct all runoff inland and not to the open Gulf of Mexico, where practicable.

(2) Minimization. Local governments shall require that permittees minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If a permittee for a dune protection permit demonstrates to the local government that damage to dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittee to minimize damage to dunes or dune vegetation to the greatest extent practicable.

(3) Compensation. Local governments shall require that permittees compensate for all damage to dunes and dune vegetation which will occur after the permittee has avoided and minimized such damage to the greatest extent practicable. The local government shall require that permittees compensate for such damage by repairing, rehabilitating, or restoring the affected dunes and dune vegetation. Local governments shall require that the permittee construct repaired, rehabilitated, or restored dunes (of the same volume as the preexisting dunes) and dune vegetation which are superior or equal to the preexisting dunes and dune vegetation in the ability to protect:

(A) adjacent public and private property from potential flood damage, nuisance, and erosion; and

(B) indigenous, migratory, threatened, and endangered flora and fauna.

(4) Off-site compensation. Local governments shall require that a permittee's compensation efforts take place on the construction site unless the permittee demonstrates the following facts to the local government:

(A) on-site compensation is not practicable;

(B) the off-site compensation will be located as close to the construction site as practicable;

(C) the proposed off-site compensation has already achieved a 1:1 ratio of proposed damage to completed, stabilized restoration; and

(D) the permittee has notified FEMA of the proposed off-site compensation.

(5) Information required for off-site compensation. Local governments shall require permittees provide the following information when proposing off-site compensation:

(A) the name, address, phone number, and fax number, if applicable, of the owner of the property where the off-site compensation will be located;

(B) the source of sand and the dune vegetation;

(C) the date of initiation of the compensation;

(D) all information regarding permits and certificates issued for the reconstruction of dunes on the compensation site;

(E) all relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site; and

(F) any increase in potential flood damage to the site where the damage to dunes and dune vegetation will occur and to the public and private property adjacent to that site.

(6) Compensation for damage to dune vegetation. Local governments shall require that permittees compensate for damage to dune vegetation by planting indigenous vegetation on the affected dunes. Local governments shall encourage permittees to use indigenous vegetation and may allow a permittee to use temporary sand fencing. Local governments shall prohibit a permittee from compensating for damage to dune vegetation by removing existing vegetation from private or state-owned property unless the permittee has received prior written permission from the property owner or the state. Local governments shall require the permittee to provide a copy of the written permission for vegetation removal and to identify the source of any sand and vegetation which will be used to compensate for damage to dunes and dune vegetation in the mitigation plan contained in the permit application.

(e) Dune reconstruction standards. Local governments may allow a permittee to reconstruct dunes by vegetative or mechanical means. Local governments shall require that a permittee proposing to reconstruct dunes use the following techniques:

(1) reconstruct dunes to approximate the natural dune shape size, elevation, and sediment content in the area;

(2) allow for the natural dynamics and migration of dunes;

(3) stabilize foredunes reconstructed in washover channels using appropriate methodology for the site; and

(4) use discontinuous or continuous temporary sand fences and indigenous plants where appropriate considering the characteristics of the site.

(f) Stabilization of critical dune areas. Local governments shall give priority for stabilization to blowouts and sand flats when permitting reconstruction of dunes. Before permitting stabilization of washover channels, local governments shall:

(1) assess the overall impact of the project on the beach/dune system; and

(2) consider the project's effects on hydrology and drainage.

(g) Compensatory mitigation deadline.

(1) Initiation of compensation. Local governments shall require permittees to begin compensation for damage to dunes and dune vegetation when the damage first occurs, but in no event shall a permittee fail to begin compensation within 90 days of the permit issuance date.

(2) Completion of compensation. Local governments shall require permittees to conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of compensation.

(3) State agency notification of compensation certification. Local governments shall notify the General Land Office after determining that the compensation is complete. No sooner than 30 working days after receipt of notification by the General Land Office the local government shall certify that compensation is complete. The General Land Office may conduct a field inspection to ensure compliance with this subchapter.

(4) Violation of compensation deadline. The General Land Office recognizes that the time necessary to restore dunes and dune vegetation varies with factors such as climate, soil moisture, and plant stability. However, in no event shall the permittee fail to achieve compensation, using a 1:1 ratio, within two years after beginning compensation efforts.

§15.74. Beachfront Construction Standards.

(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow in issuing, denying, or conditioning beachfront construction certificates. In general, Nueces County and Cameron County shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification consists of an affirmative finding of a local government that the proposed construction does not encroach upon the public beach, nor does it interfere with, or otherwise restrict the public's right to use and access the public beach.

(b) Prohibition of certification. Local governments shall not certify beachfront construction that requires a permittee to:

(1) reduce the size of the public beach in any manner; or

(2) close or otherwise impair any existing public beach access point unless the local government simultaneously provides or requires the permittee to provide equivalent or better public access.

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. A local government is prohibited from issuing a certificate to any person proposing any construction on the public beach or any construction that encroaches in whole or part on the public beach. This prohibition does not prevent the approval of reconstructed dunes and dune walkovers under a properly issued dune protection permit. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Except as provided in subparagraphs (A) and (B) of this paragraph, local governments shall not issue any beachfront construction certificate for construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach or on state submerged lands, regardless of whether the encroachment is on land that was previously landward of the public beach.

(A) A local government may issue a beachfront construction certificate to any person for construction landward of the public beach that functionally supports or depends on, or is otherwise related to, a structure within the public beach that has been damaged less than 50 by a storm or other casualty. The local government shall grant the certificate only upon the condition that the permittee undertake no related construction within the public beach other than that construction necessary for minimum repairs required to maintain the structure, and further that the structure be demolished if the repairs are not completed within one year of the storm or casualty.

(B) As a condition to issuing any beachfront construction certificate pursuant to subparagraph (A) of this paragraph allowing construction landward of the public beach, local governments shall require the permittee to remove all structures, erosion response structures, construction and demolition debris, rubble, wreckage, waste, and salvageable material encroaching on the public beach within or seaward of the tract or lot on which construction is proposed. The permittee shall apply for a dune protection permit if the proposed activity will damage dunes or dune vegetation when removing the material encroaching on the public beach.

(d) Dedication of new beach access points.

(1) A local government shall certify beachfront construction subject to the permittee's dedication of new public beach access or parking areas where a local government finds that requiring the dedication is necessary due to the nature of the permittee's proposed construction.

(2) A local government shall require a permittee to dedicate access if it issues a certificate allowing a permittee to conduct activities which will impair beach access in any manner.

§15.75. Concurrent Dune Protection and Beachfront Construction Standards.

(a) Local government application of standards. This section provides the standards local governments shall follow when issuing, denying, or conditioning dune protection permits and beach front construction certificates. This section applies to both.

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which aggravates erosion.

(c) Prohibition of new erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure.

(d) Existing erosion response structures. In no event shall local governments permit or certify maintenance or repair of an existing erosion response structure which will allow a permittee to enlarge or improve the structure. Local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances:

(1) failure to repair the structure will cause unreasonable flood hazard to a public building, public road, public water supply, public sewer system, or other public facility landward of the structure; or

(2) failure to repair the structure will cause unreasonable flood hazard to a private dwelling because adjacent erosion response structures will channel flood waters to the private dwelling.

(e) Monitoring. The local government may require that a permittee conduct a monitoring program to study the effects of a coastal and shore protection project on the public beach.

(f) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes within Zones VI-30, V, and VE on FEMA's flood insurance rate maps.

(2) Nueces County and Cameron County shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(g) Construction in eroding areas. Nueces County and Cameron County in areas experiencing erosion shall discourage structures with large areas in contact with the ground, such as swimming pools, decks, and slab foundations. Nueces County and Cameron County shall require that structures built in eroding areas be placed on pilings. Local governments shall not allow a permittee to pave or alter the ground below the first habitable floor; however, loose shell may be used to stabilize driveways.

(h) Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit unless the construction and property design provide for the gradual, dispersed drainage of storm water runoff, such that runoff within the property approximates natural rates, volumes, and direction of flow. Local governments shall require that drain spouts shall be located so as to collect rainwater and distribute it evenly under the structure. Local governments shall require permittees to construct porches, patios, and balconies to allow rainwater to pass through and to ensure that all drainage from the lot shall flow inland away from the beach and foredune area.

§15.76. Local Government Management of the Public Beach.

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Nueces County and Cameron County shall encourage beach nourishment and sediment bypassing for erosion response management. If the permittee demonstrates that these types of projects are not technically or economically feasible, the local government shall only allow a structure(s) to be protected by the project to be relocated landward in accordance with FEMA regulations as provided in Volume 44 of the Code of Federal Regulations, Parts 59-77.

(c) Requirements for beach nourishment projects. Nueces County and Cameron County shall not allow a beach nourishment project unless it finds that:

(1) the sediment to be used is of similar grain size, mineralogy, and quality as the existing beach material;

(2) the proposed nourishment material does not contain any of the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4;

(3) there are no adverse environmental effects to the property surrounding the area from which the sediment will be taken or the site of the proposed nourishment; and

(4) the removal of sediment does not conflict with spawning seasons and

migratory movements of estuarine or marine dependent species, or have any other adverse impacts to natural resources.

(d) Reconstructed dunes on public beaches. Sand dunes, either naturally created or reconstructed, may aid in the preservation of the common law public beach rights by slowing beach erosion processes. Nueces County and Cameron County shall allow reconstruction of dunes on the public beach only under the following circumstances and conditions.

(1) Nueces County and Cameron County shall require persons to locate reconstructed dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Nueces County and Cameron County shall ensure that the 20-foot reconstruction area follows the natural migration of the vegetation line.

(2) Nueces County and Cameron County shall not allow any person to reconstruct dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.

(3) Nueces County and Cameron County shall require persons to reconstruct dunes in a manner which is continuous with any surrounding existing dunes and shall approximate the sediment content, shape, size, elevation, and volume of any existing dunes.

(4) Nueces County and Cameron County shall not allow any person to reconstruct dunes using any of the following methods or materials:

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, or asphalt rubble, and building construction materials;

(C) fine, silty sediments;

(D) sediments containing any of the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4; and

(E) sand obtained by scraping or grading dunes or the beach.

(5) Nueces County and Cameron County may allow persons to use the following dune reconstruction methods or materials.

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary sand fences conforming to General Land Office guidelines; and

(C) organic brushy materials such as used Christmas trees.

(6) Nueces County and Cameron County shall protect reconstructed dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction. All applications submitted to Nueces County or Cameron County for reconstructing dunes on the public beach shall be forwarded to both the General Land Office and the Attorney General's office at least 10 working days prior to the local government's consideration of the permit. Failure of the General Land Office or the Attorney General's office to submit comments on an application for such reconstructed dunes shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(7) Local governments shall not allow a permittee to construct or maintain a private structure on the reconstructed dunes, except for specifically permitted dune walkovers or similar access ways.

(e) Dune walkovers. Nueces County and Cameron County shall only allow dune walkovers, including other similar beach access mechanisms, which extend into the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require that permittees immediately relocate walkovers to follow any landward migration of the public beach.

(f) Preservation and enhancement of public access. Nueces County and Cameron County shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public rights of access to and use of the beach. Nueces County and Cameron County shall not impair or close an existing access point or close a public beach to pedestrian or vehicular traffic without prior approval from the General Land Office.

(1) Nueces County and Cameron County shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless alternative equivalent or better beach access is first provided by the local government.

(2) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subsection, and the former law is continued in effect until the regulations are amended or changed in whole or in part. Further, this provision does not apply to vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights of way. Although exempt from the certification procedure, such vehicular controls must nevertheless be consistent with the Open Beaches Act and these rules.

(g) Request for state agency approval of beach access. When requesting approval, a local government shall submit a plan to the General Land Office and the Attorney General's office providing the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) the status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access replacing the existing beach access. Such description shall demonstrate the method of providing equivalent or better access to the public beaches;

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls regarding the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all local government ordinances that impose existing vehicular controls;

(C) a statement of any short-term or long-range goals for restricting or regulating vehicular access and use;

(D) an analysis and statement of how the proposed vehicular controls are consistent or not with state standards in these rules for preserving and enhancing public beach access. If it is determined by the local government or by the

state that the vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office and attorney general. Such improvement plan shall be a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements;

(E) a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(h) Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, §61.015, any beach user fee plan required under the Texas Natural Resources Code, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs .

(i) State agency approval of vehicular control plan. Nueces County and Cameron County shall submit the plan to the General Land Office and the Attorney General's office no later than 90 working days prior to its action. A plan may be approved if the vehicular controls are found to be consistent with the Natural Resources Code and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the Nueces County and Cameron County shall obtain the state certification of the plan for the vehicular control pursuant to the Open Beaches Act, §61.022.

(j) Exemption. This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subsection, and the former law is continued in effect until the regulations are amended or changed in whole or in part. Further, this provision does not apply to vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights of way. Although exempt from the certification procedure, such vehicular controls must nevertheless be consistent with the Open Beaches Act and these rules.

(k) Maintaining the public beach. Nueces County and Cameron County shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of the dunes. Nueces County and Cameron County shall prohibit beach maintenance activities which will result in the redistribution of sand or which alters the beach profile. The General Land Office encourages the removal of litter and other debris by hand-picking or raking and strongly discourages the use of machines which disturb the natural balance of gains and losses in the sand budget.

(l) Prohibitions on signs. Nueces County and Cameron County shall not allow any person to display or allow to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner does not have the right of access to the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

§15.77. Beach User Fees.

(a) Reciprocity of fees. Nueces County and Cameron County shall coordinate beach user fees across jurisdictional boundaries to the maximum extent possible.

(b) Amount of beach user fees.

(1) Nueces County and Cameron County shall not impose a fee or charge for the exercise of the public right of access to public beaches. Nueces County and Cameron County may charge beach users a fee in exchange for providing services to beach users in general. Nueces County and Cameron County may only impose a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the direct and indirect costs of providing and maintaining beach-related services.

(2) Beach-related services which enhance access to and safe and healthy use of the public beach include, but are not limited to, services and facilities directly related to the public beach such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; providing public facilities such as restrooms, showers, lockers, equipment rental, and picnic areas; recreational and refreshment facilities; liability insurance; and necessary staff and personnel. Such public facilities and public services shall serve only those areas on or immediately adjacent to the public beach.

(3) Nueces County and Cameron County shall not impose a fee which:

(A) exceeds the necessary and actual cost of providing public facilities and services;

(B) unfairly limits public access to and use of public beaches;

(C) is inconsistent with this subsection or the Open Beaches Act; or

(D) discriminates on the basis of residence.

(c) Beach user fee plan. If Nueces County or Cameron County proposes a new or amended beach user fee, they shall first prepare a plan that includes at minimum the following information:

(1) current beach access system within its jurisdiction demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(2) a description of all existing beach user fees charged by the local government;

(3) all local ordinances that authorize the collection of existing beach user fees;

(4) an analysis and statement of how the proposed user fee is consistent or not with state standards set forth in this subchapter for preserving and enhancing public beach access;

(5) how the beach user fee relates to beachfront construction, vehicular controls, and parking, and dune protection within the jurisdiction of the local government;

(6) a statement of any short-term or long-range goals relating to the collection and use of beach user fees.

(d) State agency approval of beach user fees. Nueces County and Cameron County shall not impose a beach user fee or increase an existing beach user fee without prior approval from the General Land Office. To receive state approval for initiating or increasing a beach user fee, Nueces County and Cameron County shall submit to the General Land Office and the Attorney General's office the beach user fee plan no later than 90 working days prior to any local government action on the beach user fee. The General Land Office shall certify whether the initiation or increase of a beach user fee is consistent with this subchapter and the Open Beaches Act. Certification of consistency shall be by adoption into the rules authorized by the Open Beaches Act.

(e) Beach user fee revenues. Revenues from beach user fees collected by Nueces County and Cameron County may be used only for necessary services and facilities directly related to the public beach. Nueces County and Cameron County shall send quarterly reports to the General Land

Office stating the amount of beach user fee revenues collected and itemizing how beach user fee revenues are expended. The General Land Office may prescribe reporting forms or methods. The General Land Office shall suspend Nueces and/or Cameron county's privilege to collect fees and the approval of the dune protection and beach access plan will be revoked if the beach user fee revenues have been spent on services which are not beach-related.

(f) Beach user fee accounts. Nueces County and Cameron County shall follow the following methods for administering beach user fee accounts.

(1) Beach user fee revenues shall be maintained and accounted for so that fee collections may be directly traced to expenditures on public beach related services and facilities. Beach user fee revenues shall not be commingled with any other funds and shall be maintained in separate bank accounts.

(2) Beach user fee revenue may be used for reasonable overhead of the local government directly related to operation and maintenance of the beach related services and facilities.

(3) A separate financial statement shall be maintained for each beach user fee. All account balances and expenditures shall be documented according to generally accepted accounting principles.

(g) Free beach access. Nueces County and Cameron County shall maintain free public beach access by providing areas where no fee is charged for parking on or off beach and for pedestrian access.

(h) Access for disabled persons. Nueces County and Cameron County shall establish, preserve, and enhance access for disabled persons. Nueces County and Cameron County shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations on or related to the public beach by any person who owns, leases, or operates a place of such public accommodation, as provided in 42 United States Code, §12181.

(i) Identification of fee and non-fee areas. Nueces County and Cameron County shall conspicuously mark both fee and non-fee beach areas with signs that clearly indicate, at minimum: the location of both the fee and non-fee areas and the identity of the local government collecting the fee.

(j) Coordination with other beach-related plans. The beach user fee pLan may be a part of a local government's beach access and use plan required under the Open Beaches Act, §61.015, any vehicular control plan required under the Open Beaches Act, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans.

§15.78. Penalties.

(a) In addition to any penalties assessed by a local government, any person who violates either the Dune Protection Act, the Open Beaches Act, this subchapter, or a permit or certificate condition is liable to the General Land Office for a civil penalty of not less than $50 nor more than $1,000 per violation per day. Each day the violation occurs or continues constitutes a separate violation. Violations of the Dune Protection Act and the Open Beaches Act and the rules adopted pursuant to those statutes are separate violations, and the General Land Office may assess separate penalties. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act for the same act or omission. Conversely, compliance with the statute and the rules adopted thereunder does not preclude the General Land Office from assessing penalties under the other statute and the rules adopted pursuant to that statute.

(b) In determining whether the assessment of penalties is appropriate, the General Land Office will consider the following mitigating circumstances: acts of God, war, public riot, or strike; unforeseeable, sudden, and natural occurrences of a violent nature; and willful misconduct by a third party not related to the permittee by employment or contract.

§15.79. General Provisions.

(a) Construction. A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subsection controls. Certification of a local government beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of a local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The attorney general shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach. The General Land Office and the local governments will consult with the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible in whole or in part by public road or common carrier ferry facility, in administering its plan a local government shall presume any beach within its jurisdic tion is a public beach unless the owner c the adjacent land obtains a declaratory judgment otherwise under the Natural Resources Code, §61.019.

(d) Violations. No person shall violate any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein.

(e) Reporting violations. Local governments shall immediately inform the General Land Office of any violations or threatened violations of a permit, a certificate, the Dune Protection Act, Open Beaches Act, and this subsection.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Local governments that have had plan certification withdrawn by the General Land Office shall nevertheless continue to issue permits or other approvals in compliance with this subchapter, the Open Beaches Act and the Dune Protection Act. Without further action by the General Land Office, local government loses, by operation oı law, the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify any local government and the Attorney General's office 30 days prior to withdrawing General Land Office certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

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

TRD-9213242 Garry Mauro
Commissioner
General Land Office

Effective date: September 30, 1992

Expiration date: January 28, 1993

For further information, please call: (51:
463-5019

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TITLE 34. PUBLIC FINANCE

Part X. Texas Public Finance Authority

Chapter 223. Master Equipment Lease Purchase Program

- **34 TAC §§223.1, 223.3, 223.5, 223.7**

The Texas Public Finance Authority is renewing the effectiveness of the emergency adoption of new §§223.1, 223.3, 223.5, and 223.7, for a 60-day period effective October 15, 1992. The text of new §§223.1, 223.3, 223.5, and 223.7 was originally published in the June 23, 1992, issue of the *Texas Register* (17 TexReg 4513).

Issued in Austin, Texas, on September 30, 1992.

TRD-9213255 Pamela Scivicque
Accountant II
Texas Public Finance Authority

Effective date: October 15, 1992

Expiration date: December 14, 1992

For further information, please call: (512) 463-5544

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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 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 80. Tow Trucks

- **16 TAC §§80.10, 80.20, 80.30, 80.40, 80.70, 80.80-80.82, 80. 90, 80.91, 80.100, 80.101, and 80.103**

The Texas Department of Licensing and Regulation proposes amendments to §§80.10, 80.20, 80.30, 80.40, 80.70, 80.80-80.82, 80.90, 80.100, 80.101, 80. 103 and new §80.91, concerning the regulation of tow trucks. The proposed rules are a revision of existing rules by amending and adding to simplify, clarify, and organize. Section 80.40 is amended to align the department's insurance requirements with the state minimum for that particular class of vehicle established by the legislature.

James D. Brush II, director, policies and standards, 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. Brush 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 simplification and clarity of the rules and an increase in the number of registered tow trucks and enforcement of the minimum insurance requirements by the Department of Motor Vehicles, Department of Public Safety, and state inspection stations. The effect on small and large businesses will be an average savings per truck of approximately $868 annually. The anticipated economic savings to persons who are required to comply with the sections as proposed will be approximately $868 annually per truck.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments and new section are proposed under Texas Civil Statutes, Article 6687-9b, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules to assure compliance with the Act.

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

[Commission-The Texas Commission of Licensing and Regulation.]

[Commissioner-The commissioner of licensing and regulation.]

Consent tow-Any tow conducted with the permission of[, or at the direction of,] the towed vehicle's legal or registered owner[,] or [such owner's] authorized representative. [Except as set forth in the definition of "nonconsent tow" following, a tow will be considered a consent tow where the owner is able to give consent.]

[Department-The Texas Department of Licensing and Regulation.]

Disabled motor vehicle-A motor vehicle which has become incapacitated in any manner or by any means.

Engage in the business of-Possessing power over, responsibility for, or control of a tow truck and/or, owning, leasing, registering with the Texas Department of Licensing and Regulation, driving, or using a tow truck or a mini-wrecker on a public roadway.

Mini-wrecker-Self-contained nonself-propelled towing device **which includes, but is not limited to, trailers, dollies, and like devices.**

Motor vehicle-A vehicle subject to registration under the Certificate of Title Act (Texas Civil Statutes, Article 6687-1) or any other device designed to be self-propelled [or transported on a public highway] .

Nonconsent tow-Any tow conducted without the permission of [, or not at the direction of,] the towed vehicle's legal or registered owner[,] or [such] owner's authorized representative. [Regardless of this definition, certified law enforcement officials may control the scene of an accident in the manner they deem appropriate and order a nonconsent tow.]

Not for hire-The owner or operator does not operate or use a tow truck, as defined by this section, to tow, winch, or move any motor vehicle not owned by the person registering the tow truck.

[Operate-Driving a tow truck on a public roadway.]

Operator-Any person operating a tow truck[,] **or mini-wrecker on a public roadway** regardless of whether the person **is the owner** [owns the truck].

Original application-The required written application form, proof of insurance, [photographs] **sign affidavit**, and any and all applicable fees.

Person-An individual, **partnership, or corporation** [or any other legal entity].

Renewal application-The written **renewal** [application] form, proof of insurance, and any and all applicable fees.

Tow truck-A motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move motor vehicles. Specifically, wheeled vehicles with a mechanical, electrical, or hydraulic winch, hydraulic wheel lift, or mechanical wheel lift, that are adapted or used to tow, winch, or otherwise move vehicles are considered tow trucks. **Rollbacks are considered tow trucks as are trailers with gross weights over 2,000 pounds** [and flat bed trucks with slings, winches, or wheel lifts are considered tow trucks]. **Flat bed trucks with slings, winches, or wheel lifts are considered tow trucks.** Mini-wreckers [and auto trailers with a minimum 2, 000 pound load capacity] are also considered tow trucks, except where described in §80.30 of this title (relating to Exceptions).

[Tow truck owner-A person owning, leasing, or otherwise using, either directly or indirectly, a tow truck on a public roadway.]

§80.20. Registration Requirement.

(a) Each tow truck must have its own certificate of registration **which shall be renewed annually.** A certificate of registration is not [assignable or] transferable.

(b) (No change.)

(c) A certificate of registration allows a tow truck to be operated in the State of Texas, provided the tow truck **operator** complies with all other applicable state laws. [In particular, the provisions of the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, must be complied with when towing from one incorporated city to another. This Act and its rules do not in any way reduce, diminish, or otherwise affect the jurisdiction of the Texas Railroad Commission.]

(d) The certificate of registration, or a **duplicate** [an accurate] copy thereof, shall be kept in the tow truck at all times and presented immediately to any department representative or certified law enforcement official who asks to see it.

(e) A person, corporation, partnership, or any other entity desiring to operate a tow truck shall file, **on a form provided by** [an appropriate written application with] the department, **an application for a tow truck certificate of registration** [annually on a form provided by the department for that purpose]. The written application form shall be **completed, the sign and insurance affidavit attested to** [accompanied by a certificate of insurance, required photographs], and the required fees **attached**. The application must be signed by the tow truck's owner or the owner's authorized agent.

[(f) The following information is required in the original application:

[(1) year and make of the vehicle;

[(2) vehicle identification number;

[(3) gross weight;

[(4) current Texas license plate number;

[(5) name, address, and telephone number of the tow truck's owner;

[(6) sales tax identification number, if applicable;

[(7) two photographs of the tow truck, one of each side, showing the name, address, and telephone number of the business operating the tow truck permanently inscribed or affixed on each side as required by §80.100 of this title (relating to Technical Requirements); and

[(8) a certification claiming exemption if an owner is claiming an exemption from cargo insurance coverage.]

(f) [(g)] A renewal application must contain [the following information]:

(1) the **current** address and phone number of the tow truck owner [if different from that indicated on the original application];

(2) the vehicle's current Texas license plate number [if it is different from the one indicated on the original application; and

(3) **the tow truck special license plate number (tow tag number)** [the vehicle's current department certificate of registration number].

(g)[(h)] Both original and renewal applications shall include a certification that the truck complies with the safety and insurance requirements as set forth in §80.40 and §80.100 of this title (relating to Insurance Requirements and Technical Requirements-All Tow Trucks).

(h)[(i)] If the applicant is a corporation, the individual who signs the application form, by his signature, is certifying that the corporation is in good standing with the State Comptroller's Office.

(i)[(j)] **Renewal** [Annual renewal] applications may be submitted up to 45 days prior to the expiration of the original certificate of registration. All required fees must be submitted with the **signed** [written] renewal application.

(j)[(k)] If a tow truck owner fails to renew the certificate of registration before it expires, he may renew it on payment of the renewal fee and a $25 late fee. This renewal certificate of registration will be valid for one year from the date of its issuance by the department. If an application for renewal is not completed by the 31st day after the current certificate of registration expires, the certificate of registration may not be renewed **and the owner must comply with the requirements for an original certificate of registration**. [To reinstate the certificate of registration, the owner must comply with the requirements for an original certificate of registration.]

(k)[(l)] If a tow truck owner is **replacing** [retiring] a truck **that is being put out of service** [and replacing it, or replacing a truck that is being put out of service due to fire, theft, or other irreparable damage,] the owner may submit the required information for the new truck to the department, including a certificate of insurance demonstrating coverage of the new truck, along with a $25 duplicate registration fee, and a replacement certificate of registration will be issued that will remain valid for the replacement truck until the expiration date on the original certificate of registration for the truck being replaced.

§80.30. Exemptions.

[(a)] The commissioner has determined that there is insufficient legislative guidance to promulgate administrative rules regarding all tow trucks **and finds a need to except certain tow trucks or towing devices. They are:**

(1) vehicles bearing exempt or military license plates;

(2) rented tow bars or towing devices used by individuals who are not engaged in automotive or vehicle related businesses and which are being used on a one-time basis;

(3) hobbyists towing race cars, cars for exhibitions, or antique automobiles if using a trailer or roll back;

(4) towing a recreational vehicle or being towed by a recreational vehicle; or

(5) a vehicle designed and able to transport four or more vehicles at one time.

[(b)] Tow trucks or towing devices are exempt from regulation under the Act if they are:

[(1) vehicles bearing exempt or military license plate;

[(2) rented tow bars or towing devices used by individuals who are not engaged in automotive or vehicle-related businesses and which are being used on a one-time basis;

[(3) hobbyists towing race cars, cars for exhibitions, or antique automobiles;

[(4) recreational vehicles towing, or being towed by their owner; or

[(5) considered to be transports that haul four or more vehicles.]

§80.40. Insurance Requirements.

(a) A registrant shall procure, and keep in full force and effect, [at all times when the registration is in effect], all insurance required by this section. At the time of original registration[,] **the registrant** [and upon renewal, the insurance carrier,] or [its] authorized agent, must file a certificate of insurance with the department. The certificate must certify the type and amount of insurance coverage and provide for 30 days' written notice to the department of cancellation of or material change in the policy. **Insurance information shall be provided to a service recipient upon request.**

(b) **The policies and certificates shall be issued by a casualty insurance company which is authorized to do business in this state and shall comply with all applicable Texas Department of Insurance regulations.** [No insurance policy or certificate of insurance will be accepted by the commissioner unless issued by an insurance company licensed and authorized to do business in this state in the form prescribed or approved by the State Board of Insurance and signed or countersigned by an authorized agent of the insurance company. The commissioner will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of the Insurance Code, Article 1.14-2, and rules adopted by the State Board of Insurance under that article, if accompanied by an affidavit as proof of inability to obtain insurance from any insurance company authorized to do business in this state.]

(c) The coverage provisions insuring the public from loss or damage that may arise to any person or property by reason of

the operation of a tow truck shall **have** [set] minimum limits for each tow truck as follows:

(1) Each tow truck must have **minimum** liability insurance **covering damage for which the tow truck owner is liable** [coverage]. **Liability insurance coverage shall be no less than that required by the Texas Department of Insurance.** [It is the intent of this subsection to provide for insurance covering damage, except that to the towed vehicle, for which the tow truck owner is liable].

(A) Each tow truck with a gross vehicle weight of 26,000 pounds or less must carry **liability insurance equal to or exceeding $20,000-$40,000-$15,000 split limit coverage** [$300, 000 combined single limit coverage].

(B) Each tow truck with a gross vehicle weight over 2,000 pounds must carry **liability insurance equal to or exceeding $100,000-$300,000-$50,000 split limit coverage** [$500,000 combined single limit coverage].

(2) Each tow truck must have tow truck cargo, on-hook, or similar type insurance. It is the intent of this subsection to require insurance covering damage to the towed vehicle while it is in the care, custody, or control of the tow truck owner **while towing** and for which said **tow truck** owner is liable. [The term "damage" shall include, but is not limited to, damage to the towed vehicle that is the direct or indirect result of an improper hookup or improper towing.]

[(A)] Each tow truck with a gross vehicle weight of 26,000(pounds or less must carry cargo on-hook or similar type insurance in an amount not less than **$5,000** [$10,000]. **Tow trucks over 26,000 pounds must have this coverage in an amount not less than $25,000.** In lieu of this coverage, each truck may have garagekeeper's legal liability insurance with direct primary coverage options in an amount not less than **$5,000 if gross weight is 26,000 pounds or less or $25,000 if over 26,000 pounds** [$10,000] to cover damage to the towed vehicle. This provision does not apply to an owner whose tow truck tows only property he owns. For this exemption to apply, the owner must certify, on [in] his application for registration, that his truck is used to tow only property he owns. In addition, any owner claiming this exemption must permanently affix on each side of the truck, in letters at least two inches high, the phrase "Not For Hire."

[(B) Each tow truck with a gross vehicle weight over 26,000 pounds and a tandem axle must have tow truck cargo or on-hook insurance for the coverage of a towed vehicle in an amount not less than $25,000. In lieu of this coverage, each truck may have garagekeeper's legal liability insurance with direct primary coverage options in an amount not less than $25,000 to cover damage to the towed vehicle. This provision does not apply to an owner whose tow truck tows only property he owns. For this exemption to apply, the owner must certify, in his application for registration, that his truck is used to tow only property he owns. In addition, any owner claiming this exemption must permanently affix on each side of the truck, in letters at least two inches high, the phrase "Not For Hire."]

(d) The certificate of insurance shall also:

[(1) specify that the policy covers the vehicle subject to the certificate of registration;]

(1)[(2)] list the Department of Licensing and Regulation tow truck registration number, unless the truck is being registered for the first time and does not yet have a registration number;

(2)[(3)] identify the vehicle by make, model, and vehicle identification number, **Texas tow plate number (unless a replacement vehicle)**; and

(3)[(4)] indicate that the policy complies with the intent; of and minimum coverage limits established by these rules.

(e) **A tow truck registered under the Act shall not be operated upon cancellation or expiration, for whatever reason, of any insurance required by this section.** [Each tow truck must be insured so as to meet the requirements of all other applicable statutes, including the Texas Motor Carrier Act, in addition to meeting the insurance requirements set forth in this chapter.]

(f) **If the applicant's tow truck is insured under a fleet policy, the application must state this, and the policy number must be indicated on the application form.** [A tow truck registration issued under Texas Civil Statutes, Article 6687-9(b), shall be suspended upon cancellation or expiration, for whatever reason, of any insurance required by this section.]

(g) If the applicant's tow truck is self-insured under **the Texas Insurance Code, a copy of the self-insured certificate issued by the Texas Department of Insurance must be attached to the application** [a fleet policy, the application must state this, and the policy number must be indicated on the application form].

[(h) If the applicant's tow truck is self-insured under the Texas Insurance Code, a copy of the self-insured certificate issued by the insurance board must be attached to the application.]

§80.70. Responsibilities of the Tow Truck Owner.

(a) The tow truck owner must allow the department **or certified Texas Peace officers**, as part of an inspection or investigation, to enter his business premises during reasonable business hours to examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted, including, but not limited to, the operation of the tow truck in question.

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

(d) The tow truck registrant must notify the department, within 10 days, of any change in physical or mailing address.

§80.80. Fees-Original Registration. The annual fee for an original certificate of registration is $125 for each truck. [This fee is not refundable.]

§80.81. Fees-Renewal Registration.

(a) The annual fee for a renewal certificate of registration is $50 for each truck. [This fee is not refundable.]

(b) A late fee of $25 will be charged if the completed renewal certificate of registration application is postmarked up to 31 days after the original certificate of registration expires. [This fee is not refundable.]

§80.82. Fees-Duplicate Registration. A $25 fee will be charged for issuance of a duplicate certificate of registration. [This fee is not refundable.]

§80.90. Sanctions-Administrative Sanctions.

[(a)] If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner **may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100 and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).** [shall:]

[(1) issue a written reprimand to the person that specifies the violation;

[(2) deny, revoke, or suspend the person's license;

[(3) place on probation a person whose license has been suspended.

[(b) If a suspension is probated, the commissioner may require the person to:

[(1) report regularly to the commissioner on matters that are the basis of the probation; or

[(2) limit practice to the areas prescribed by the commissioner.

[(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner shall issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction. The commissioner shall base the recommended sanction, and any accompanying conditions, on the following factors:

[(1) the seriousness of the violation;

[(2) the history of previous violations;

[(3) the amount necessary to deter future violations;

[(4) efforts made to correct the violation; and

[(5) any other matters that justice may require.

[(d) Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

[(1) a brief summary of the charges;

[(2) a statement of the proposed sanction, and any accompanying conditions; and

[(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

[(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination.

[(f) If the person charged with the violation accepts the determination of the commissioner, the commissioner shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person.

[(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

[(h) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final as provided by Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §16(c), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §19.

[(i) A motion for a rehearing is a prerequisite for an appeal.]

§80.91. Sanction-Revocation, Suspension, or Denial Because of Criminal Conviction. Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing may suspend or revoke an existing registration, or disqualify a person from receiving a registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the applicant will be registered. The commissioner may also, after hearing, suspend, revoke, or deny a registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

§80.100. Technical Requirement-All Tow Trucks.

(a) **Tow truck license plates shall be mounted on the tow truck as prescribed by the Texas Department of Motor Vehicles under Texas Civil Statutes, Article 6675a-5i.** [Each tow truck must display a tow truck license plate issued by the Department of Motor Vehicles under Texas Civil Statutes, Article 6675a-1. The plate must be permanently attached and must face toward the rear of the vehicle. Additionally, the plate shall be placed as high up on the vehicle as possible behind the driver.]

(b) Each tow truck shall have the tow truck owner's **name or** business name, address, and telephone number permanently inscribed or affixed on each side of the truck in letters no less than **1/2 inch wide and** two inches high. The lettering should be of a color sufficiently different from the color of the truck to make it clearly and readily visible. For purposes of this requirement, the address need not include the street address or post office box number, but must include the city where the business is based. If the business is based in an unincorporated area, the county name must appear on the sides of the truck. [If federal law prohibits identification of the name or nature of the business, substitute identification approved by the department will be allowed.] In the event a self-contained nonself-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached and which is providing the motive and/or braking forces, must meet this requirement.

(c) (No change.)

[(d) Each turck shall have brakes that meet reasonable braking performance requirements under all loading conditions. In the event that a self-contained nonpropelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the braking force, must meet this requirement.]

(d)[(e)] No tow truck shall tow more than its actual weight unless it has a 35,000-pound winch, capacity (single or dual line), a 5/8-inch cable or its equivalent, and air brakes. In the event that a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, the term "actual weight" as used in this subsection shall mean the actual weight of said device plus the actual weight of the vehicle to which that device is attached and which is providing the motive and/or braking forces. If a certified law enforcement officer at the scene of an accident determines that the scene must be cleared immediately, and a heavy-duty tow truck is not available, the office may waive this requirement at the scene.

(e)[(f)] If a tow truck is pulling two or more vehicles, the tow truck must be able to tie into and operate the service brakes on the rearmost towed vehicle. This provision does not apply if the rearmost towed vehicle has only vacuum brakes. In the event that a self-contained nonself-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the motive and braking forces, must meet this requirement.

(f) [(g)] Each tow truck **except rollbacks and carrier,** shall be equipped with a winch, [and] a winch line, and boom with a lifting capacity of not less than 8,000 pounds, single line capacity or a hydraulic or mechanical wheel lift with a lifting capacity of not less than 2,500 pounds. In the event that a self-contained nonself-propelled towing device, or some other form of auxiliary device, is used, that device must have a

lifting capacity of not less than 5,000 pounds and a towing capacity of not less than 7,000 pounds.

(g)[(h)] Each tow truck shall have the following standard equipment:

(1) tow sling, mechanical lift, or hydraulic lift which is sufficient to prevent the swinging of any equipment being transported. This subsection does not apply to vehicle carriers and rollbacks unless the wheels of a vehicle they are towing are in contact with the ground. In the event that a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, the vehicle to which that device is attached, and which is providing the motive and braking forces, does not need to provide this equipment;

(2) 5/16-inch link steel safety chains for tow trucks with a gross vehicle weight of 10,000 pounds or less and 3/8-inch steel safety chains or their equivalent for tow trucks with a gross vehicle weight over 10,000 pounds. These link sizes are minimums. These chains are in addition to the normal J-hook-up chains;

(3) rope, wire, or straps suitable for securing doors, hoods, trucks, etc.; and

(4) outside rearview mirrors on both sides of the truck. In the event that a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the motive and/or braking forces, must meet this requirement.

(h) [(i)] **A tow truck shall have an auxiliary tail light and turn signal system capable of providing the tail lights and turn signals for vehicles being towed.** [If a tow truck is pulling a vehicle and the towed vehicle does not have functioning tail lights or turn signals, the tow truck operator must supply the towed vehicle with functioning tail lights and turn signals. The tail lights and turn signals must provide safe lighting of the towed vehicle.]

(i)[(j)] If a tow truck uses a winch, a safety wrap , **a chain connected from the top of the boom to the center of the T-bar,** must be performed.

(j)[(k)] Safety chains must be used on all tows, regardless of whether a sling style or wheel lift style apparatus is used.

(k)[(l)] All tow trucks with a slip-in bed must have the bed [properly] secured to the frame of the truck by a minimum of eight 1/2-inch diameter bolts. At least four of these bolts must **secure the** [be at the] front of the slip-in bed **to the frame.**

[(m) No tow truck shall lift or tow more than its safe lifting and stopping capacities permit.]

(l)[(n)] All tow truck operators must have a valid driver's license of the proper class.

(m)[(o)] **All tow trucks shall be inspected by a Texas Department of Public Safety approved state motor vehicle inspection station, shall have a valid inspection sticker properly affixed, and shall at all times meet conditions for receiving the inspection sticker.** [All required safety mechanisms of the tow truck, including, but not limited to, all headlights, tail lights, turn signals, brakes, brake lights, hazard lights. flashing warning lights, windshield wipers, wiper blades, and tires, shall operate and be in good repair.]

(n)[(p)] All tow trucks shall operate within the applicable recommended towed vehicle manufacturer's safety policies and procedures regarding the hook-up and towing of the towed vehicle.

(o)[(q)] All tow truck owners shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing **unresolved** complaints [to the department]. The licensee may use a sticker or rubber stamp to convey the required information. The notification shall be included on:

(1) any written tow truck slip or ticket;

(2) a sign prominently displayed at the place of payment; or

(3) any bill for service.

(p) Owners shall notify service recipients of the tow truck's Texas Department of Licensing and Regulation registration number and the Texas tow tag number by placing that information on all tow slips, bills, or similar receipts.

§80.101. Technical Requirements-Accident Scene Tow Trucks.

(a) Any tow truck towing from the scene of an accident must be equipped with the following (in the event that a self-contained non-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the motive and/or braking forces, must meet this requirement):

(1) one 10-pound BC fire extinguisher or two five-pound BC fire extinguishers. The fire extinguisher or extinguishers shall be properly filled, operable, and located so they are readily accessible for use **and shall be labeled by a national testing laboratory** [All fire extinguishers shall meet no less than the requirements of the *National Fire Protection Handbook*, 14th edition (1976), and shall be so labeled by a national testing laboratory];

(2) one crowbar or wrecking bar **of at least 36 inches;**

(3)-(4) (No change.)

(5) a container to carry glass and debris cleaned from **roadway** [streets] when picking up a damaged or disabled vehicle; **and**

(6) a spotlight or flashlight. [; and]

[(7) flashing warning lights that comply with the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701-d). That Act allows the use of red and/or amber lenses only. However, the red lenses may be used only under the direction of a law enforcement officer or while hooking up to a disabled vehicle in the roadway.]

(b) A tow truck operator shall ensure that while he is lifting a vehicle in preparation for towing no one but he and certified law enforcement officers shall be within a safe distance **from** [of] the tow truck and vehicle to be towed. A safe distance is at least twice the distance between the end of the boom and the point of hook-up on the vehicle being winched or twice the distance the car is being lifted, whichever is greater. If a hydraulic or mechanical lift is being used, a safe distance is twice the distance to which the lift arm is extended.

(c)-(d) (No change.)

§80.103. Technical Requirements-Other Statutes and Administrative Rules. Each tow truck must meet the requirements of all other applicable statutes and administrative rules promulgated thereunder in addition to meeting the requirements of these rules: [The following statutes are at least some of the other laws which may impact your operation of a tow truck. Contact the named agency for more information.]

[(1) Texas Motor Carrier Act, Texas Civil Statutes, Article 911b. This act may require Railroad Commission authority to pull from incorporated city to incorporated city;

[(2) Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a. This Act may limit the storage fees charged, depending upon when notice is provided to the vehicle's owner. This Act also provides for the handling of abandoned cars. This Act is administered by the Department of Highways and Public Transportation;

[(3) Texas Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a. This Act regulates the operation of facilities in which non-consent tows are stored. This statute is administered by the

Department of Licensing and Regulation;

[(4) Texas Uniform Act Regulation Public Highways, Texas Civil Statutes, Article 6701-4. This Act is administered by the Department of Public Safety and relates in part to the use of emergency lights by tow trucks;

[(5) The Property Code, Texas Civil Statutes, §70.003 and §70.004. These sections relate to a lien on a motor vehicle, motorboat, vessel, or outboard motor for towing services.]

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 October 2, 1992.

TRD-9213340 Jack W. Garison
Acting Executive Director
Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-3127

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• 16 TAC §§80.91-80.94, 80.102

(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 Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation proposes the repeal of §§80.91-80.94 and 80.102, concerning tow trucks. Sections 80.92-80.94 relate to sanctions and the repeal of these sections is necessary in order to clarify and simplify existing sections. Section 80.102 relates to technical requirements-repossession/recovery tow trucks and is being repealed because the section exempts certain tow trucks from towing safety requirements.

James D. Brush II, director, policies and standards division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Brush II, also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be increased protection of citizens during repossession/recovery towing of vehicles. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 6687-9b, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules to assure compliance with the Act.

§80.91. Sanctions-Administrative Penalty/Fine.

§80.92. Sanctions-Injunctive Relief and Civil Penalty.

§80.93. Sanctions-Criminal Penalty.

§80.94. Sanctions-Revocation or Suspension because of a Criminal Conviction.

§80.102. Technical Requirements-All Tow Trucks.

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 October 2, 1992.

TRD-9213339 Jack W. Garison
Acting Executive Director
Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-3127

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 101. Dental Licensure

General Qualifications

• 22 TAC §101.1

The Texas State Board of Dental Examiners proposes an amendment to §101.1, concerning general qualifications. This section states the general qualifications for any person desiring to practice dentistry in the State of Texas.

C. Thomas Camp, executive director, 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. Camp 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 to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

The amendment is proposed under Texas Civil Statutes, Article 4545, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§101.1. General Qualifications.

(a) (No change.)

(b) An applicant for licensure from the Texas State Board of Dental Examiners shall:

(1) make written application to the board **for each examination to be taken requesting to take either the general dental examination or a specialty examination in the area of orthodontics, oral and maxillofacial surgery, oral pathology, pediatriac dentistry, periodontics, prosthodontics, endodontics, or public health. The application shall contain all information as required for a completed application. A completed application shall contain all documentation required except for proof of dental school graduation and proof of having passed the National Board Examination as detailed below. Proof of graduation and of passing the National Board Examination may be submitted as they are available, but they must be submitted prior to sitting for the examination. The completed application must be received by the board office not later than 30 days prior to the announced examination date. Applications received by the board office after the 30-day deadline will not be accepted for the scheduled examination date requested. Permission to transfer to a future scheduled examination or a request to receive a refund shall be granted only in the event of the applicant's failure to graduate from dental school or failure to pass the National Board examination. A written request for refund or transfer must be received prior to the applicant's assigned State Board examination date;**

(2) **in the event of a question or dispute as to whether application has been made to the board, applicant must provide a return receipt from certified mail of the United States Postal Service, or the application shall be deemed not to have been submitted to the board;** [which shall indicate compliance with all require-

ments of said application to the board. Written application shall be received not later than 30 days prior to the announced examination date.]

(3)[(2)] present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association [or if the applicant has not completed the last term of dental school prior to making application, the dean of the accredited school shall certify that the applicant is a candidate for graduation to occur prior to the examination date];

(4)[(3)] present proof of having passed the examination for dentists in its entirety given by the National Board of Dental Examiners;

(5)[(4)] present proof of successful completion of a current course in basic life support given by the American Heart Association or the American Red Cross prior to the applicant's examination for licensure;

(6)[(5)] pay an examination and licensure fee as required by law and the rules and regulations of the board; and

(7)[(6)] satisfactorily pass either an oral, written, or clinical practical examination or any combination thereof as may be determined by the board;

(8) in addition to the above requirements, an applicant for specialty examination must meet the following additional requirements:

(A) present proof of current dental licensure in good standing from any state; and

(B) present proof of completion of specialty training from an accredited program of the American Dental Association Council on Dental Education in the examination area requested.

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 October 1, 1992.

TRD-9213325 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 477-2985

Examinations

• 22 TAC §101.5

The Texas State Board of Dental Examiners proposes an amendment to §101. 5, concerning examinations. This section states that examinations shall be administered annually by the Texas State Board of Dental Examiners. They will include written examination; dental clinical examination; and specialty examinations.

C. Thomas Camp, executive director, 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. Camp 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 as proposed will be to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

The amendment is proposed under Texas Civil Statutes, Article 4544 and Article 4547a, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§101.5. Examinations. The following examinations shall be administered annually by the Texas State Board of Dental Examiners:

(1) written examination;

(2) general dental clinical examination;

(3) specialty examination:

(A) endodontics;

(B) oral pathology;

(C) oral and maxillofacial surgery;

(D) orthodontics;

(E) pediatric dentistry;

(F) periodontics;

(G) prosthetics;

(H) public health.

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 October 1, 1992.

TRD-9213326 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 477-2985

Chapter 103. Dental Hygiene Licensure

• 22 TAC §103.1

The Texas State Board of Dental Examiners proposes an amendment to §103.1 concerning General Qualifications. This section outlines the qualifications for any person desiring to practice dental hygiene in the State of Texas.

C. Thomas Camp, executive director, 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. Camp 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 to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

The amendment is proposed under Texas Civil Statutes, Article 4545, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§103.1. General Qualifications.

(a) (No change.)

(b) An applicant for licensure from the Texas State Board of Dental Examiners

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shall:

(1) make written application to **the board for each examination to be taken. The application shall contain all information as required for a completed application. A completed application shall contain all documentation required except for proof of dental hygiene school graduation and proof of having passed the National Board Examination as detailed below. Proof of graduation and of passing the National Board Examination may be submitted as they are available, but they must be submitted prior to sitting for the examination. The completed application must be received in the board office not later than 30 days prior to the announced examination date. Applications received by the board office after the 30-day deadline will not be accepted for the scheduled examination date requested. Permission to transfer to a future scheduled examination or a request to receive a refund shall be granted only in the event of the applicant's failure to graduate from dental hygiene school or failure to pass the National Board examination. A written request for refund or transfer must be received prior to the applicant's assigned State Board examination date;**

(2) **in the event of a question or dispute as to whether application has been made to the board, applicant must provide a return receipt from certified mail of the United States Postal Service, or the application shall be deemed not to have been submitted to the board.** [which shall indicate compliance with all requirements of said application to the board. Written application shall be received not later than 30 days prior to the announced examination date.]

(3)[(2)] present proof of graduation from a dental hygiene school accredited by the Commission of Dental Accreditation of the American Dental Association [or if the applicant has not completed the last term of dental hygiene school prior to making application, the program director of the accredited school shall certify that the applicant is a candidate for graduation to occur prior to the examination date];

(4)[(3)] present proof of having passed the examination for dental hygienists in its entirety given by the National Board of Dental Examiners;

(5) **present proof of successful completion of a current course in basic life support given by the American Heart Association or the American Red Cross prior to the applicant's examination for licensure;**

(6)[(4)] pay an examination and licensure fee as required by law and the rules and regulations of the Board; and

(7)[(5)] satisfactorily pass either an oral, written, or clinical practical examination(s) or any combination thereof as may be determined by the board.

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 October 1, 1992.

TRD-9213324 C. Thomas Camp
Executive Director
Texas State Board of Dental Examiners

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 477-2985

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Part XI. Board of Nurse Examiners

Chapter 221. Advanced Nurse Practitioners

• 22 TAC §221.2

The Board of Nurse Examiners proposes an amendment to §221.2 concerning education. The amendment is being proposed in response to the recommendations made by the ANP Advisory Committee for a petitioning process for individuals not previously qualified to be recognized as Advanced Nurse Practitioners due to ANP educational programs lacking accreditation. The amendment creates the petitioning process for those individuals. Editorial changes are also made to clarify educational requirements to be consistent with current policies.

Louise Waddill, Ph.D., R.N., executive director, 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.

Ms. Waddill, Ph.D., R.N., 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 as proposed will be to afford those early pioneers of the Nurse Practitioner movement opportunity to demonstrate that they are safe and effective practitioners; to obtain board approval, and to meet the health care needs of their communities through advanced practice. 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 Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714. Comments must be received by Friday, November 6, 1992.

The amendment is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§221.2. Education.

(a) The registered professional nurse practicing as an advanced nurse practitioner shall have completed a post-basic program of study appropriate to the practice area which meets the following criteria.

(1) (No change.)

(2) Programs of study in the State of Texas should be accredited by the **board or a national accrediting body recognized by the board.**

(3) Programs of study in states other than Texas must meet the requirements of Chapter 219 of this title (relating to Advanced Nurse Practitioner Program), **and shall** [should] **be accredited** [approved] by the appropriate licensing body in that state or be accredited by a national accrediting body recognized by the board.

(4) (No change.)

(b) Proof of current certification of the advanced nurse practitioner in the appropriate area of practice by a national or state organization, whose certification examination has been recognized by the board, will:

(1) waive the need to review transcripts and course descriptions from the post-basic program of study **;and/or**

(2) waive the accreditation and/or length of program requirements addressed in subsection (a)(2), (3), and (4) of this section.

(c) Petitions for waiver from the program accreditation requirements of subsection (a)(2) and (3) of this section may be granted by the board for individuals who completed their educational programs during or before 1978.

(1) Petitioners under this section must present documentation as required by the board to support their petition and assure the board that their knowledge, skills and abilities are appropriate for the role.

(2) Petitioners must meet the length of academic program requirements of subsection (a)(4) of this section.

(3) Petitioners shall not be under current board investigation or board order.

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 30, 1992.

TRD-9213303 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse Examiners

Earliest possible date of adoption: November 17, 1992

For further information, please call: (512) 835-8650

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 277. Occupational Safety

Federal Laws and Regulations Covering Occupational Safety

• 25 TAC §277.1, §277.2

(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 Texas Department of Health (department) proposes the repeal §277.1 and §277.2, concerning federal laws and regulations covering occupational safety. The programs covered by the laws and regulations have been transferred to the Texas Workers' Compensation Commission and are no longer being implemented by the department. Accordingly, the department needs to repeal the sections.

These proposed repeals were earlier proposed in the April 3, 1992, issue of the *Texas Register*, however because the department is proposing substantive changes to what was earlier proposed the new sections are being reproposed at this time.

Jerry Lauderdale, Director, Division of Occupational Health, has determined that there will be no fiscal implications to state or local government as a result of administering or implementing the repeal.

Mr. Lauderdale also has determined that for the first five-year period that the repeal is in effect the public benefit of the proposed repeal is to remove from department rules federal laws and regulations which the department no longer implements. There will be no costs to small or large businesses as a result of the proposed repeal. There also will be no cost to persons and no impact on local employment.

Comments on the proposed repeal may be submitted to Jerry Lauderdale, Director, Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600. Mr. Lauderdale will accept comments for 30 days after publication of the proposed repeal in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Thursday, October 22, 1992, in the Exchange Building, Room 400, 8407 Wall Street, Austin.

The repeals are proposed under the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§277.1. Federal Law Covering Occupational Safety.

§277.2. Federal Regulations Covering Occupational Safety.

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 October 5, 1992.

TRD-9213412 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Chapter 289. [Occupational Health and] Radiation Control

Control of Radiation

The Texas Department of Health (department) proposes to repeal existing §§289.4, 289.21-289.31, 289.41-289.46, 289. 61-289.68, and 289.91-289.99, concerning occupational health.

Section 289.4 concerns threshold limit values of airborne contaminants; §§289.21-289.31 concern environmental standards in industrial establishments; §§289.41-289.46 concern industrial homework standards; §§289.61-289.68 concern standards for face and eye protection in public schools; and §§289.91-289.99 concern sanitation at temporary places of employment. All of the repealed sections are being transferred to Chapter 295 of this title as part of an overall restructuring and updating of the sections. The new sections in Chapter 295 which will replace the repealed sections are being proposed for adoption in this issue of the *Texas Register*.

The proposed repeals were earlier proposed in the April 3, 1992, issue of the *Texas Register*, however because the department is proposing substantive changes to what was earlier proposed the new sections are being reproposed at this time.

Jerry Lauderdale, director, Division of Occupational Health, has determined that for each year of the first five-year period that the repeals are in effect there will be no fiscal implications to state or local government as a result of administering or implementing the repeals.

Mr. Lauderdale also has determined that for each year of the the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be restructured and updated rules so that the general public will more clearly understand the requirements imposed by the rules. There will be no cost to small or large businesses as a result of the proposed repeals. There also will be no cost to persons and no impact on local employment.

Comments on the proposed repeal may be submitted to Jerry Lauderdale, Director, Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600. Mr. Lauderdale will accept comments for 30 days after publication of the proposed repeal in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Thursday, October 22, 1992, in the Exchange Building, Room 400, 8407 Wall Street, Austin.

(Editor's note: The text of the following section proposed for repeal will not be published. The section 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.)

• 25 TAC §289.4

The repeal is proposed under the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.4. Threshold Limit Values of Airborne Contaminants.

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 October 5, 1992.

TRD-9213414 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Environmental Standards in Industrial Establishments

• 25 TAC §§289.21-289.31

(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 the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.21. General Provisions.

§289.22. Definitions.

§289.23. General Requirements.

§289.24. Light and Ventilation.

§289.25. Water Supply.

§289.26. Toilet Facilities.

§289.27. Washing Facilities.

§289.28. Change Rooms.

§289.29. Retiring Rooms for Women.

§289.30. Lunch Rooms.

§289.31. Food Service.

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 October 5, 1992.

TRD-9213417 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Industrial Homework Standards

• 25 TAC §§289.41-289.46

(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 the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.41. Scope and Purpose.

§289.42. Definitions.

§289.43. General Requirement.

§289.44. Employer's Permit.

§289.45. Homeworker's Certificate.

§289.46. Appendices.

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 October 5, 1992.

TRD-9213418 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Standards for Face and Eye Protection in Public Schools

• 25 TAC §§289.61-289.68

(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 the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

§289.61. Purpose and Scope.

§289.62. Exceptions.

§289.63. Definitions.

§289.64. General Requirements.

§289.65. Eye Protectors.

§289.66. Materials and Methods of Test of Protections.

§289.67. Selection of Eye and Face Protective Devices.

§289.68. Appendix for §289.66.

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 October 5, 1992.

TRD-9213421 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Sanitation at Temporary Places of Employment

• 25 TAC §§289.91-289.99

(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 the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.91. General Provisions.

§289.92. Definitions.

§289.93. Standards for General Sanitation.

§289.94. Standards for Lighting and Ventilation.

§289.95. Standards for Water Supply.

§289.96. Standards for Toilet Facilities and Toilet Rooms.

§289.97. Standards for Hand-Washing Facilities.

§289.98. Standards for Lunch or Rest Areas.

§289.99. Standards for Food Service.

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 October 5, 1992.

TRD-9213422 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Chapter 295. Occupational [Environmental] Health

Occupational Health Rules and Guidelines

The Texas Department of Health (department) proposes new §§295.101- 295.109, 295.121-295.126, 295. 141-295.148, and 295.161-295.169, concerning occupational health.

New §§295.101-295.109 concern occupational health rules and new guidelines; new §§295.121-295.126 concern industrial homework standards; new §§295.141-295.148 concern standards for face and eye protection in public schools; and new §§295.161-295.169 concern sanitation at temporary places of employment. The new sections will replace existing sections in Chapter 289 of this title which are being proposed for repeal in this issue of the Texas Register. Guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules.

These proposed new sections were earlier proposed in the April 3, 1992, issue of the Texas Register, however because the department is proposing substantive changes to what was earlier proposed the new sections are being reproposed at this time.

The new sections, with a few exceptions, will replace existing sections in Chapter 289 because the department wants to place them in a more appropriate chapter in the Texas Administrative Code, which is Chapter 295. The specific changes are as follows.

New §295.101 concerning threshold limit values of airborne contaminants will replace existing §289.4 in Chapter 289, and new §295.106 concerning environmental standards in industrial establishments will replace existing §§289.21-289.31 in Chapter 289; the new guidelines will reference federal regulations containing the most current federal requirements in these areas. Guidelines mean standards, limits, codes, practices, or procedures recommended by the Department for use by public entities; not enforceable by the Department as administrative rules.

New §§295.102-295.105 and §§295.107-295.109, concerning exposure to toxic and hazardous substances, occupational noise exposure, respiratory protection, ventilation, access to employee exposure and medical records, medical services and first aid will not replace any existing sections in Chapter 289; instead, these sections are new guidelines which reference federal regulations containing the most current federal requirements in these areas. Guidelines mean standards, limits, codes, practices, or procedures recommended by the Department for use by public entities; not enforceable by the Department as administrative rules.

New §§295.121-295.126 concerning industrial homework standards will replace existing §§289.41-289.46 of Chapter 289, and new §§295.141-295. 148 concerning standards for face and eye protection in public schools will replace existing §§289.61-289.68 in Chapter 289. This is strictly a reorganization change, with the exception of new §295.146, in that existing sections will be moved to a new chapter; there will be no change to the text of the other sections themselves. Accordingly, the department will not be accepting comments on the text of these proposed sections, with the exception of new §295.146.

New §§295.161-295.169 concerning sanitation at temporary places of employment will replace existing §§289.91-289.99 in Chapter 289. This is a reorganization change and also a change in the text of the rules for updating and clarification purposes.

Jerry Lauderdale, director, division of occupational health, has determined that for each year of the first five-year period that the new sections will be in effect there will be no fiscal implications to state and local governments.

Mr. Lauderdale also has determined that for the first five year period that the new sections are in effect the public benefit of administering or implementing the new sections will be to move the sections to a more appropriate chapter in the Texas Administrative Code, to adopt guidelines referencing the most current federal regulations concerning occupational health, and to update and clarify the rules. There will be no costs to small and large businesses as a result of enforcing the proposed sections. There will be no cost to persons and there will be no impact on local employment.

Comments on the proposed new sections may be submitted to Jerry Lauderdale, Director, Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (Telephone (512) 834-6600). Mr. Lauderdale will accept comments for 30 days after publication of the proposed repeal in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Thursday, October 22, 1992, in the Exchange Building, Room S400, 8407 Wall Street, Austin.

• 25 TAC §§295.101-295.109

The new sections are being proposed under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

§295.101. Threshold Limit Values of Airborne Contaminants.

(a) Scope. This information applies to public places of employment in Texas.

(b) Purpose. The purpose of this sections is to present employers the recommended maximum average atmospheric concentration of contaminates to which they are permitted to expose employees during an eight-hour working day in their places of employment, including industrial establishments.

(c) Pertinent references. Copies of related laws, regulations, opinions of the Attorney General of Texas, and Advisory Standards currently applicable will be provided to any citizen of Texas upon request.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Industrial establishment-An institution, a place, building or location where one or more persons are employed.

(2) Places of employment-Any place where persons work for city, county, or state agencies, or other political subdivision of the state, public schools, public colleges and universities, and publicly owned utilities.

(3) American Conference of Governmental Industrial Hygienist (ACGIH) -The organization responsible for collecting the best available threshold limit value information from industrial experience, experimental human and animal studies, and when poisible from a combination of the three.

(e) Applicability of figures.

(1) Threshold limit values (TLV) refer to airborne concentrations of substances and represent conditions under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect. Because of wide variation in individual susceptibility, however, a small percentage of workers may experience discomfort from some substances and concentrations at or below the threshold limit, a smaller percentage may be effected more seriously by aggravation of a pre-existing condition or by development of an occupational illness.

(2) TLV's refer to time-weighted concentrations for a seven or eight-hour workday and a 40-hour workweek. They should be used as guides in the control of health hazards and should not be used as fine lines between safe and dangerous concentrations. (Exceptions are the substances listed in Appendices A and B and those substances designated with a "C" or Ceiling value, as explained in Appendix C in subsection (p) of this section.)

(3) Time weighted averages permit excursions above the limit provided they are compensated by equivalent excursions below the limit during the workday.

In some instances it may be permissible to calculate the average concentration for a workweek rather than for a workday. The degree of permissible excursion is related to the magnitude of the TLV of a particular substance as given in Appendix C in subsection (p) of this section. The relationship between threshold limit and permissible excursion is a rule of thumb and in certain cases may not apply. The amount by which threshold limits may be exceeded for short periods without injury to health depends upon a number of factors such as the nature of the contaminant, whether very high concentrations-even for short periods-produce acute poisoning, whether the effects are cumulative, the frequency with which high concentrations occur, and the duration of such periods. All factors must be taken into consideration in arriving at decisions as to whether a hazardous condition exists.

(f) Source.

(1) Threshold limits are based on the best available information from industrial experience, from experimental human and animal studies, and, when possible, from a combination of the three. The basis on which the values are established may differ from substance to substance; protection against impairment of health may be a guiding factor for some, whereas reasonable freedom and irritation, narcosis, nuisance, or other forms of stress may form the basis of others.

(2) The Chemical Substances TLV Committee holds to the opinion that limits based on physical irritation should be considered no less binding than those based on physical impairment. There is increasing evidence that physical irritation may initiate, promote or accelerate physical impairment through interaction with other chemical or biological agents.

(3) In spite of the fact that serious injury is not believed likely as a result of exposure to the threshold limit concentrations, the best practice is to maintain concentrations of all atmospheric contaminants as low as is practical.

(4) These limits are intended for use in the practice of industrial hygiene and should be interpreted and applied only by a person trained in this discipline. They are not intended for use, or for modification for use:

(A) as a relative index of hazard or toxicity;

(B) in the evaluation or control of community air pollution nuisances;

(C) in estimating the toxic potential of continuous uninterrupted exposure;

(D) as proof or disproof of an existing disease or physical condition; or

(E) for adoption by countries whose working conditions differ from those in the United States of America and where substances and processes differ.

(g) Documentation of threshold limit values (TLV). Documentation of Threshold Limit Values is a separate companion piece to the TLV's as issued by the ACGIH. The publication gives the pertinent scientific information and data with reference to literature sources, that were used to base each limit. Each documentation also contains a statement defining the type of response against which the limit is safeguarding the worker. For a better understanding of the TLV's it is essential that the Documentation of Threshold Limit Values be consulted when the TLV's are being used.

(h) Ceiling vs time-weighted average limits.

(1) Although the time-weighted average concentration provides the most satisfactory, practical way of monitoring airborne agents for compliance with the limits, there are certain substances for which it is inappropriate. In the latter group are substances which are predominantly fast acting and whose threshold limit is more appropriately based on this particular response. Substances with this type of response are best controlled by a ceiling "C" limit that could not be exceeded. It is implicit in these definitions that the manner of sampling to determine compliance with the limits for each group must differ; a single brief sample, that is applicable to a "C" limit, is not appropriate to the time-weighted limit; here, a sufficient number of samples are needed to permit a time-weighted average concentration throughout a complete cycle of operations or throughout the work shift.

(2) Whereas the ceiling limit places a definite boundary which concentrations should not be permitted to exceed, the time weighed average limit requires an explicit limit to the excursions that are permissible above the listed values. The magnitude of these excursions may be pegged to the magnitude of the threshold limit by an appropriate factor shown in Appendix C in subsection (p) of this section. It should be noted that the same factors are used by the Chemical Substances TLV Committee in making a judgment whether to include or exclude a substance for a "C" listing.

(i) Skin notation. Listed substances followed by the word "Skin" refer to the potential contribution to the over-all exposure by the cutaneous route including mucous membranes and eye, either by airborne, or more particularly, by direct contact with the substance. Vehicles can alter skin absorption. This attention-calling designation is intended to suggest appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated.

(j) Mixtures. Special consideration should be given also to the application of the TLV's in assessing the health hazards which may be associated with exposure to mixtures of two or more substances. A brief discussion of basic considerations involved in developing threshold limit values for mixtures, and methods for their development, amplified by specific examples are given in Appendix B in subsection (p) of this section.

(k) Nuisance dusts.

(1) In contrast to fibrogenic dusts which cause scar tissue to be formed in lungs when inhaled in excessive amounts, so-called "nuisance" dusts have a long history of little adverse effect on lungs and do not produce significant organic disease or toxic effects when exposures are kept under reasonable control. The nuisance dusts have also been called (biologically) "inert" dusts, but the latter term is not appropriate to the extent that there is no dust which does not evoke some cellular response in the lung when inhaled in sufficient amount. However, the lung-tissue reaction caused by inhalation of nuisance dusts has the following characteristics:

(A) the architecture of the air spaces remains intact;

(B) collagen (scar tissue) is not formed to a significant extent;

(C) the tissue reaction is potentially reversible:

(2) Excessive concentrations of nuisance dusts in the workroom air may seriously reduce visibility (iron oxide) , may cause unpleasant deposits in the eyes, ears, and nasal passages (Portland Cement dust), or cause injury to the skin or mucous membranes by chemical or mechanical action per se or by the rigorous skin cleansing procedures necessary for their removal.

(3) A threshold limit of 10 mg/m3 (million particles per cubic foot), or 30 mppcf (million particles per cubic foot), of total dusts 1% SiO_2, whichever is less, is recommended for substances in these categories and for which no specific threshold limits have been assigned. This limit, for a normal workday, does not apply to brief exposures at higher concentrations. Neither does it apply to those substances which may cause physiologic impairment at lower con-

centrations but for which a threshold limit has not yet been adopted. Some "inert" particulates are given in Appendix D in subsection (p) of this section.

(l) Simple asphyxiants-inert gases or vapors. A number of gases and vapors, when present in high concentrations in air, act primarily as simple asphyxiants without other significant physiological effects. A TLV may not be recommended for each simple asphyxiant because the limiting factor is the available oxygen. The minimal oxygen content should be 18% by volume under normal atmospheric pressure (equivalent to a partial pressure, pO2 of 135 mm Hg). Atmospheres deficient in O2 do not provide adequate warning and most simple asphyxiants are ordorless. Several simple asphyxiants present an explosion hazard. Account should be taken of this factor in limiting the concentration of the asphyxiant. Specific examples are listed in Appendix E in subsection (p) of this section.

(m) Physical factors. It is recognized that such physical factors as heat, ultraviolet and ionizing radiation, humidity, abnormal pressure (altitude) and the like may place added stress on the body so that the effects from exposure at threshold limit may be altered. Most of these stresses act adversely to increase the toxic response of a substance. Although most threshold limits have built-in safety factors to guard against adverse effects to moderate deviations from normal environments, the safety factors of most substances are not of such a magnitude as to take care of gross deviations. For example, continuous work at temperature above 90 degrees Farenheit or over-time extending the workweek more than 25%, might be considered gross deviations. In such instances judgment must be exercised in the proper adjustments of the TLV's.

(n) "Notice of intent". At the beginning of each year, proposed actions of the Chemical Substances TLV Committee for the forthcoming year are issued in the form of a "Notice of Intent." This notice provides not only an opportunity for comment, but solicits suggestions of substances to be added to the list. The suggestions should be accompanied by substantiating evidence.

(o) As legislative code. The conference recognizes that the TLVs may be adopted in legislative codes and regulations. If so used, the intent of the concepts contained in the Preface should be maintained and provisions should be made to keep the list current. These values are reviewed annually by the Chemical Substances TLV Committee for revision or additions, as further information becomes available.

(p) Adopted values and appendices are as follows.

(1) Adopted values.

XIII. ADOPTED VALUES (Gases, Vapors, Toxic Dusts, Fumes and Mists)

(In Alphabetical Order)

	Substance	ppm[a)]	mg/M^3[b)]
	Abate	--	15
	Acetaldehyde	200	360
	Acetic acid	10	25
	Acetic anhydride	5	20
	Acetone	1,000	2,400
	Acetonitrile	40	70
	Acetylene	E	--
	Acetylene dichloride, see 1, 2-Dichloroethylene	--	--
	Acetylene tetrabromide	1	14
	Acrolein	0.1	0.25
	Acrylamide-Skin	--	0.3
	Acrylonitrile-Skin	20	45
	Aldrin-Skin	--	0.25
	Allyl alcohol-Skin	2	5
	Allyl chloride	1	3
**C	Allyl glycidyl ether (AGE)	10	45
	Allyl propyl disulfide	2	12
	Allundum (Al_2O_3)	--	D
	2-Aminoethanol, see Ethanolamine	--	--
	2-Aminopyridine	0.5	2
**	Ammonia	50	35
	Ammonium sulfamate (Ammate)	--	15
	n-Amyl acetate	100	525
	sec-Amyl acetate	125	650
	Aniline-Skin	5	19
	Anisidine (o, p-isomers)-Skin	--	0.5
	Antimony & Compounds (as Sb)	--	0.5
	ANTU (alpha naphthyl thiourea)	--	0.3
	Argon	E	--
	Arsenic & Compounds (as As)	--	0.5
	Arsine	0.05	0.2
	Azinphos-methyl-Skin	--	0.2
	Barium (soluble compounds)	--	0.5
C	Benzene (benzol)-Skin	25	80
	Benzidine-Skin	--	A[1]
	p-Benzoquinone, see Quinone	--	--
	Benzoyl peroxide	--	5
	Benzyl chloride	1	5
	Beryllium	--	0.002
	Biphenyl, see Diphenyl	--	--
	Bisphenol A, see Diglycidyl ether	--	--
	Boron oxide	--	15
	Boron tribromide	1	10
C	Boron trifluoride	1	3

	Substance	ppm[a)]	mg/M3[b)]
	Bromine	0.1	0.7
*	Bromine pentafluoride	0.1	0.7
	Bromoform-Skin	0.5	5
	Butadiene (1, 3-butadiene)	1,000	2,200
	Butanethiol, see Butyl mercaptan	--	--
	2-Butanone	200	590
	2-Butoxy ethanol (Butyl Cellosolve)-Skin	50	240
	Butyl acetate (n-butyl acetate)	150	710
	sec-Butyl acetate	200	950
	tert-Butyl acetate	200	950
	Butyl alcohol	100	300
	sec-Butyl alcohol	150	450
	tert-Butyl alcohol	100	300
C	Butylamine-Skin	5	15
C	tert-Butyl chromate (as CrO_3)-Skin	--	0.1
	n-Butyl glycidyl ether (BGE)	50	270
*	Butyl mercaptan	0.5	1.5
	p-tert-Butyltoluene	10	60
	Cadmium (Metal dust and soluble salts)	--	0.2
*C	Cadmium oxide fume (as Cd)	--	0.1
	Calcium carbonate	--	D
	Calcium arsenate	--	1
	Calcium oxide	--	5
**	Camphor (Synthetic)	2	--
	Carbaryl (Sevin R)	--	5
	Carbon black	--	3.5
	Carbon dioxide	5,000	9,000
	Carbon disulfide-Skin	20	60
	Carbon monoxide	50	55
	Carbon tetrachloride-Skin	10	65
	Cellulose (paper fiber)	--	D
	Chlordane-Skin	--	0.5
	Chlorinated camphene-Skin	--	0.5
	Chlorinated diphenyl oxide	--	0.5
*	Chlorine	1	3
	Chlorine dioxide	0.1	0.3
C	Chlorine trifluoride	0.1	0.4
C	Chloroacetaldehyde	1	3
	α-Chloroacetophenone (phenacylchloride)	0.05	0.3
	Chlorobenzene (monochlorobenzene)	75	350
	o-Chlorobenzylidene malononitrile (OCBM)	0.05	0.4
	Chlorobromomethane	200	1,050
	2-Chloro-1, 3-butadiene, see Chloroprene	--	--
	Chlorodiphenyl (42% Chlorine)-Skin	--	1
	Chlorodiphenyl (54% Chlorine)-Skin	--	0.5
	1-Chloro, 2, 3-epoxypropane, see Epichlorhydrin	--	--
	2-Chloroethanol, see Ethylene chlorohydrin	--	--
	Chloroethylene, see Vinyl choride	--	--

	Substance	ppm[a)]	mg/M3[b)]
C	Chloroform (trichloromethane)	50	240
	1-Chloro-1-nitropropane	20	100
	Chloropicrin	0.1	0.7
	Chloroprene (2-chloro-1, 3-butadiene)-Skin	25	90
	Chromic acid and chromates (as CrO_3)	--	0.1
	Chromium, sol. chromic, chromous salts as Cr ...	--	0.5
	Metal & insol. salts	--	1
	Coal tar pitch volatiles (benzene soluble fraction) anthracene, BaP, phenanthrene, acridine, chrysene, pyrene)	--	0.2
	Cobalt, metal fume & dust	--	0.1
	Copper fume	--	0.1
	Dusts and Mists	--	1
	Corundum (Al_2O_3)	--	D
	Cotton dust (raw)	--	1
	Crag[R] herbicide	--	15
	Cresol (all isomers) - Skin	5	22
	Crotonaldehyde	2	6
	Cumene-Skin	50	245
	Cyanide (as CN)-Skin	--	5
*	Cyanogen	10	--
	Cyclohexane	300	1,050
	Cyclohexanol	50	200
	Cyclohexanone	50	200
	Cyclohexene	300	1,015
	Cyclopentadiene	75	200
	2, 4-D	--	10
	DDT-Skin	--	1
	DDVP, see Dichlorvos	--	--
	Decaborane-Skin	0.05	0.3
	Demeton[R]-Skin	--	0.1
	Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	50	240
	1, 2-Diaminoethane, see Ethylenediamine	--	--
	Diazomethane	0.2	0.4
	Diborane	0.1	0.1
C	1, 2-Dibromoethane (ethylene dibromide)-Skin ...	25	190
	Dibutyl phosphate	1	5
	Dibutylphthalate	--	5
*C	Dichloroacetylene	0.1	0.4
C	o-Dichlorobenzene	50	300
	p-Dichlorobenzene	75	450
	Dichlorodifluoromethane	1,000	4,950
	1, 3-Dichloro-5, 5-dimethyl hydantoin	--	0.2
	1, 1-Dichloroethane	100	400
	1, 2-Dichloroethane	50	200
	1, 2-Dichloroethylene	200	790
C	Dichloroethyl ether-Skin	15	90
	Dichloromethane, see Methylenechloride	--	--
	Dichloromonofluoromethane	1,000	4,200

	Substance	ppm[a)]	mg/M[3b)]
C	1, 1-Dichloro-1-nitroethane	10	60
	1, 2-Dichloropropane, see Propylenedichloride ..	--	--
	Dichlorotetrafluoroethane	1,000	7,000
	Dichlorvos (DDVP)-Skin	--	1
	Dieldrin-Skin	--	0.25
	Diethylamine	25	75
	Diethylamino ethanol-Skin	10	50
**C	Diethylene triamine-Skin	10	42
	Diethylether, see Ethyl ether	--	--
	Difluorodibromomethane	100	860
C	Diglycidyl ether (DGE)	0.5	2.8
	Dihydroxybenzene, see Hydroquinone	--	--
	Diisobutyl ketone	50	290
	Diisopropylamine-Skin	5	20
	Dimethoxymethane, see Methylal	--	--
	Dimethyl acetamide-Skin	10	35
	Dimethylamine	10	18
	Dimethylaminobenzene, see Xylidene	--	--
	Dimethylaniline (N-dimethylaniline)-Skin	5	25
	Dimethylbenzene, see Xylene	--	--
	Dimethyl 1, 2-dibromo-2, 2-dichloroethyl phosphate, (Dibrom)	--	3
	Dimethylformamide-Skin	10	30
	2, 6-Dimethylheptanone, see Diisobutyl ketone ..	--	--
	1, 1-Dimethylhydrazine-Skin	0.5	1
	Dimethylphthalate	--	5
	Dimethylsulfate-Skin	1	5
	Dinitrobenzene (all isomers)-Skin	--	1
	Dinitro-o-cresol-Skin	--	0.2
	Dinitrotoluene-Skin	--	1.5
	Dioxane (Diethylene dioxide)-Skin	100	360
	Diphenyl	0.2	1
	Diphenyl amine	--	10
	Diphenylmethane diisocyanate (see Methylene bisphenyl isocyanate (MDI)	--	--
	Dipropylene glycol methyl ether-Skin	100	600
	Di-sec, octyl phthalate (Di-2-ethylhexylphthalate)	--	5
	Emery	--	D
*	Endosulfan (Thiodan[R])-Skin	--	0.1
	Endrin-Skin	--	0.1
	Epichlorhydrin-Skin	5	19
	EPN-Skin	--	0.5
	1, 2-Epoxypropane, see Propyleneoxide	--	--
	2, 3-Epoxy-1-propanol, see Glycidol	--	--
	Ethane	E	--
	Ethanethiol, see Ethylmercaptan	--	--
	Ethanolamine	3	6
	2-Ethoxyethanol-Skin	200	740
	2-Ethoxyethylacetate (Cellosolve acetate)-Skin .	100	540

	Substance	ppm[a)]	mg/M[3b)]
	Ethyl acetate	400	1,400
	Ethyl acrylate-Skin	25	100
	Ethyl alcohol (ethanol)	1,000	1,900
	Ethylamine	10	18
	Ethyl sec-amyl ketone (5-methyl-3-heptanone)	25	130
	Ethyl benzene	100	435
	Ethyl bromide	200	890
	Ethyl butyl ketone (3-Heptanone)	50	230
	Ethyl chloride	1,000	2,600
	Ethyl ether	400	1,200
	Ethyl formate	100	300
	Ethyl mercaptan	0.5	1
	Ethyl silicate	100	850
	Ethylene	E	--
	Ethylene chlorohydrin-Skin	5	16
	Ethylenediamine	10	25
	Ethylene dibromide, see 1, 2-Dibromoethane	--	--
	Ethylene dichloride, see 1, 2-Dichloroethane	--	--
C	Ethylene glycol dinitrate and/or Nitroglycerin-Skin	0.2[d)]	--
	Ethylene glycol monomethyl ether acetate, see Methyl cellosolve acetate	--	--
	Ethylene imine-Skin	0.5	1
	Ethylene oxide	50	90
	Ethylidine chloride, see 1, 1-Dichloroethane	--	--
	N-Ethylmorpholine-Skin	20	94
	Ferbam	--	15
	Ferrovanadium dust	--	1
	Fibrous glass	--	D
	Fluoride (as F)	--	2.5
	Fluorine	0.1	0.2
	Fluorotrichloromethane	1,000	5,600
**C	Formaldehyde	5	6
	Formic acid	5	9
	Furfural-Skin	5	20
	Furfuryl alcohol	50	200
	Gasoline	--	A[3]
	Glycerin mist	--	D
	Glycidol (2, 3-Epoxy-1-propanol)	50	150
	Glycol monoethyl ether, see 2-Ethoxyethanol	--	--
	Graphite, (Synthetic)	--	D
	Guthion,[R] see Azinphosmethyl	--	--
	Gypsum	--	D
	Hafnium	--	0.5
	Helium	E	--
	Heptachlor-Skin	--	0.5
	Heptane (n-heptane)	500	2,000
	Hexachloroethane-Skin	1	10
	Hexachloronaphthalene-Skin	--	0.2
	Hexane (n-hexane)	500	1,800
	2-Hexanone	100	410

	Substance	ppm[a)]	mg/M^{3}[b)]
	Hexone (Methyl isobutyl kètone)	100	410
	sec-Hexyl acetate	50	300
	Hydrazine-Skin	1	1.3
	Hydrogen	E	--
	Hydrogen bromide	3	10
C	Hydrogen chloride	5	7
	Hydrogen cyanide-Skin	10	11
	Hydrogen fluoride	3	2
	Hydrogen peroxide	1	1.4
	Hydrogen selenide	0.05	0.2
	Hydrogen sulfide	10	15
	Hydroquinone	--	2
*	Indene	10	45
	Indium and compounds, as In	--	0.1
C	Iodine	0.1	1
	Iron oxide fume	--	10
	Iron salts, soluble, as Fe	--	1
	Isoamyl acetate	100	525
	Isoamyl alcohol	100	360
	Isobutyl acetate	150	700
	Isobutyl alcohol	100	300
	Isophorone	25	140
	Isopropyl acetate	250	950
	Isopropyl alcohol	400	980
	Isopropylamine	5	12
	Isopropylether	500	2,100
	Isopropyl glycidyl ether (IGE)	50	240
	Kaolin	--	D
	Ketene	0.5	0.9
	Lead	--	0.2
	Lead arsenate	--	0.15
	Limestone	--	D
	Lindane-Skin	--	0.5
	Lithium hydride	--	0.025
	L.P.G. (Liquified petroleum gas)	1,000	1,800
	Magnesite	--	D
	Magnesium oxide fume	--	15
	Malathion-Skin	--	15
	Maleic anhydride	0.25	1
C	Manganese and compounds, as M_n	--	5
	Marble	--	D
**	Mercury-Skin	--	0.1
**	Mercury (organic compounds)-Skin	--	0.01
	Mesityl oxide	25	100
	Methane	E	--
	Methanethiol, see Methyl mercaptan	--	--
	Methoxychlor	--	15
	2-Methoxyethanol, see Methyl cellosolve	--	--
	Methyl acetate	200	610

	Substance	ppm[a)]	mg/M3[b)]
	Methyl acetylene (propyne)	1,000	1,650
	Methyl acetylene-propadiene mixture (MAPP)	1,000	1,800
	Methyl acrylate-Skin	10	35
	Methylal (dimethoxymethane)	1,000	3,100
	Methyl alcohol (methanol)	200	260
	Methylamine	10	12
	Methyl amyl alcohol, see Methyl isobutyl carbinol	--	--
*	Methyl isoamyl ketone	100	475
	Methyl (n-amyl) ketone (2-Heptanone)	100	465
C	Methyl bromide-Skin	20	80
	Methyl butyl ketone, see 2-Hexanone	--	--
	Methyl cellosolve-Skin	25	80
	Methyl cellosolve acetate-Skin	25	120
**C	Methyl chloride	100	210
	Methyl chloroform	350	1,900
	Methylcyclohexane	500	2,000
	Methylcyclohexanol	100	470
	o-Methylcyclohexanone-Skin	100	460
	Methyl ethyl ketone (MEK), see 2-Butanone	--	--
	Methyl formate	100	250
	Methyl iodide-Skin	5	28
	Methyl isobutyl carbinol-Skin	25	100
	Methyl isobutyl ketone, see Hexone	--	--
	Methyl isocyanate-Skin	0.02	0.05
*	Methyl mercaptan	0.5	1
	Methyl methacrylate	100	410
	Methyl propyl ketone, see 2-Pentanone	--	--
C	Methyl silicate	5	30
C	oc Methyl styrene	100	480
C	Methylene bisphenyl isocyanate (MDI)	0.02	0.2
	Methylene chloride (dichloromethane)	500	1,740
	Molybdenum (soluble compounds)	--	5
	(insoluble compounds)	--	15
	Monomethyl aniline-Skin	2	9
C	Monomethyl hydrazine-Skin	0.2	0.35
	Morpholine-Skin	20	70
	Naphtha (coal tar)	100	400
	Naphthalene	10	50
	β-Naphthylamine	--	A[1]
	Neon	E	--
	Nickel carbonyl	0.001	0.007
	Nickel, metal and soluble cmpds, as Ni	--	1
	Nicotine-Skin	--	0.5
	Nitric acid	2	5
	Nitric oxide	25	30
	p-Nitroaniline-Skin	1	6
	Nitrobenzene-Skin	1	5
	p-Nitrochlorobenzene-Skin	--	1

Substance *	ppm[a)]	mg/M[3b)]
Nitroethane	100	310
Nitrogen	E	--
Nitrogen dioxide	5	9
Nitrogen trifluoride	10	29
Nitroglycerin-Skin	0.2	2
Nitromethane	100	250
1-Nitropropane	25	90
2-Nitropropane	25	90
N-Nitrosodimethylamine (dimethyl-nitrosoamine)-Skin	--	A[1]
Nitrotoluene-Skin	5	30
Nitrotrichloromethane, see Chloropicrin	--	--
Nitrous oxide	E	--
Octachloronaphthalene-Skin	--	0.1
* Octane	400	1,900
* Oil mist, particulate	--	5[h]
* Oil mist, vapor	i) A[3]	--
Osmium tetroxide	--	0.002
Oxalic acid	--	1
Oxygen difluoride	0.05	0.1
Ozone	0.1	0.2
Paraquat-Skin	--	0.5
Parathion-Skin	--	0.1
Pentaborane	0.005	0.01
Pentachloronaphthalene-Skin	--	0.5
Pentachlorophenol-Skin	--	0.5
Pentaerythritol	--	D
* Pentane	500	1,500
2-Pentanone	200	700
Perchloroethylene	100	670
Perchloromethyl mercaptan	0.1	0.8
Perchloryl fluoride	3	13.5
* Petroleum Distillates (naphtha)	i) A[3]	--
Phenol-Skin	5	19
p-Phenylene diamine-Skin	--	0.1
Phenyl ether (vapor)	1	7
Phenyl ether-Biphenyl mixture (vapor)	1	7
Phenylethylene, see Styrene	--	--
Phenyl glycidyl ether (PGE)	10	60
Phenylhydrazine-Skin	5	22
Phosdrin (Mevinphos[R])-Skin	--	0.1
Phosgene (carbonyl chloride)	0.1	0.4
Phosphine	0.3	0.4
Phosphoric acid	--	1
Phosphorus (yellow)	--	0.1
Phosphorus pentachloride	--	1
Phosphorus pentasulfide	--	1
Phosphorus trichloride	0.5	3

	Substance	ppm[a)]	mg/M[3b)]
	Phthalic anhydride	2	12
	Picric acid-Skin	--	0.1
	Pival R (2-Pivalyl-1, 3-indandione)	--	0.1
	Plaster of Paris	--	D
	Platinum (Soluble Salts) as Pt	--	0.002
	Polytetrafluoroethylene decomposition products	--	A[2]
	Propane	E	--
	β Propiolactone	--	A[1]
	Propargyl alcohol-Skin	1	--
	n-Propyl acetate	200	840
	Propyl alcohol	200	500
	n-Propyl nitrate	25	110
	Propylene dichloride	75	350
	Propylene imine-Skin	2	5
	Propylene oxide	100	240
	Propyne, see Methylacetylene	--	--
	Pyrethrum	--	5
	Pyridine	5	15
	Quinone	0.1	0.4
	RDX-Skin	--	1.5
	Rhodium, Metal fume and dusts, as Rh	--	0.1
	Soluble salts	--	0.001
	Ronnel	--	10
	Rotenone (commercial)	--	5
	Rouge	--	D
	Selenium compounds (as Se)	--	0.2
	Selenium hexafluoride	0.05	0.4
	Silicon carbide	--	D
	Silver, metal and soluble compounds	--	0.01
	Sodium fluoracetate (1080)-Skin	--	0.05
	Sodium hydroxide	--	2
	Stibine	0.1	0.5
	Starch	--	D
*	Stoddard solvent	200	1,150
	Strychnine	--	0.15
**C	Styrene monomer (phenylethylene)	100	420
	Sucrose	--	D
	Sulfur dioxide	5	13
	Sulfur hexafluoride	1,000	6,000
	Sulfuric acid	--	1
	Sulfur monochloride	1	6
	Sulfur pentafluoride	0.025	0.25
	Sulfuryl fluoride	5	20
	Systox, see Demeton[R]	--	--
	2, 4, 5 T	--	10
	Tantalum	--	5
	TEDP-Skin	--	0.2
	Teflon[R] decomposition products	--	A[2]
	Tellurium	--	0.1

	Substance	ppm[a)]	mg/M[3b)]
	Tellurium hexafluoride	0.02	0.2
	TEPP-Skin	--	0.05
C	Terphenyls	1	9
	1, 1, 1, 2-Tetrachloro-2, 2-difluoroethane	500	4,170
	1, 1, 2, 2-Tetrachloro-1, 2-difluoroethane	500	4,170
	1, 1, 2, 2-Tetrachloroethane-Skin	5	35
	Tetrachloroethylene, see Perchloroethylene	--	--
	Tetrachloromethane, see Carbon tetrachloride	--	--
	Tetrachloronaphthalene-Skin	--	2
	Tetraethyl lead (as Pb)-Skin	--	0.100[j)]
	Tetrahydrofuran	200	590
	Tetramethyl lead (as Pb)-Skin	--	0.150[j)]
	Tetramethyl succinonitrile-Skin	0.5	3
	Tetranitromethane	1	8
	Tetryl (2, 4, 6-trinitrophenylmethylnitramine)-Skin	--	1.5
	Thallium (soluble compounds)-Skin as Tl	--	0.1
	Thiram	--	5
	Tin (inorganic cmpds, except SnH_4 and SnO_2)	--	2
	Tin (organic cmpds)	--	0.1
	Tin oxide	--	D
	Titanium dioxide	--	D
	Toluene (tolul)	200	750
C	Toluene-2, 4-diisocyanate	0.02	0.14
	o-Toluidine-Skin	5	22
	Toxaphene, see Chlorinated camphene	--	--
	Tributyl phosphate	--	5
	1, 1, 1-Trichloroethane, see Methyl chloroform	--	--
	1, 1, 2-Trichloroethane-Skin	10	45
	Trichloroethylene	100	535
	Trichloromethane, see Chloroform	--	--
	Trichloronaphthalene-Skin	--	5
	1, 2, 3-Trichloropropane	50	300
	1, 1, 2-Trichloro 1, 2, 2-trifluoroethane	1,000	7,600
	Triethylamine	25	100
	Trifluoromonobromomethane	1,000	6,100
*	Trimethyl benzene	25	120
	2, 4, 6-Trinitrophenol, see Picric acid	--	--
	2, 4, 6-Trinitrophenylmethylnitramine, see Tetryl	--	--
	Trinitrotoluene-Skin	--	1.5
	Triorthocresyl phosphate	--	0.1
	Triphenyl phosphate	--	3
	Tungsten & compounds, as W		
	Soluble	--	1
	Insoluble	--	5
	Turpentine	100	560
	Uranium (natural) sol. & insol. compounds as U	--	0.2

	Substance	ppm[a)]	mg/M[3b)]
C	Vanadium (V_2O_5 dust)	--	0.5
	(V_2O_5 fume)	--	0.1
	Vinyl benzene, see Styrene	--	--
**C	Vinyl chloride	500	1,300
	Vinylcyanide, see Acrylonitrile	--	--
	Vinyl toluene	100	480
	Warfarin	--	0.1
	Xylene (xylol)	100	435
	Xylidine-Skin	5	25
	Yttrium	--	1
	Zinc chloride fume	--	1
	Zinc oxide fume	--	5
	Zirconium compounds (as Zr)	--	5

Radioactivity: For permissible concentrations of radioisotopes in air, see U. S. Department of Commerce, National Bureau of Standards, Handbook 69, "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959. Also, see U. S. Department of Commerce National Bureau of Standards, Handbook 59, "Permissible Dose from External Sources of Ionizing Radiation," September 24, 1954, and addendum of April 15, 1958.

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a) Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 mm. Hg pressure.
b) Approximate milligrams of particulate per cubic meter of air.
d) An atmospheric concentration of not more than 0.02 ppm, or personal protection may be necessary to avoid headache.
h) As sampled by method that does not collect vapor.
i) According to analytically determined composition.
j) For control of general room air, biologic monitoring is essential for personnel control.
** See Notice of Intended Changes
* 1970 Addition
Capital letters refer to Appendices.

Appendix A. MINERAL DUSTS

Substance	m.p.p.c.f.[e)]
SILICA	
Crystalline	
** Quartz, Threshold Limit calculated from the formula	$\frac{250^{f)}}{\%SiO_2 + 5}$
** Cristobalite, Threshold Limit calculated	
Amorphous, including natural diatomaceous earth	20
SILICATES (less than 1% crystalline silica)	
** Asbestos, all types	5
Mica	20
Portland Cement	50
Soapstone	20
Talc (non-asbestiform)	20
Talc (fibrous), use asbestos limit	--
Tremolite, see asbestos	--
Graphite (natural)	15
** "Inert" or Nuisance Particulates See Appendix D	50 (or 15 mg/M^3 whichever is the smaller) of total dust $<1\%$ SiO_2

Conversion factors
mppcf X 35.3 = million particles per cubic meter
= particles per c.c.

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e) Millions of particles per cubic foot of air, based on impinger samples counted by light-field technics.

f) The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.

** See Notice of Intended Changes for Mineral Dusts

Appendix B. NOTICE OF INTENDED CHANGES (FOR 1970)

These substances, with their corresponding values, comprise those for which either a limit has been proposed for the first time, or for which a change in the "Adopted" listing has been proposed. In both cases, the proposed limits should be considered trial limits that will remain in the listing for a period of at least two years. During this time, the previously Adopted Limit will remain in effect. If, after two years no evidence comes to light that questions the appropriateness of the values herein, the values will be placed in the "Adopted" list. Documentation is available for each of these substances.

Substance	ppm	mg/M^3
2-Acetylaminofluorene-Skin	--	A[1]
+ Allyl glycidyl ether	5	22
4-Aminodiphenyl-Skin	--	A[1]
+ Ammonia	25	18
+ Ammonium chloride fume	--	10
Asphalt (petroleum) fumes	--	5
+ Butyl lactate	1	5
+ Camphor (synthetic)	2	12
+ Diazinon-Skin	--	0.1
+ 2-N Dibutylamino ethanol-Skin	2	14
Dichlorobenzidine-Skin	--	A[1]
+ Diethylene triamine-Skin	1	4
4-Dimethylaminoazobenzene	--	A[1]
Fibrous glass	g)--	D
+C Formaldehyde	2	3
+ Iron pentacarbonyl	0.01	0.08
+ Mercury (Alkyl compounds)-Skin	--	0.01
Mercury (All forms except alkyl)	--	0.05
+ Methyl chloride	100	210
Methyl 2-cyanoacrylate	2	8
+ Methylcylopentadienyl manganese tricarbonyl (as Mn)	0.1	0.2
Methyl demeton-Skin	--	0.5
Methyl parathion-Skin	--	0.2
Phenothiazine-Skin	--	5
+ Rosin Core Solder, pyrolysis products	--	0.1 (as aldhyde)
Styrene	100	420

\+ 1970 Revision or Addition

Capital letters refer to Appendices

g) <5-7 μ Diameter. No TLV for coarse fibrous glass has yet been set.

Appendix B cont'd

NOTICE OF INTENDED CHANGES (Cont'd)

(FOR 1970)

	Substance	ppm	mg/M^3
+C	Subtilisins (Proteolytic enzymes)	--	0.0003 (as 100% pure crystal-line enzyme)
+	Vanadium (V_2O_5 Fume) as V	--	0.05
	Vinyl acetate	10	30
+	Vinyl chloride	200	770
+	Wood dust (non allergenic)	--	5

\+ 1970 Revision or Addition

Capital letters refer to Appendices

NOTICE OF INTENDED CHANGES (Cont'd)

MINERAL DUSTS

Substance	TLV
+ Asbestos (All types)	5 fibers/ml > 5μ in length[k)]
+ Coal dust (bituminous)	2 mg/m^3 (respirable dust)[m)]
Cristobalite	Use one-half the value calculated from the count or mass formulae for quartz.
+ 'Inert' or Nuisance Particulates	10 mg/M^3 or 30 mppcf (whichever is the smaller) of the total dust < 1% SiO_2[n)]
+ Quartz	TLV in mppcf: $\frac{300}{\%SiO_2 + 10}$ TLV for respirable dust in mg/m^3: $\frac{10\ mg/M^3}{\%\ \text{Respirable quartz} + 2}$[p)] TLV for "total dust", respirable and nonrespirable: $\frac{30\ mg/M^3}{\%\ \text{quartz} + 3}$
Silica, fused	Use quartz formulae
Tridymite	Use one-half the value calculated from formulae for quartz.

\+ 1970 Revision or Addition

k) As determined by the membrane filter method at 430 X magnification phase contrast illumination. Concentrations > 5 fibers/ml, but not to exceed 10, may be permitted for 15-minute periods each hour up to five times daily.

m) "Respirable" dust as defined by the British Medical Research Council Criteria (1) and as sampled by a device producing equivalent results (2).

(1) Hatch, T. E. and Gross, P., Pulmonary Deposition and Rentention of Inhaled Aerosols, p. 149. Academic Press, New York, New York, 1964.
(2) Interim Guide for Respirable Mass Sampling, AIHA Aerosol Technology Committee, AIHA J. 31, 2, 1970, p. 133.

n) This automatically reduces all particulate substances in Adopted list with TLV of 15 mg/M^3 to 10 mg/M^3.

p) Both concentration and per cent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

Aerodynamic Diameter (μ) (unit density sphere)	% passing selector
≤ 2	90
2.5	75
3.5	50
5.0	25
10	0

(2) Appendix A.

A[1] Because of the high incidence of cancer, either in man or in animals, no exposure or contact by any route, respiratory, oral or skin should be permitted for the compounds:

2-Acetylaminofluorene
4-Aminodiphenyl
Benzidine & its salts
Dichlorobenzidine
4-Dimethylaminoazobenzene
beta-Naphthylamine
4-Nitrodiphenyl
N-Nitrosodimethylamine
beta-Propiolactone

Because of the extremely high incidence of bladder tumors in workers handling beta-naphthylamine and the potential carcinogenic activity of the other compounds, the State of Pennsylvania prohibits the manufacture, use and other activities that involve human exposure without express approval by the Department of Health.

A[2] Polytetrafluoroethylene* decomposition products. - Thermal decomposition of the fluorocarbon chain in air leads to the formation of oxidized products containing carbon, fluorine and oxygen. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No TLV is recommended pending determination of the toxicity of the products, but air concentrations should be minimal.

A[3] Gasoline and/or Petroleum Distillates. - The composition of these materials varies greatly and thus a single TLV for all types of these materials is no longer applicable. In general, the aromatic hydrocarbon content will determine what TLV applies. Consequently the content of benzene, other aromatics and additives should be determined to arrive at the appropriate TLV (Elkins, et. al. A.I.H.A.J. 24, 99, 1963).

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* Trade Names: Algoflon, Fluon, Halon, Teflon, Tetran

(3) Appendix B.

B.1 THRESHOLD LIMIT VALUES FOR MIXTURES

When two or more hazardous substances are present, their combined effect, rather than that of either individually, should be given primary consideration. In the absence of information to the contrary, the effects of the different hazards should be considered as additive. That is, if the sum of the following fractions,

$$\frac{C_1}{T_1} + \frac{C_2}{T_2} + \text{----} \frac{C_n}{T_n}$$

exceeds unity, then the threshold limit of the mixture should be considered as being exceeded. C_1 indicates the observed atmospheric concentration, and T_1 the corresponding threshold limit, (See Example 1A.a.).

Exceptions to the above rule may be made when there is good reason to believe that the chief effects of the different harmful substances are not in fact additive, but independent as when purely local effects on different organs of the body are produced by the various components of the mixture. In such cases the threshold limit ordinarily is exceeded only when at least one member of the series ($\frac{C_1}{T_1}$ + or + $\frac{C_2}{T_2}$ etc.) itself has a value exceeding unity, (See Example 1A.b.).

Antagonistic action or potentiation may occur with some combinations of atmospheric contaminants. Such cases at present must be determined individually. Potentiating or antagonistic agents are not necessarily harmful by themselves. Potentiating effects of exposure to such agents by routes other than that of inhalation is also possible, e.g. imbibed alcohol and inhaled narcotic (trichloroethylene). Potentiation is characteristically exhibited at high concentrations, less probably at low.

When a given operation or process characteristically emits a number of harmful dusts, fumes, vapors or gases, it will frequently be only feasible to attempt to evaluate the hazard by measurement of a single substance. In such cases, the threshold limit used for this substance should be reduced by a suitable factor, the magnitude of which will depend on the number, toxicity and relative quantity of the other contaminants ordinarily present.

Examples of processes which are typically associated with two or more harmful atmospheric contaminants are welding, automobile repair, blasting, painting, lacquering, certain foundry operations, diesel exhausts, etc., (Example 2.)

THRESHOLD LIMIT VALUES FOR MIXTURES
EXAMPLES

1A. General case, where air is analyzed for each component

a. Additive effects. (note: It is essential that the atmosphere be analyzed both qualitively and quantitatively for each component present, in order to evaluate compliance or noncompliance with this calculated TLV.)

$$\frac{C_1}{T_1} + \frac{C_2}{T_2} + \frac{C_3}{T_3} + \ldots\ldots = 1$$

Example No. 1: Air contains 5 ppm of carbon tetrachloride (TLV = 10 ppm) 20 ppm of ethylene dichloride (TLV = 50 ppm) and 10 ppm of ethylene dibromide (TLV = 25 ppm)

Atmospheric concentration of mixture =

5 + 20 + 10 = 35 ppm of mixture

$$\frac{5}{10} + \frac{20}{50} + \frac{10}{25} = \frac{25 + 20 + 20}{50} = 1.3$$

Threshold Limit is exceeded. Furthermore, the TLV of this mixture may be calculated by reducing the total fraction to 1.0; i.e.

$$\text{TLV of mixture} = \frac{35}{1.3} = 27 \text{ ppm}$$

Example No. 2: Air contains 200 ppm of hexane (TLV = 500 ppm) 100 ppm of methylene chloride (TLV = 500 ppm) and 20 ppm of perchlorethylene (TLV = 100 ppm)

Atmospheric contentration of mixture =

200 + 100 + 20 = 320 ppm of mixture

$$\frac{200}{500} + \frac{100}{500} + \frac{20}{100} = \frac{200 + 100 + 100}{500} = \frac{400}{500} = 0.8$$

Threshold Limit is not exceeded. The TLV of this mixture

$$= \frac{320}{0.8} = 400 \text{ ppm}$$

1B. Special case when the source of contaminant is a liquid mixture and the atmospheric composition is <u>assumed</u> to be similar to that of the original material; e.g. on a time weighted average exposure basis, all of the liquid (solvent) mixture eventually evaporates.

a. Additive effects (approximate solution)

1. The percent composition (by weight) of the liquid mixture is known, the TVLs of the constituents must be listed in mg/M^3.

(<u>NOTE</u>: <u>In order to evaluate compliance with this TLV, field sampling instruments should be calibrated, in the laboratory, for response to this specific quantitative and qualitative air-vapor mixture, and also to fractional concentrations of this mixture; e.g., ½ the TLV; 1/10 the TLV; 2 X the TLV; 10 X the TLV; etc.)</u>

$$\text{TLV of mixture} = \frac{1}{\frac{f_a}{TLV_a} + \frac{f_b}{TLV_b} + \frac{f_c}{TLV_c} + \ldots\ldots \frac{f_n}{TLV_n}}$$

Example No. 1: Liquid solvent contains (by weight) 50% heptane (TLV = 2,000 mg/M^3) 30% methylene chloride (TLV = 1740 mg/M^3) 20% perchlorethylene (TLV = 670 mg/M^3)

$$\text{TLV of mixture} = \frac{1}{\frac{0.5}{2000} + \frac{0.3}{1740} + \frac{0.2}{670}} = \frac{1}{.00025 + .00017 + .0003}$$

$$= \frac{1}{.00072} = 1390\ mg/M^3$$

Of this mixture: 50% or 695 mg/M^3 is heptane, 30% or 417 mg/M^3 is methylene chloride and 20% or 278 mg/M^3 is perchlor-ethylene

These values can be converted to ppm as follows:

heptane:
2000 mg/M^3 = 500 ppm
1 mg/M^3 = 0.25 ppm
695 mg/M^3 = 174 ppm

methylene chloride:
1740 mg/M^3 = 500 ppm
1 mg/M^3 = 0.287 ppm
417 mg/M^3 = 119 ppm

perchlorethylene: 670 mg/M^3 = 100 ppm
1 mg/M^3 = 0.15 ppm
278 mg/M^3 = 42 ppm

The TLV of this mixture = 174 + 119 + 42 = 335 ppm.

1B.b. General Exact Solution for Mixtures of N Components With Additive Effects and Different Vapor Pressures.

(1) $$\frac{C_1}{T_1} + \frac{C_2}{T_2} + \ldots\ldots + \frac{C_n}{T_n} = 1;$$

(2) $$C_1 + C_2 + \ldots\ldots + C_n = T;$$

(2.1) $$\frac{C_1}{T} + \frac{C_2}{T} + \ldots\ldots + \frac{C_n}{T} = 1.$$

By the Law of Partial Pressures,

(3) $$C_1 = ap_1,$$

and by Raoult's Law,

(4) $$p_1 = F_1p_1^{o}.$$

Combine (3) and (4) to obtain

(5) $$C_1 = aF_1p_1^{o}.$$

Combining (1), (2,1) and (5), we obtain

(6) $$\frac{F_1p_1^{o}}{T} + \frac{F_2p_2^{o}}{T} + \ldots\ldots + \frac{F_np_n^{o}}{T} = \frac{F_1p_1^{o}}{T_1} + \frac{F_2p_2^{o}}{T_2} + \ldots\ldots + \frac{F_np_n^{o}}{T_n}$$

and solving for T,

(6.1) $$T = \frac{F_1p_1^{o} + F_2p_2^{o} + \ldots\ldots = F_np_n^{o}}{\frac{F_1p_1^{o}}{T_1} + \frac{F_2p_2^{o}}{T_2} + \ldots\ldots = \frac{F_np_n^{o}}{T_n}}$$

or

(6.2) $$T = \frac{\sum_{i=1}^{i=n} F_1p_1^{o}}{\sum_{i=1}^{i=n} \frac{F_1p_1^{o}}{T_1}}$$

T = Threshold Limit Value in ppm.
C = Vapor concentration in ppm.
p = Vapor pressure of component in solution.
p^o = Vapor pressure of pure component.
F = Mol fraction of component in solution.
a = A constant of proportionality.

Subscripts 1, 2, . . . n relate the above quantities to components 1, 2, . . . n, respectively.

Subscript i refers to an arbitrary component from 1 to n.

Absence of subscript relates the quantity to the mixture.

1B.c. 'Solution to be applied when there is a reservoir of the solvent mixture whose composition does not change appreciably by evaporation

Exact Arithmetic Solution of Specific Mixture

	Mol. wt.	Density	TLV	p^o at 25°C	Mol fraction in half-and-half solution by volume
Trichloro-ethylene (1)	131.4	1.46 g/ml	100	73 mm Hg	0.527
Methylchlo-roform (2)	133.42	1.33 g/ml	350	125 mm Hg	0.473

$F_1p_1^o$ = (0.527) (73) = 38.2

$F_2p_2^o$ = (0.473) (125) = 59.2

$$TLV = \frac{38.2 + 59.2}{\frac{38.2}{100} \quad \frac{59.2}{350}} = \frac{(97.4) \quad (350)}{133.8 + 59.2} = \frac{(97.4) \quad (350)}{193.0} = 177$$

TLV = 177 ppm (Note difference in TLV when account is taken of vapor pressure and mol fraction in comparison with above sample where such account is not taken.)

2. A mixture of one part of (1) parathion (TLV, 0.1) and two parts of (2) EPN (TLV, 0.5).

$$\frac{C_1}{0.1} + \frac{C_2}{0.5} = \frac{C_m}{T_m} \qquad C_2 = 2C_1$$

$$C_m = 3C_1$$

$$\frac{C_1}{0.1} + \frac{2C_1}{0.5} = \frac{3C_1}{T_m}$$

$$\frac{7C_1}{0.5} = \frac{3C_1}{T_m}$$

$$T_m = \frac{1.5}{7} = 0.21 \text{ mg/M}^3$$

1C. TLV for Mixtures of Mineral Dusts.

For mixtures of biologically active mineral dusts the general formula for mixtures may be used.

For a mixture containing 80% talc and 20% quartz, the TLV for 100% of the mixture is given by:

$$TLV = \frac{1}{\frac{0.8}{20} + \frac{0.2}{2.5}} = 8.4 \text{ mppcf}$$

Essentially the same result will be obtained if the limit of the more (most) toxic component is used provided the effects are additive. In the above example the limit for 20% quartz is 10 mppcf.

For another mixture of 25% quartz, 25% amorphous silica and 50% talc:

$$\text{TLV} = \frac{1}{\frac{0.25}{2.5} + \frac{0.25}{20} + \frac{0.5}{20}} = 7.3 \text{ mppcf}$$

The limit for 25% quartz approximates 8 mppcf.

(4) Appendix C.

PERMISSIBLE EXCURSIONS FOR TIME-WEIGHTED AVERAGE (TWA) LIMITS

The Excursion TLV Factor in the Table automatically defines the magnitude of the permissible excursion above the limit for those substances not given a "C" designation; i.e., the TWA limits. Examples in the Table show that nitrobenzene, the TLV for which is 1 ppm, should never be allowed to exceed 3 ppm. Similarly, carbon tetrachloride, TLV 10 ppm, should never be allowed to exceed 20 ppm. By contrast, those substances with a "C" designation are not subject to the excursion factor and must be kept below the TLV.

These limiting excursions are to be considered to provide a 'rule-of-thumb' guidance for listed substances generally, and may not provide the most appropriate excursion for a particular substance. Efforts are being made to develop such specific excursions, when indicated to be significantly different from that recommended by the present excursion factors.

Substance	TLV	Excursion Factor	Max. Conc. Permitted for short time
Nitrobenzene	1 ppm	3	3 ppm
Carbon tetrachloride	10 ppm	2	20 ppm
Carbon monoxide	50 ppm	1.5	75 ppm
Acetone	1000 ppm	1.25	1250 ppm
Boron trifluoride	C 1 ppm	--	1 ppm
Butylamine	C 5 ppm	--	5 ppm
Styrene monomer	C 100 ppm	--	100 ppm

For all substances:

TLV = 0 - 1 (ppm or mg/m^3), Excursion Factor = 3
TLV = 1 - 10 (ppm or mg/m^3), Excursion Factor = 2
TLV = 10 - 100 (ppm or mg/m^3), Excursion Factor = 1.5
TLV = 100 - 1000 (ppm or mg/m^3), Excursion Factor = 1.25

BASIS FOR ASSIGNING LIMITING "C" VALUES

By definition in the Preface, a listed value bearing a "C" designation refers to a 'ceiling' value that should not be exceeded; all values should fluctuate below the listed value. This, in effect, makes the "C" designation a maximal allowable concentration (MAC). In general, the bases for assigning or not assigning a "C" value rest on whether excursions of concentration above a proposed limit for periods up to 15 minutes may result in a) intolerable irritation, b) chronic, or irreversible tissue change, or c) narcosis of sufficient degree to increase accident proneness, impair self-rescue or materially reduce work efficiency.

(5) Appendix D.

Some "Inert" or Nuisance Particulates q)

Alundum (Al_2O_3)	Kaolin
Calcium carbonate	Limestone
Cellulose (paper fiber)	Magnesite
Portland Cement	Marble
Corundum (Al_2O_3)	Pentaerythritol
Emery	Plaster of Paris
Glycerine Mist	Rouge
Graphite (synthetic)	Silicon Carbide
Gypsum	Starch

Vegetable oil mists	Sucrose
(except castor, cashew nut,	Tin Oxide
or similar irritant oils)	Titanium Dioxide

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q) When toxic impurities are not present, e.g. quartz $< 1\%$.

(6) Appendix E.

Some Simple Asphyxiants - "Inert" Gases and Vapors

Acetylene	Hydrogen
Argon	Methane
Ethane	Neon
Ethylene	Nitrogen
Helium	Nitrous Oxide
	Propane

1970 TLV COMMITTEE MEMBERS

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§295.102. Exposure to Toxic and Hazardous Substances.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal regulations in Title 29, Code of Federal Regulations, Subpart G, §§1910.1000; 1910.1001; 1910.1017; 1910.1018; 1910.1025; 1910.1043; 1910.1047; 1910.1048; and 1910. 1450 which contains the most current and pertinent standards regarding occupational exposure to toxic and hazardous substances.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

§295.103. Occupational Noise Exposure.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal regulations in Title 29, Code of Federal Regulations, Subpart G, §1910.95, which contains the most current and pertinent standards regarding occupational noise exposure.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

§295.104. Respiratory Protection.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal

regulations in Title 29, Code of Federal Regulations, Subpart I, §1910.134, which contains the most current and pertinent standards regarding respiratory protection.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

§295.105. Ventilation.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal regulations in Title 29, Code of Federal Regulations, Subpart G, §1910.94, which contains the most current and pertinent standards regarding ventilation.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

§295.106. Environmental Standards in Industrial Establishments.

(a) Scope. This section applies to public places of employment.

(b) Purpose. The purpose of this section is to prescribe minimum environmental requirements for the protection of the health of employees in public places of employment.

(c) Laws and regulations. Pertinent and related laws, regulations, opinions of the attorney general of Texas, and advisory standards. Copies of any or all such references which are currently applicable will be provided to any citizen of Texas upon request from the Industrial Hygiene, Occupational Health and Radiation Control Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Approved-Approved by the Texas State Department of Health or by local health authorities having jurisdiction.

(2) Chemical toilets-A toilet facility where the waste disposal is not washed into the sewer but is collected in a container charged with a chemical solution for the purpose of disinfecting and deodorizing the contents.

(3) Drinking water-Water which does not contain objectionable pollution, contamination, minerals, or infection, and is considered satisfactory for domestic consumption.

(4) Industrial establishment-An institution, a place, building or location related to manufacturers or to the product of industry or labor. (See also the definition of "places of employment" set forth in this section.)

(5) Lavatory-A basin or other vessel for washing.

(6) Number of employees-The maximum number at work at any one time in one industrial establishment.

(7) Personal service rooms-Rooms set apart as first aid rooms, rest rooms, emergency rooms, dressing rooms, toilet rooms, wash rooms, lunch rooms, and rooms for similar purposes.

(8) Places of employment-A place where persons work for city, county, or state agencies, or other political subdivision of the state, public schools, public colleges and universities, and publicly owned utilities.

(9) Sanitary condition-That physical condition of working quarters which precludes the probability of disease transmission.

(10) Shall-The word "shall" is used for provisions which are mandatory.

(11) Should-The word "should" indicates provisions which are not mandatory but which are recommended as good practice.

(12) Toilet facilities (closets) -Water-flushed fixtures maintained within toilet rooms for the purpose of defecation.

(13) Toilet room-A room maintained within or on the premises of any place of employment, containing toilet facilities for use of employees.

(14) Urinal-A water-flushed fixture connected with a sewer, maintained within a toilet room for the sole purpose of urination.

(15) Wash room-Any space or room in any place of employment used solely for the purpose of maintaining body cleanliness.

(16) Water closet-A toilet facility which is connected to a sewer and flushed with water.

(e) Housekeeping.

(1) All places of employment, passageways, storerooms, and service rooms shall be kept clean and sanitary.

(2) The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable.

(3) Cleaning and sweeping shall be done in such a manner as to minimize the contamination of the air with dust and, so far as is practicable, shall be done outside of working hours.

(4) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, loose boards, or obstructions that may injure or aid in injury to the worker.

(f) Expectorating.

(1) Expectorating on the walls, floors, work places, or stairs of any establishment shall not be permitted.

(2) Cuspidors are undesirable, but, if used, they shall be of such construction that they are readily and fully cleanable. They shall be cleaned at least once daily when in use.

(g) Waste disposal.

(1) Any receptacle used for storing putrescible solid or liquid waste shall be sturdily constructed of such material and in such a manner that it does not leak and may be conveniently and thoroughly cleaned. Such a receptacle shall be equipped with a tight fitting cover and shall be maintained in a sanitary condition.

(2) All putrescible solid or liquid waste, or nonputrescible waste which has been in contact with putrescible waste, shall be stored in a suitable container and shall be removed as often as necessary to maintain the place of employment in a sanitary condition.

(3) All wastes shall be treated adequately and disposed of in such a manner as to comply with existing statutes and regulations.

(h) Rodent, insect, and vermin control. Every enclosed work place and personal service room shall be constructed, equipped, and maintained, so far as reasonably practicable, in such a manner as to prevent the entrance or harborage of rodents, insects, and vermin of any kind. "Maintained" is also intended to mean, that should a work place or personal service room become infested at any time, steps will be taken to eliminate the infestation through accepted public health measures.

(i) Inspection. Inspections should be made by the employer or his designated and qualified representative as often as necessary as to insure compliance with all sanitary requirements of this standard. Inspections should also be made of mechanical equipment utilized to promote sanita-

tion as often as is necessary to insure its proper functioning. Permanent records of these inspections should be made.

(j) Lighting. Lighting should be in a general accordance with the values shown in Illuminating Engineering Society's Bulletin Number RP-15 on "Recommended Levels of Illumination," 1966, or the latest revisions thereof.

(k) Ventilation. The amount of ventilation provided shall be in accordance with the requirements of local authorities having jurisdiction. In the event that there are not legally specified ventilation requirements, the following guidelines should be used in establishing minimum ventilation requirements.

(1) Outside air should be provided by either mechanical or natural means to all rooms occupied by workers at a rate in cubic feet per minute per person which is not less than the following:

Air space in room in cubic cubic feet per person	Cubic feet of out-side air per minute per person
Less than 200	20
201-500	15
501-1000	10
Over 1000	5

(2) For information concerning natural ventilation, standard references such as the "Heating, Ventilating, and Air Conditioning Guide" of the American Society of Heating and Ventilation Engineers and the "Industrial Ventilation," a manual of recommended practice published by the American Conference of Governmental Industrial Hygienists, are suggested.

(3) Toilet rooms should be provided with a minimum ventilation rate of 35 cubic feet of air per minute per water closet or urinal installed therein.

(l) Drinking water.

(1) An adequate supply of drinking water shall be provided for drinking, ablutionary, and culinary purposes in all places of employment. Drinking water should be made available within 200 feet of any location at which employees are regularly engaged in work. Under certain conditions where the work area is large and the number of employees relatively small, these requirements may be met by the use of approved portable containers.

(2) Sanitary drinking fountains shall be of a type and construction approved by the Texas Water Commission and local health authorities having jurisdiction.

(3) In all instances where workmen are furnished water cooled by ice which is not placed directly into the cooler at an ice dock or ice plant, or not handled by a sanitary mechanical device, or in any other satisfactory sanitary manner, the construction of the water container shall be such that the ice does not come in direct contact with the water. Ice shall be manufactured and handled according to minimum standards in §§229.111-229.120 of this title (relating to Manufacture, Storage and Distribution of Ice Sold for Human Consumption, Including Ice Produced At Point of Use).

(4) Containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, shall not be allowed.

(5) The common drinking cup is prohibited.

(6) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(7) In those instances where industries provide, operate, and maintain drinking water systems, entirely separate from public water systems, at least four water samples per month shall be secured from an active part of the drinking water distribution system and submitted for bacteriological water analysis to the Texas Water Commission. In cases of existing water systems, the Texas Water Commission shall be notified and a request made for a sanitary survey. For any new water systems also contact the Texas Water Commission for specific requirements.

(8) After repairs or extensions have been made to the drinking water system, the new or repaired facilities should be disinfected with water having 40 to 60 milligrams per liter residual chlorine and the water containing excessive chlorine should remain in contact with the portion of the system being disinfected for at least 24 hours. After complete flushing, samples of water should be collected for bacteriological examination to be assured that the treatment was effective. Repeat process until treatment is effective.

(9) A sample of water which is properly collected and identified by the completion of forms for this purpose which may be obtained from the Texas Water Commission shall be submitted for analysis as determined by the requirements of the Texas Water Commission.

(10) Individuals in responsible charge of the production, treatment, and distribution of potable water should secure water plant operator's certification of competency.

(m) Nonpotable water.

(1) Outlets for nonpotable water, such as water for industrial or fire-fighting purposes only, shall be posted to indicate clearly that the water is unsafe and is not to be used for drinking, ablutionary, or culinary purposes.

(2) There shall be no cross-connection, open or potential, between a system furnishing water for drinking purposes and a system furnishing toxic chemicals or nonpotable water or water of questionable quality for other uses.

(3) Construction shall be such that there shall be no possibility of backflow of contaminated water or toxic chemicals into a drinking water system.

(4) Nonpotable water shall not be used for bathing or for washing any portion of the person, clothing, or dishes.

(n) General.

(1) Every place of employment shall be provided with adequate toilet facilities which are separate for each sex. The sewage disposal or treatment method shall

comply with requirements of the health authorities having jurisdiction.

(2) Toilet facilities shall be provided so as to be readily accessible to all employees. Toilet facilities so located that employees must use more than one floor-to-floor flight of stairs to or from them are not considered as readily accessible. As far as is practicable, toilet facilities should be located within 200 feet of all locations at which workers are regularly employed.

(3) Water closets shall be provided for each sex according to the table in subparagraph (A) of this paragraph.

(A) For employees only up to the number of 10, one toilet properly controlled will be acceptable. The number to be provided for each sex shall in every case be based on the maximum number of persons of that sex employed at any one time at work on the premises for which the facilities are furnished. When persons other than employees, e.g., customers in a store, or restaurant, are permitted the use of toilet facilities on the premises, a reasonable allowance shall be made for such other persons in estimating the minimum number of toilet facilities.

Number of persons	Minimum number of water closets
1 to 9	1
10 to 24	2
25 to 49	3
50 to 74	4
75 to 100	5
Over 100	1 for each additional 30 persons

(B) Where 10 or more males are employed, urinals may be provided. One water closet less than the number specified in the foregoing may be provided for men for each urinal, except that the number of water closets in such cases may not be reduced to less than two-thirds of the number specified in the foregoing. A minimum of two feet of trough urinal shall be considered as equivalent to one individual urinal.

(4) An adequate supply of toilet paper with holder shall be provided at every water closet.

(5) Covered receptacles for the disposal of sanitary napkins shall be kept in all toilet rooms used by women.

(6) Adequate washing facilities shall be provided in every toilet room or be adjacent thereto.

(o) Construction of toilet rooms.

(1) Each toilet facility (closet) shall occupy a separate compartment, which should be equipped with a door, latch, and clothes hook.

(2) The walls of compartments or partitions between fixtures may be less than the height of room walls, but the top shall not be less than six feet from the floor and the bottom not more than one foot from the floor.

(3) The door to every toilet room shall be fitted with an effective self-closing device, and the entrance to the toilet room shall be so screened that the interior of the toilet room is not visible from the workroom.

(4) In all toilet rooms hereinafter installed, the floors and side walls, to a height of at least six inches, including the angle formed by the floor and side walls, shall be of watertight construction.

(5) The floors, walls, ceilings, partitions, and doors of all toilet rooms shall be of a finish that can be easily cleaned. In new installations, cove bases should be provided to facilitate cleaning.

(6) Toilet rooms, except those in work places accessible to men only, shall be completely enclosed with solid material that is nontransparent from the outside. In new installations, the minimum floor space allotted for water closets, lavatories, and urinals should be as follows:

Room	Minimum width	Minimum depth	Minimum room space per unit
Water closets	32 inches	42 inches	16 square feet
Lavatories	24 inches	42 inches	12 square feet
Urinals	24 inches	42 inches	12 square feet

(p) Construction and installation of toilet facilities.

(1) In the absence of applicable local building codes, the requirements of the American Standard Plumbing Code, A0.8-1955, or the latest revision thereof approved by the American Standards Association, Incorporated, should be followed in the construction and installation of toilet facilities.

(2) Every water closet bowl shall be set entirely free and open from all enclosing structures and shall be so installed that the space around the fixture can be easily cleaned. This provision does not prohibit the use of wall-hung type water closets.

(3) Every water closet shall have a hinged open-front seat made of substantial material having a nonabsorbent finish. Integral water closet seats may be used where specifically permitted by local health authorities having jurisdiction.

(q) Chemical toilets and privies.

(1) When chemical closets or privies are permitted, they shall be of a type approved by the local health authorities having jurisdiction and shall be maintained in a sanitary condition. In the absence of specific regulations, construction and maintenance shall be in accordance with recommendations contained in publication titled The Sanitary Privy, Supplement Number 108 to the Public Health Reports, published by the United States Public Health Service.

(2) When more than two closets for each sex are needed, a water carriage disposal system should be installed in lieu of chemical closets or privies.

(r) Facilities for maintaining personal cleanliness. Adequate facilities for maintaining personal cleanliness shall be provided in every place of employment. These shall be convenient for the employees for whom they are provided and shall be maintained in a sanitary condition.

(1) At least one lavatory (wash basin) with adequate hot and cold water, preferably from a combination supply fixture, shall be provided for every 20 employees (men and women) or portion thereof, up to 100 persons, and one lavatory (wash basin) for each additional 25 persons or portion thereof. Twenty-four inches of sink with individual faucet shall be considered as equal to one lavatory. In all instances, a suitable cleansing agent shall be provided at each wash place.

(2) Where employees are exposed to skin contamination with poisonous, infectious, or irritating material, one lavatory supplied with hot and cold water, preferably from a combination supply fixture, shall be provided for every five employees.

(3) One shower bath with ample supply of hot and cold water from one fixture shall be supplied for every 15 workers, or portion thereof, exposed to excessive heat or to skin contamination with poisonous, infectious, or irritating material.

(4) Individual hand towels, or sections thereof, of cloth or paper, shall be provided and proper receptacles or other sanitary means maintained for the disposal of used towels. Other apparatus for drying the hands may be substituted for towels upon approval by the authorities having jurisdiction. The provision of a towel for general or common use shall be prohibited.

(5) Separate change or dressing rooms equipped with individual clothes facilities shall be provided for each sex wherever it is the practice to change from street clothes or wherever it is necessary to change because the work performed involves exposure to excessive dirt, heat, fumes, vapor, or moistures. In the event that change rooms are not provided, facilities shall be furnished for hanging outer garments.

(6) Where employees' work clothes are exposed to contamination by radioactive, poisonous, infectious, or irritating material, facilities should be provided in change rooms so that street and work clothes will not be stored in contact with each other.

(s) Work clothes maintenance. Where the process in which the worker is engaged is such that his working clothes become wet or have to be washed between shifts, provision shall be made to insure that such clothing is dry before reuse.

(t) Women's retiring rooms. Where 10 or more women are employed at any one time, at least one retiring room shall be provided, with the understanding that it is to be used only for rest and emergencies and not for smoking or recreation purposes.

(1) Where less than 10 women are employed and a rest room is not furnished, some equivalent space shall be provided which can be properly screened for privacy and made suitable for the use of women employees.

(2) At least one couch or bed shall be provided in every place where more than 10 women are employed. The number of such beds or couches required shall be as follows. A minimum of 60 square feet per bed shall be provided.

Employees	Number of beds
10 to 100	One bed
100 to 250	Two beds

One additional bed for each additional 250 women employees

(u) Lunch rooms. In all places of employment where employees are permitted to lunch on premises, an adequate space suitable for that purpose shall be provided for the maximum number of employees who may use such space at one time. Such space shall be separate from any location where there is exposure to toxic materials. Suitable storage space for lunches and lunch boxes should be provided.

(1) A covered receptacle shall be provided and shall be used by employees for the disposal of all waste food, napkins, sack, wrappings, or other empty or used food containers.

(2) No employee shall be permitted to store or eat any part of his lunch or any other food or to smoke at any time where there are present any toxic material or other substance that may be injurious to health. Workers in areas where toxic materials are used shall wash their hands before eating any meals or smoking. Convenient handwashing facilities shall be provided for this purpose.

(3) In every establishment where there is exposure to injurious dusts or other toxic materials, a separate lunch room

shall be maintained unless it is convenient for the employees to lunch away from the premises.

(A) The following number of square feet per person, based on the maximum number of persons using the room at one time, shall be required:

Number of persons	Square feet
25 and less	8
26-74	7
75-149	6
150-499	5
500 and more	4

(B) Generally, the preparation, storage, and dispersing of food shall be accomplished according to the provisions of the Texas Food and Drug Laws and by local health authorities having jurisdiction. All other activities such as the disinfection and storage of dishes shall also conform to the aforementioned state laws and local ordinances.

§295.107. Sanitation in the Workplace.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal regulations in Title 29, Code of Federal Regulations, Subpart I, §1910.141, which contains the most current and pertinent standards regarding sanitation in the workplace.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

§295.108. Access to Employee Exposure and Medical Records.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal regulations in Title 29, Code of Federal Regulations, Subpart C, §1910.20, which contains the most current and pertinent standards regarding access to employee exposure and medical records.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

§295.109. Medical Services and First Aid.

(a) The Texas Department of Health (department) adopts by reference as guideline only (guidelines mean standards, limits, codes, practices, or procedures recommended by the department for use by public entities; not enforceable by the department as administrative rules) the federal regulations in Title 29, Code of Federal Regulations, Subpart K, §1910.151, which contains the most current and pertinent standards regarding medical service and first aid.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756, and is available for public review during regular business hours.

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 October 5, 1992.

TRD-9213424 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1992

For further information, please call: (512) 834-6600

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Industrial Homework Standards

• 25 TAC §§295.121-295.126

The new sections are proposed under the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.121. Scope and Purpose.

(a) Scope. These sections in this undesignated head apply to employers and employees who engage in industrial homework.

(b) Purpose. The purpose of these sections is to establish the procedure for administration of provisions of the Texas Industrial Homework Law.

(c) Pertinent references. Copies of related laws, regulations, opinions of the Attorney General of Texas, and advisory standards currently applicable will be provided to any citizens of Texas upon requests.

§295.122. Definitions. The following words and terms, when used in the sections of this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Employer–Any person who directly or indirectly or through an employee, agent, independent contractor, or any other person delivers to another person any materials or articles to be manufactured in a home and thereafter to be returned to him, not for the personal use of himself or of a member of his family.

Home–Any room, house, or apartment, or other premises, whichever is most extensive, used in whole or in part as a place of dwelling.

Industrial homework–Any manufacture in a home of materials or articles for an employer.

Person–A corporation, copartnership, or a joint association.

To manufacture–To prepare, alter,

repair, or finish in whole or in part for profit and compensation.

§295.123. General Requirements. All persons who engage in industrial homework shall familiarize themselves with and shall comply with the Texas Industrial Homework Law, other pertinent laws and regulations, and Occupational Health Regulations as approved by the Texas Board of Health.

§295.124. Employer's Permit.

(a) Employers, prior to distributing materials or articles for manufacture by industrial homework, shall apply for a valid employer's permit by submitting an application form, provided by the Texas Department of Health (department), to the Texas Board of Health, attention of the Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The application will be accompanied by a payment of the prescribed fee of $50.

(b) Upon approval by the department, an employer's permit, properly executed, shall be issued.

(c) Unofficial reproduction of the employer's permit certificate is expressly prohibited.

(d) The employer's permit may be revoked or suspended if there is failure to comply with any provision of this section.

§295.125. Homeworker's Certificate.

(a) Every person prior to engaging in industrial homework shall obtain a valid homeworker's certificate by submitting an application form, provided by the Texas Department of Health (department), to the Texas Board of Health, attention of the Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The application will be accompanied by a payment of the prescribed fee of $.50.

(b) Upon approval by the department, a homeworker's certificate, properly executed, shall be issued.

(c) Unofficial reproduction of the homeworker's certificate is expressly prohibited.

(d) The homeworker's certificate may be revoked or suspended if there is failure to comply with any provision of this section or if an industrial homeworker has permitted any person not holding a valid homeworker's certificate to assist him in performing his industrial homework.

§295.126. Forms. The Texas Department of Health will develop forms to be used for:

(1) applications for permits to distribute industrial homework;

(2) employer's permit certificates;

(3) applications for industrial homeworker's certificate; and

(4) the homeworker's certificates.

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 October 5, 1992.

TRD-9213426 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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Standards for Face and Eye Protection in Public Schools

• 25 TAC §§295.141-295.148

The new sections are proposed under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.141. Purpose and Scope.

(a) Purpose. The purpose of these sections of this undesignated head is to provide governing boards and administrators of Texas school districts reasonable and adequate means, ways, and methods for the proper selection and safe use of eye protective equipment.

(b) Scope. These sections shall apply to all teachers and pupils within Texas public schools participating in certain vocational, industrial arts, and chemical-physical courses or laboratories where potentially hazardous operations exist. These sections were extracted from American Standards Association Bulletin Z2.1-1959, which is to be used as a further reference for material not contained within these sections.

§295.142. Exceptions. Variations from the requirements of this section may be granted by the Texas Department of Health only when it is demonstrated to the satisfaction of the department that equivalent protection is afforded. For protection of personnel involved with operations not listed therein, please consult the Division of Occupational Health, Texas Department of Health.

§295.143. Definitions.

(a) General information.

(1) The word "approved" refers to approval by the Texas Department of Health, i.e., the agency having jurisdiction over the specific requirement.

(2) The use of the word "shall" indicates a mandatory requirement. The word "should" indicates a recommendation.

(b) Specific definitions.

(1) Bridge size-The distance between lenses on the nose side of each eye, expressed in millimeters.

(2) Contaminant-A harmful material that is foreign to the normal atmosphere.

(3) Cover plate-A removable pane of colorless glass, plastic-coated glass, or plastic that covers the filter plate and protects it from damage.

(4) Dust-Finely divided solid particles generated by processing (including handling, crushing, grinding, or pulverizing) materials such as rock, metal, wood, and grain.

(5) Eyepiece-A gastight transparent window in a gas-mask facepiece through which the wearer may see.

(6) Eye size-A measurement expressed in millimeters and denoting the size of the lens-holding section of an eye frame.

(7) Face shield-A device worn in front of the eyes and a portion of or all or the face, whose predominant function is protection of the eyes and face.

(8) Filter plate-Removable pane in the window that absorbs varying proportions of the ultraviolet, visible, and infrared rays according to the composition and density of the plate.

(9) Fume-Solid dispersoids formed by condensation of vapors, such as those from heated metals.

(10) Goggles-A device, with contour-shaped eyecups or facial contact with glass or plastic lenses, worn over the eyes and held in place by a headband for the protection of the eyes and eye sockets.

(11) Hand shield-A device, usually held in the hand or supported on the wearer's chest, designed to protect the eyes and face during welding operations.

(12) Helmet-A device that is worn by a person to shield the eyes, face, neck, and other parts of the head.

(13) Lens-The transparent glass or plastic device through which the wearer of the protective goggles or spectacles sees, and which provides protection to the eyes

against flying objects, glare, or injurious radiation, or a combination of these hazards.

(14) Lens, corrective-A lens ground to the wearer's individual corrective prescription.

(15) Mist-Suspended liquid droplets generated by breaking up a liquid into a dispersed state.

(16) Particulate matter-Matter occurring in the form of minute separate particles, such as dust, fume, mist, and fog; a dispersoid.

(17) Protector-A device that provides head, face and eye protection against the hazards of processes encountered in employment or in the natural environment.

(18) Shield-A device to be held in the hand, or supported without the aid of the operator, whose predominant function is protection of the eyes and face.

(19) Spectacle-A device patterned after conventional-type spectacle eyewear but of more substantial construction, either with or without side shields, and with clear, impact-resistant filter or corrective lenses of glass or plastic.

§295.144. General Requirements.

(a) Eye protection shall be required where there is a reasonable probability of injury to the body that can be prevented by such protection.

(b) In such cases, governing boards and administrators of Texas school districts shall furnish protectors of a type suitable for the work to be performed, and participating teachers and pupils shall use such protectors.

(c) No person shall be subjected, without protection, to a hazardous environmental condition.

(d) Protectors shall meet the following minimum requirements. Protectors shall:

(1) provide adequate protection against the particular hazards for which they are designed;

(2) be reasonably comfortable when worn under the designated conditions;

(3) fit snugly and shall not unduly interfere with the movements of the wearer;

(4) be durable;

(5) be capable of being disinfected; and

(6) be easily cleanable.

(e) Protectors should be kept clean and in good repair.

(f) Eye protector shall be provided where machines or operations present the hazard of flying particles, pieces, or substances.

(g) Workers whose vision requires the use of corrective lenses in spectacles and who are required by this standard to wear protective goggles shall be provided with goggles of one of the following types:

(1) goggles whose protective lenses provide optical correction;

(2) goggles that can be worn over corrective spectacles without disturbing the adjustment of the spectacles; and

(3) goggles that incorporate corrective lenses mounted behind the protective lenses.

(h) Only protectors which bear the label of or meet the standards set forth in American Standards Association Bulletin Z2.1-1959 shall be used.

§295.145. Eye Protectors.

(a) Face shields.

(1) Function. The devices described in this subsection are designed to provide protection to the face (i.e., the front part of the head including forehead, eyes, cheeks, nose, mouth, chin) and neck, where required, from flying particles and sprays of hazardous liquids and, in addition, to provide antiglare protection where required.

(2) Intended uses. Some typical uses for face shields include the following:

(A) woodworking operations where chips and particles fly;

(B) metal machining causing flying particles;

(C) buffing, polishing, wire brushing, and grinding operations where flying particles or objects may strike the face;

(D) spot welding; and

(E) handling hot or corrosive materials.

(b) Helmets and hand shields.

(1) Function. The devices described in this subsection are designed to provide protection for the eyes, face, ears, and neck against intense radiant energy. Typical operations which require helmets or hand shields include various kinds of arc welding and heavy gas cutting.

(2) Styles. The helmet and the hand shield are made to the same basic design and of the same basic materials, a bowl-shaped or modified bowl-shaped device containing a window with filter plate which allows the wearer to see the radiant object, yet prevents harmful intensities of radiation from reaching his eyes. The helmet headgear has an adjustable frame by which it is supported on the head; while the hand shield has a handle attached to the bottom by which it is held in the hand. The basic designs may be modified to provide protection against special hazards, but modified equipment shall meet the same requirements as the basic design.

(c) Goggles, eyecup models. The three basic types of eyecup goggles shall be subdivided into the following classes.

(1) Chippers' models providing protection against flying objects. Eyecups shall be ventilated in a manner to permit circulation of air. Ventilation openings shall be such as to exclude a spherical particles 0.04 inch in diameter.

(2) Dust and splash models providing protection against relatively fine dust particles or liquid splashes. Eyecups shall be ventilated in a manner to permit circulation of air. The ventilation openings shall be baffled or screened to prevent the direct passage of dust or liquids into the interior of the eyecups.

(3) Welders' and cutters' models providing protection against glare and injurious radiations. The basic designs may be modified to provide more protection against special hazards, but the modified equipment shall meet the same requirements as the basic design. Eyecups shall be ventilated in a manner to permit circulation of air. The ventilation openings shall be baffled to prevent the passage of light rays into the interior of the eyecups.

(d) Spectacles, metal or plastic frame.

(1) Protection. Spectacles shall provide protection to the eye from flying objects and, where required, from glare and injurious radiations. Spectacles without side shields are intended to provide frontal eye protection only. Where side as well as frontal eye protection is required, the spectacles shall be provided with side shields. The edge of the side shield shall have a smooth finish or shall be padded.

(2) Materials and methods of test. General materials used shall be capable of withstanding the disinfection, corrosion resistance, water absorption, and inflammability tests outlined in §295.146 of this title.

(e) Goggles, flexible fitting.

(1) Description. Goggles shall consist of a frame (composed of a flexible, chemical-resistant, nontoxic, nonirritating, and slow-burning material, forming a lens

holder), lenses, and a positive means of support on the face such as an adjustable headband of suitable material to retain the frame comfortably and snugly in place in front of the eyes. The lens holder shall be such that the lenses are held firmly and tightly and may be removed or replaced without the use of tools. The goggles may be ventilated or not, as required by their intended use. Where chemical goggles are ventilated, the openings shall be such as to render the goggles splashproof.

(2) Protection. Goggles shall provide eye protection from fine dusts, fumes, liquids, splashes, mists, and spray.

(3) Application. Specific application for use of flexible fitting goggles will be found in Table 1 of §295.147 of this title.

(4) Materials and methods of test. Plastic lenses used in flexible fitting goggles shall be not less than 0.050 inch in thickness. Materials used shall be capable of withstanding the disinfection, corrosion resistance, water absorption, and flammability tests outlined in §295.146 of this title.

(f) Goggles, plastic eyeshield.

(1) Description. The goggles shall consist of a frame of plastic material, lens or lenses, and a means of support such as an adjustable headband to retain the goggles in front of the eyes. The frame and lens need not be of the same material. The lens need not be an integral part of the goggles. The frame may be translucent, clear, or opaque, and may be ventilated or not, as required by its intended use. The edge of the frame which bears against the face shall have a smooth surface free from roughness or irregularities which might cause discomfort to the wearer.

(2) Protection. The goggles shall provide protection against flying objects and, where required, from glare and injurious radiations. Where the goggles are used for protection against injurious light radiation, the lenses and frames shall meet the requirements of §295.148(b) of this title. (relating to Appendix for §295.146) and the frames shall prevent the passage of injurious light rays.

(3) Application. Specific application for use of plastic eyeshield goggles will be found in Table I of §295.147 of this title.

(4) Materials and methods of test. Where plastic lenses are used in plastic eyeshield goggles, they shall be not less that 0.050 inch in thickness. If glass lenses are used, they shall be not less than 3.0 millimeters nor more than 3.8 millimeters in thickness. Materials used shall be capable of withstanding the disinfection, corrosion, resistance, water absorption, and flammability tests outlined in §295.146 of this title.

(g) Spectacles, plastic eyeshield.

(1) Description. Spectacles shall consist of a frame of metal, fiber, or plastic material, plastic lens or lenses, and temples or other suitable means of support to retain the frame before the eyes. The lens or lenses need not be an integral part of the frame. The spectacles shall have side shields, if required by their intended use.

(2) Protection. Spectacles shall provide protection to the eye from flying objects and, where required, from glare and injurious radiation. Spectacles without side shields provide frontal eye protection only. Where side as well as frontal eye protection is required, the spectacles shall be provided with side shields.

(3) Application. Specific application for use of plastic eyeshield spectacles will be found in Table 1 of §295.147 of this title.

(4) Materials and methods of test. Plastic lenses used in plastic eyeshield spectacles shall not be less that 0. 050 inch in thickness. Materials used shall be capable of meeting the applicable requirements and withstanding the tests outlined in §295.146 of this title.

(h) Goggles, foundrymen's.

(1) Description. Goggles shall consist of a mask made of a flexible, nonirritating, and noncombustible or slow-burning material, such as leather or flexible plastic, metal lens holders attached thereto, lenses, and a positive means of support on the face, such as an adjustable headband, to retain the mask comfortably and snugly in place in front of the eyes. The edge of the mask in contact with the face shall be provided with a binding of corduroy or other suitable material. The lens holders shall be so designed that the lenses are held firmly and tightly and may be readily removed or replaced. The lens holders shall be ventilated to permit circulation of air. Ventilation openings shall exclude a spherical particle 0.04 inch in diameter. For protection against heavy concentrations of dust, the use of a fine-mesh screen lining (e.g., 100-mesh screen) is recommended. Such lining shall be suitably and permanently fastened to the inside surface of each lens holder assembly.

(2) Protection. The foundryman's goggles shall provide protection against impact and hot-metal splash hazards encountered in foundry operations such as melting, pouring, chipping, babbitting, grinding, and riveting. Where required, they shall also provide protection against dusts.

(3) Applications. Specific application for use of foundrymen's goggles will be found in Table 1 of §295.147 of this title.

(4) Materials and methods of test. Materials used shall be capable of withstanding the disinfection, corrosion-resistance, water-absorption, and flammability tests outlined in §295.146 of this title.

§295.146. Materials and Methods of Test of Protections.

(a) Materials. Materials used in the manufacture of eye protectors shall combine mechanical strength and lightness of weight to a high degree, shall be nonirritating to the skin when subjected to perspiration, and shall withstand frequent disinfection by the methods prescribed in this section. Where metals are used, they shall be inherently corrosion resistant.

(b) Disinfection. All materials shall be such as to withstand, without visible deterioration or discoloration, washing in detergents and warm water, rinsing to remove all traces of detergent, and disinfection by the following methods:

(1) immersion for 10 minutes in a solution of formalin made by placing one part of 40% formaldehyde solution in 9 parts of water at a room temperature of 68 degrees Fahrenheit;

(2) subjection to a moist atmosphere of formaldehyde for a period of 10 minutes at a room temperature of 68 degrees Fahrenheit; or

(3) immersion for 10 minutes in a solution of modified phenolics, hypochlorite, or quaternary ammonium compounds in strength specified by the manufacturer at a room temperature of 68 degrees Fahrenheit.

(c) Corrosion resistance. Metal parts shall be tested for corrosion resistance by placing them in a boiling aqueous 10% (by weight) solution of sodium chloride for a period of 15 minutes. The parts upon being removed from this solution shall be immediately immersed in a 10% (by weight) aqueous solution of sodium chloride at a room temperature of 68 degrees Fahrenheit. They shall then be removed from this solution and, without wiping off the adhering liquid, allowed to dry for 24 hours at room temperature. The metal parts shall then be rinsed in lukewarm water and allowed to dry. On visual inspection, the metal parts shall show no signs of roughening of the surface resulting from corrosion.

(d) Water absorption. Plastic parts shall be tested for water absorption and the results calculated in accordance with Test Method Number 7031 of Federal Specification L-P-406 (see §295. 148(a) of this title (relating to Appendix for §295.146). The amount of the water absorbed shall not exceed 5.0%.

(e) Flammability.

(1) Eyecup goggles. Eyecup goggles shall be tested for flammability by use of a 5/8-inch high diameter Bunsen burner, adjusted for a 3/4-inch high non-luminous flame of commercial natural gas (1,000-1,200 British thermal units). The temple side of the specimen shall be held at the tip of this flame in a draft-free room and the time (in seconds) required to ignite the material so that it will remain burning after the flame is removed shall be determined. The time required to ignite the specimen in the manner described shall be not less than four seconds.

(2) All other types. Where plastic materials are used, such materials shall be slow burning. Cellulose nitrate, or materials having flammability characteristics approximating those of cellulose nitrate, shall not be used. Flammability of the materials shall be no greater than that exhibited by cellulose acetate or acetate butyrate.

(f) Impact.

(1) Test for lenses of all types. The frame with lens shall be supported on a wooden block of such size and shape as to fit the frame securely but not to touch the lens. A 7/8 inch diameter steel ball, weighing approximately 1.56 ounces, shall be freely dropped from a height of 50 inches onto the horizontal upper surface of the lens. The edge of the lens shall not chip from the shock nor shall the lens be displaced from the frame.

(2) Lens on block. The lens shall be removed from the frame and placed horizontally on the end of a hardwood tube having an upper periphery conforming in shape and size to the lens to be tested and a wall thickness not greater than 3/16 inch. A washer of rubber packing not more than 1/8 inch thick and of the same shape and size as the end of the tube shall be placed between the lens and the tube. The rubber washer shall be of the quality required for a Grade A gasket in Federal Specification HH-G-156. The 7/8 inch steel ball shall be freely dropped from a height of 50 inches onto the horizontal outer surfaces of the lens. The lens shall not fracture from the impact of the steel ball.

(3) Breakage pattern. As a test to determine the type of breakage pattern exhibited by a lens when subjected to a force sufficient to break it, a lens may be broken by increasing the height of drop of the 7/8 inch steel ball or by employing a heavier ball. If made of glass, the lens shall break predominately with radial cracks with a minor tendency toward concentric cracks. Any tendency to break with lines of cleavage parallel to the surface indicates an unsatisfactory heat treatment; and the lenses represented by that sample shall be considered as not conforming to these requirements.

§295.147. Selection of Eye and Face Protective Devices. The following table sets forth guidelines for the selection of eye and face protective devices.

TABLE 1. Selection of Eye and Face Protective Devices.

Hazard Involved	*Part To Be Protected*	*Type*	*Permissible Protective Devices Reference in §295.145.*
Relatively large flying objects	Eyes, Face	Goggles	(c), (e), (f), (h)
		Spectacles	(d), (g)
		Face Shields	(a)
Dust and small flying particles	Eyes, Face	Goggles	(c), (e), (f), (h)
		Spectacles	(d), (g)
		Face Shields	(a)
Dust and wind	Eyes	Goggles	(c), (e), (f), (h)
		Spectacles	(d), (g)
Molten metal	Eyes, Face	Goggles	(c), (e), (f), (h)
		Spectacles	(d), (g),
		Face Shields	(a)
Gases, fumes, and smoke	Eyes, Face	Goggles	(c), (e), (f), (h)
Liquids	Eyes, Face	Goggles	(c), (e), (f), (h)
		Face Shields	(a)
Reflected light or glare	Eyes	Goggles	(c), (e), (f), (h),
		Spectacles	(d), (g)
Injurious radiant energy (moderate)	Eyes	Goggles	(c), (e), (f), (h)
		Helmets	(b)
		Hand shields	(b)
		Face shields	(a) (must include crown protector and chin protector)
Injurious radiant	Eyes, Face	Helmets	(b)
		Hand shields	(b)

§295.148. Appendix for §295.146.

(a) Water absorption test (for weight and dimensional changes).

(1) Specimens.

(A) Molding compounds. Test specimens for molding compounds shall be disks two inches in diameter by 0.125 plus or minus 0.007 inch thick.

(B) Sheets. Test specimen of laminated compounds and specimens cut from material shall be one by three inches by the thickness of the sheet.

(C) Rods. The test specimen for rods shall be one inch in length for rods one inch in diameter or under, and 1/2 inch in length for larger diameter rods. The diameter of the specimen shall be the diameter of the finished rod.

(D) Tubes. The test specimen for tubes less than three inches in inside diameter shall be the full section of the tube and one inch in length. For tubes three inches or more in inside diameter, a rectangular specimen shall be cut three inches in length in the circumferential direction of the tube and one inch in width lengthwise of the tube.

(E) Finish. The test specimens for sheets, rods, and tubes shall be machined, sawed, or sheared from the sample so as to have smooth edges free from cracks. The cut edges shall be made smooth by finishing with Number 000 or finer sandpaper or emery cloth. Sawing, machining, and finishing operations shall be slow enough so that the material is not heated appreciably.

(2) Apparatus. Apparatus' used shall consist of:

(A) circulating air oven maintained at 122 degrees plus or minus 4 degrees Fahrenheit (50 degrees Celsius plus or minus 2 degrees Celsius);

(B) a desiccator;

(C) analytical balance; and

(D) a micrometer, gauge, or caliper capable of measuring accurately to 0.001 inch.

(3) Procedure.

(A) Three specimens of the sample to be tested shall be conditioned in an oven at 122 degrees plus or minus 4 degrees Fahrenheit (50 degrees plus or minus 2 degrees Celsius) for 24 hours. After conditioning, the specimens shall be cooled in a desiccator and weighed. Dimensions of the specimens shall be measured with a micrometer gauge to 0.001 inch. The specimens shall then be completely immersed in distilled water maintained at a temperature of 77 degrees plus or minus 4 degrees Fahrenheit (25 degrees plus or minus 2 degrees Celsuis). At least 50 milliliters of distilled water shall be employed for immersing each specimen. At the end of 24 hours immersion, each specimen shall be removed, the surface moisture quickly absorbed by a dry cloth, and the specimen reweighed. If the specimen is 1/16 inch or less thickness, it shall be put in a weighing bottle immediately after removing the surface moisture and shall be weighed in the bottle. The dimensions shall then be remeasured.

(B) When materials are known or suspected to contain any appreciable amount of water-soluble ingredients, the specimens after immersion, weighing, and measuring shall be reconditioned for the same time and temperature as used in the original drying period. They shall then be cooled in a desiccator and immediately reweighed. If the reconditioned dry weight is lower than the conditioned dry weight found after the original drying before immersion, the difference shall be considered as water-soluble matter lost during the immersion test. For such materials, the water absorption value shall be taken as the sum of the increase in weight upon immersion and of the weight of the water-soluble matter.

(4) Report. The report shall include the data specified under Section 1, paragraph 8 of Specification L-P-406 and the following:

(A) the percentage increase in weight during immersion calculated to nearest 0.01% as follows:

$$\text{Increase in weight, percent} = \frac{\text{Wet Weight} - \text{Conditioned Weight}}{\text{Conditioned Weight}} \times 100$$

(B) the percentage of soluble matter lost during immersion, if determined, calculated to nearest 0.01% as follows:

$$\text{Soluble matter lost, percent} = \frac{\text{Conditioned Weight} - \text{Reconditioned Weight}}{\text{Conditioned Weight}} \times 100$$

When the weight on reconditioning the specimen after immersion in water exceeds the conditioned weight prior to immersion, report "no loss of soluble matter".

(C) the percentage of water absorbed in 24 hours, which is the sum of the values in subparagraphs (A) and (B) of this paragraph;

(D) the percentage change in each dimension during immersion; and

(E) observations regarding any change in physical condition of the specimen.

(b) Selection of shade numbers for welding filters. The following is a guide for the selection of the proper shade numbers of filter lenses or windows used in welding. These recommendations may be varied to suit the individual's needs.

Welding Operation	Shade Numbers
Shielded metal-arc welding 1/16-, 3/32-, 1/8-, 5/32-inch electrodes	10
Inert-gas metal-arc welding (nonferrous) 1/16-, 3/32-, 1/8-, 5/32-inch electrodes	11
Inert-gas metal-arc welding (ferrous) 1/16-, 3/32-, 1/8-, 5/32-inch electrodes	12
Shielded metal-arc welding 3/16-, 7/32-, 1/4 inch electrodes	12
5/16-, 3/8-inch electrodes	14
Atomic hydrogen welding	10-14
Carbon-arc welding	14
Soldering	2
Torch brazing	3 or 4
Light cutting, up to 1 inch	3 or 4
Medium cutting, 1 inch to 6 inches	3 or 5
Heavy cutting, over 6 inches	5 or 6
Gas welding (light), up to 1/8 inch	4 or 5
Gas welding (medium), 1/8 inch to 1/2 inch	5 or 6
Gas welding (heavy), over 1/2 inch	6 or 8

Note: In gas welding or oxygen cutting, where the torch produces a high yellow light, it is desirable to use a filter or lens that absorbs the yellow or sodium line in the visible light of the operation.

(c) Maintenance and disinfection of eye protectors.

(1) Maintenance.

(A) It is essential that the lenses of eye protectors be kept clean. Continuous vision through dirty lenses can cause eye strain, which could possibly result in substandard production by the operator. Daily cleaning of the eye protector with soap and hot water is recommended.

(B) Replace pitted lenses. Pitted lenses, like dirty lenses, can be a source of reduced vision. They should be replaced periodically . Deep scratches or excessive pitting of lenses are apt to weaken the lenses and cause them to break more readily.

(C) Replace headbands. Slack, worn-out, sweat-soaked, or twisted headbands do not hold the eye protector in proper position. Visual inspection can determine when the elasticity is reduced to a point beyond proper function.

(D) Keep goggles in case when not in use. Spectacles, in particular, should be given the same care as one's own glasses, since the frame, nose pads, and temples can be damaged by rough usage.

(2) Disinfection. Personal protective equipment which has been previously used shall be disinfected before being issued to another employee. Even when each employee is assigned protective equipment for extended periods, it is recommended that this equipment be cleaned and disinfected regularly. Several methods for disinfecting eye-protective equipment are acceptable. The most effective method is to disassemble the goggles or spectacles and thoroughly clean all parts with soap and hot water. Carefully rinse all traces of soap and replace defective parts with new ones. Swab thoroughly or completely immerse all parts for 10 minutes in a solution of germicidal deodorant fungicide. Remove parts from solution and suspend in a clean place for air drying at room temperature or with heated air. Do not rinse after removing parts from solution because this will remove the germicidal residue which retains its effectiveness indefinitely. The dry parts or items should be placed in clean, dust-proof containers, such as a box, bag, or plastic envelope to protect them until re-issue.

(d) Fitting of goggles and spectacles.

(1) Cup goggles.

(A) The first step in fitting cup goggles is to adjust the nose bridge. Both the ball and link-chain bridges of goggles are adjustable to accommodate the individual wearer. Both types of bridges usually have some means for shortening or lengthening. In either case, to shorten or lengthen the bridge, the instructions of the manufacturer should be followed. Chain not needed after adjustment should be cut off. The chain should be insulated to protect the nose of the wearer.

(B) The proper procedure for adjusting headbands is to keep the band loose enough to slip two fingers under it, palm side down, without stretching. Headbands should be worn low and flat and approximately at the base of the skull in order to hold goggles in a comfortable position. Most cup goggles are thinner and slanted away at the lower nasal sides, which makes for comfort as well as easy identification in getting them right side up.

(2) Spectacles.

(A) The first step in fitting spectacles is to determine the proper eye and bridge sizes. This is done best by using fitting samples and placing the sample spectacles on the nose to arrive at the proper size. The adjustable rocker pads should fit flush against the sides of the nose without allowing the metal bridge of the spectacle to rest on the nose bridge of the wearer. The small metal arms, to which the pearloids pads are attached, can be readily adjusted by round nose pliers which are especially designed for this purpose.

(B) To fit the temples comfortably over the ears, hold the spectacle firmly in one hand and shape the bow of the temple gradually by drawing it slowly between thumb and forefinger of other hand. Temples should be angled down from frame to ear so that lenses will be perpendicular to the line of vision. Prescription safety spectacles should be fitted only by qualified optical personnel.

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 October 5, 1992.

TRD-9213427 — Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

Sanitation at Temporary Places of Employment

• 25 TAC §§295.161-295.169

The new sections are proposed under the Health and Safety Code, §341.016, which provides the Texas Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Texas Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.161. General Provisions.

(a) Scope. These sections of this undesignated head apply to temporary places of employment. This includes locations or situations where one or more persons are directly or indirectly employed by others in:

(1) work of a mobile nature or at a series of locations involving movement from one location to another;

(2) work of a transitory or seasonal nature performed for a limited period of time or at a temporary job site, or both;

(3) work on railroad facilities, i. e., maintenance of way; or

(4) work in any agricultural operation or activity performed in the field or outside of any permanent structure or facility.

(b) Exclusion. Places of employment or numbers of employees to which specific federal sanitation standards apply, as adopted under the Occupational Safety and Health Act of 1970, Public Law 91-596, are excluded (29 United States Code Annotated, §§651-678). This section does not apply to the operation of railroad rolling stock.

(c) Purpose. The purpose of these sections is to prescribe minimum standards for the protection of the individual employee and the public welfare at temporary places of employment.

(d) Employer responsibility.

(1) Each person, association, or organization acting as employer shall have the responsibility to provide and maintain, or cause to be provided and maintained, sanitary facilities at any temporary place of employment according to the minimum standards set forth in these sections for the total number of persons employed during each workday or part thereof, except as otherwise provided, whether the mode of employment is direct or by means of an intermediary.

(2) Where labor is performed under a contractual arrangement, that person, association, or organization for whose benefit such labor is performed shall have

primary responsibility, and each labor contractor thereto shall have joint responsibility, for compliance with the provisions of these sections.

(3) Where employees of more than one employer perform work at a temporary place of employment, it shall be the responsibility of each employer to provide or arrange for sanitary facilities meeting minimum standards for the total number of his own employees.

(4) Employers shall permit the use of the required sanitary facilities by their employees without fee or other charge, nor shall any charge be made to employees if transportation is provided to or from such facilities. The pay of employees shall not be subject to deduction as a consequence of providing or using such facilities.

(5) Employers shall inform their employees of their rights and obligations as set forth in these sections. They shall notify their employees of the location(s) of all sanitary facilities designated for their use and of any means of travel to these facilities, if provided, or of any subsequent changes in location or other arrangement.

(6) An employer who employs no more than six persons performing work at a temporary place of employment on any work day may, on such days, be exempt from the requirement to provide toilet and handwashing facilities so long as he has provided or arranged for immediate transportation for these persons to travel to and from nearby facilities that meet minimum sanitary standards and are accessible to their use.

(e) Employee responsibility. Each employee shall make proper use of the sanitary facilities provided, as is reasonable and necessary, so as not to adversely affect his own health or that of others.

(f) Travel-distance limitation concerning all sanitary facilities.

(1) An unimpeded walking distance of no more than 440 yards, which may also be measured as 400 meters or 1/4 mile, is the maximum distance that shall be required of employees to walk to the sanitary facilities provided for their use, as required by these sections. Impeded distances or those requiring climbing shall be shorter, so that in no case does walking to these facilities require more than five minutes.

(2) Where sanitary facilities are required but it is not possible to comply with this travel-distance limitation, the employer must provide such facilities at the nearest possible location, and shall provide or arrange for transportation during both work and rest periods for immediate travel to and from these facilities, which must meet minimum sanitary standards. Transportation to the facilities so located shall not require more than five minutes travel time.

(3) The travel-distance limitation shall not apply to employment as mounted riders nor when operating moving power equipment or vehicles on the job.

(g) Penalty and enforcement. The statutory penalty and enforcement provisions covering violations of Health and Safety Code, Chapter 341, and these sections are contained in the Health and Safety Code, Chapter 341, §341.091 and §341.092.

§295.162. Definitions. The following words and terms, when used in these sections of this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Approved-Approved by the Texas Department of Health or the local health authority, whichever shall maintain jurisdiction.

Chemical toilets-A toilet facility in which human waste is collected in a container charged with a chemical, for the purpose of disinfecting and deodorizing prior to disposal.

Drinking water (potable water)-All water which may be distributed by any organization or individual, public or private, for all purposes of human consumption, washing of the person, the preparation of foods or beverages, or for the cleansing of any utensil or article used in the course of preparation or consumption of food or beverages.

Hand-washing facility-A plumbing device for washing the hands, arms, face and head, including lavatories, basins and sinks, both for cleanliness and for safety purposes.

Hygiene-Conditions or practices conducive to the establishment and maintenance of health.

Limited period of time-Not to exceed 12 months.

May-Used to denote authorized alternatives to mandatory provisions of these sections.

Nuisance-Any object, place, or condition which constitutes a possible or probable medium of transmission of disease to or between human beings or any other object, place, or condition which may be specifically declared to be a nuisance.

Number of employees-The maximum number of employees present at any one time during a regular work day at a temporary place of employment.

Putrescible-Organic waste subject to rotting or undergoing anaerobic decomposition, becoming foul and malodorous.

Sanitary condition-That condition of good order and cleanliness which precludes the probability of disease transmission.

Sanitary facility-Equipment built or installed to serve as a means of:

(A) dispensing drinking water;

(B) washing the hands;

(C) eliminating body wastes; or

(D) collecting refuse.

Shall (or must)-Used to denote mandatory provisions of these sections.

Should-Indicates provisions which are not mandatory, but which are recommended as good practice.

Standards-Methods, practices, processes, or operations necessary or appropriate to establish healthful employment conditions.

Toilet facility-A plumbing device for the purpose of defecation or urination, or both, including water closets and biological or chemical toilets, and urinals.

Toilet room-An enclosed area containing one or more toilet facilities and offering personal privacy. Toilet rooms may be either permanently located (fixed) or portable.

§295.163. Standards for General Sanitation.

(a) Hygiene.

(1) Employers shall require that work areas be kept clean to the extent that the nature of the work allows.

(2) Job sites shall be kept free from obstructions that may cause or contribute to the injury of an employee, cause an unsafe act to be committed, or impede sanitation.

(b) Waste collection and disposal.

(1) Any receptacle used for the collection and storage of putrescible wastes shall be sturdily constructed so that it does not leak and may be conveniently and thoroughly cleaned. Such a receptacle shall be equipped with a tight-fitting cover, and shall be maintained in a sanitary condition. Disposable plastic bags of suitable size and strength are recommended for use as liners for such containers.

(2) All solid or liquid wastes, debris, refuse, and garbage, shall be removed from work and rest areas in such a manner as to avoid creating a nuisance or menace to health. Removal shall be repeated as often as necessary to maintain sanitary conditions.

(3) All wastes, including human waste, that are collected as a consequence of temporary employment shall be disposed of according to the applicable statutes covering the disposal of wastes.

(c) Inspection. Every temporary place of employment shall be maintained in a sanitary condition. To this purpose, inspections of job sites and related sanitary facilities shall be made by the employer or his designated representative(s) as often as necessary to insure compliance with all sanitary requirements of these sections.

§295.164. Standards for Lighting and Ventilation.

(a) Lighting. Where artificial lighting is necessary, employers shall provide lighting levels in such work areas that shall be not less than the levels of illumination summarized in Bulletin RP-15, titled "Recommended Levels of Illumination," and further described in the "IES Lighting Handbook," 5th Edition, both published by the Illumination Engineering Society of North America (IES).

(b) Ventilation.

(1) Employers shall provide proper ventilation for enclosed spaces which people may occupy in the course of temporary employment. This requires outside fresh air of acceptable quality. Whenever local building codes do not specify either ventilation rates or amounts, the provisions of paragraphs (2) and (3) of this subsection shall constitute the minimum ventilation standard.

(2) Ventilating systems shall provide outside fresh air by natural or mechanical means. When mechanical ventilation is used, provision for air-flow measurement should be included. When natural ventilation and infiltration are used the ventilation rate shall be measurable. When infiltration rates are not sufficient to meet ventilation air requirements, mechanical ventilation shall be provided.

(3) The minimum rate of ventilation, supplying outside fresh air of acceptable quality for any indoor or enclosed space, shall not be less than five cubic feet per minute per occupant, not less than 20 cubic feet per minute per occupant where smoking, or cooking, or open flames are permitted. Such ventilation shall be continuous during all working hours and any other periods of occupancy.

§295.165. Standards for Water Supply.

(a) Drinking water (potable water).

(1) Every temporary place of employment shall be provided with an adequate supply of potable water for drinking. Employers shall make drinking water readily accessible to all employees during all working hours and rest periods in sufficient amounts to meet their needs. All drinking water shall be obtained from a water system complying with §§337. 201-337.212 of this title (relating to Public Water Systems). Drinking water may also be supplied in sealed glass or plastic containers from producers inspected by the Food and Drug Division of the Texas Department of Health according to the provisions of Health and Safety Code, Chapter 431. All water supplies must be protected from contamination to the point of consumption.

(2) Sanitary drinking fountains, where installed, shall be in accordance with *American National Standard Specifications for Drinking Fountains and Self-Contained Mechanically-Refrigerated Drinking Water Coolers, ANSI/ARI 1010-73*, published by the American National Standards Institute.

(3) Where no supply system of drinking water meeting minimum standards is available, the requirement for providing drinking water may be met by the use of individual, disposable, or portable containers filled with water from a source in compliance with minimum standards for water hygiene, as set forth in paragraph (1) of this subsection.

(4) All kinds of portable containers used to dispense water for drinking shall be clearly marked as to the nature of their contents, maintained in a sanitary condition, and not used for any other purpose. They must be capable of being tightly closed. All portable containers except those used for individual consumption must be equipped with a suitable tap. Containers such as barrels, pails, or tanks from which water must be poured or dipped shall be prohibited. The common drinking cup is prohibited.

(5) Portable containers shall supply a total minimum capacity of not less than two quarts for each of the maximum number of employees present for each work day. Drinking water contained therein, during the period of dispensing to employees, shall not exceed a temperature of 80 degrees Fahrenheit.

(6) Where drinking water is dispensed from portable containers other than individual containers it shall be dispensed either through the use of a drinking fountain or a gravity water tap. Except where drinking water is supplied exclusively by fountain, disposable single-service cups shall be supplied to all persons at a job site for drinking purposes. A container for storage of a sufficient number of cups and a receptacle for the disposal of used cups shall be provided adjacent to each water dispenser.

(7) Where drinking water is cooled by ice, the construction of the container shall be such that the ice does not come in contact with the water unless the ice is manufactured from potable water and is protected from contamination between the point of manufacture and the point of use.

(b) Non-potable water.

(1) Outlets for non-potable water, such as water for industrial, irrigation, or fire-fighting purposes only, shall be clearly identified by employers, who must inform all employees and all others at the job site that the water is unsafe for drinking, washing, or cooking purposes.

(2) Under no circumstances shall non-potable water be supplied or used for any drinking water purpose.

§295.166. Standards for Toilet Facilities and Toilet Rooms.

(a) General.

(1) Employers shall provide toilet facilities, in separate toilet rooms for both sexes, according to these sections, for all temporary places of employment. They shall be readily accessible to all employees during all working hours and rest periods. These facilities may be either fixed (permanently located) or portable.

(2) Toilet facilities shall be either water-actuated, chemical or biological toilets. Other systems, such as privies, combustion toilets, sealed-bag toilets and vault toilets, may be used only upon specific permission of the health authority having local jurisdiction.

(3) Except as provided as follows, a minimum of one toilet, either fixed or portable, shall be provided per 30 employees of each sex, of fraction thereof, as determined on a daily basis at each temporary place of employment. However, when chemical toilets are furnished, a minimum of one toilet per 20 employees of each sex, or fraction thereof, shall be specified unless cleanout service is provided more often than once per week. When toilet facilities are not used by women, urinals may be substituted for as many as one-third of the minimum number of toilets specified for men.

(4) Whenever other persons in addition to employees will use the same facilities, a reasonable additional allowance shall be included for them when determining the total number of toilets.

(5) In those instances where the total number of employees to be provided for at a job site is 15 or less, as determined on a daily basis, a single toilet in a toilet room that offers complete privacy and can be locked from the inside may be provided for both men and women.

(6) Toilet rooms and facilities shall be maintained in a sanitary condition, free of objectionable toilet odors, during all work hours and rest periods. The floors, walls, ceilings, partitions, and doors of all toilet rooms shall be of a finish that can be easily cleaned. An adequate supply of toilet paper in a suitable holder shall be main-

tained for each toilet. Covered waste receptacles shall be provided in all toilet rooms used by women.

(b) Specifications: toilet facilities and rooms at fixed locations.

(1) Each toilet facility (water closet, chemical or biological toilet) at a fixed (permanent) location, shall occupy a separate compartment equipped with a door and latch. Walls or partitions between fixtures shall be sufficiently high to assure privacy.

(2) Each toilet facility shall be so installed that the space around it can be easily cleaned. This provision does not prohibit the use of wall-hung toilet stools or urinals.

(3) Each toilet shall have a seat made of substantial material having a non-absorbent finish.

(4) Toilet rooms at fixed locations that are not ventilated by mechanical means shall be provided with a screened ventilation opening sufficiently large to permit adequate ventilation.

(c) Specifications: portable toilet facilities and rooms.

(1) Portable toilet facilities shall be so constructed as to be readily accessible. Privacy must be assured. Steps, handrails, and other installations shall be provided, as necessary, to allow convenient and safe access and usage by every person.

(2) Portable combination arrangements combining toilet facilities with drinking water, handwashing and waste-disposal facilities, together with recommended first aid and emergency equipment, and which are capable of being towed or otherwise moved from one job site to another while maintaining a sanitary condition, are specifically authorized so long as their sanitary components meet minimum standards.

(3) Buildings housing portable toilet rooms may be mobile trailers or prefabricated, skid-mounted, or otherwise portable structures. If they contain more than one facility, each shall occupy a separate compartment with a door and latch. Walls or partitions between toilets shall be sufficiently high to assure privacy. Urinals need not occupy separate compartments.

(4) If the structure contains a tank in which waste is stored, the tank shall be vented to the outside of the structure.

(5) Portable toilet rooms that are not ventilated by mechanical means shall be provided with an adequate screened ventilation opening.

§295.167. Standards for Hand-washing Facilities.

(a) General.

(1) Employers shall provide hand-washing facilities for maintaining personal cleanliness at every temporary place of employment. These shall be convenient for employee use and shall be maintained in a sanitary condition.

(2) Hand-washing facilities shall be supplied with running water, which may be gravity flow. It is required that this be potable water. See §295.165(a) of this title (relating to Standards for Water Supply).

(3) At least one hand-washing facility shall be located in, or adjacent to any toilet room provided for employees' use, whether these are portable or at fixed (permanent) locations. A minimum of one hand-washing facility shall be provided for each two toilet facilities, as determined from the requirements of §295.166(a)(3) of this title (relating to Standards for Toilet Facilities and Toilet Rooms).

(4) A dispenser containing a suitable cleansing agent shall be provided for each hand-washing facility. Individual hand towels and proper receptacles for their disposal shall be located conveniently.

(5) Wherever a sufficient supply of potable water for hand-washing cannot be provided at a particular temporary job site, compliance with the hand-washing standards may be accomplished by providing an ample supply of dis-posable, pre-moistened cleaning towels and emulsifiable skin cleaners. This alternative shall not be employed as a permanent substitute for hand-washing facilities, however.

(b) Specifications: portable hand-washing facilities.

(1) Portable hand-washing facilities shall be supplied with potable water for washing purposes to the extent of at least one-half gallon for each of the maximum number of employees present for regular work day. Storage tanks for such water must be kept in a sanitary condition.

(2) "Grey water" (wash water after being used) shall be disposed of in a holding tank, seepage pit, or by other means so as not to create a nuisance or menace to health.

§295.168. Standards for Lunch or Rest Areas.

(a) At all temporary places of employment where employees or others are required or permitted to eat or take rest periods at the job site, employers shall provide or designate one or more areas suitable for that purpose for the maximum number of persons who may use them at one time. In outdoor areas where insufficient shade is available, a tarpaulin fly or similar means should be provided for shade during eating and rest periods.

(b) All required sanitary facilities shall be furnished during eating and rest periods. See travel distance limitations in §295.161(f) of this title (relating to General Provisions) for more information.

(c) An adequate number of covered receptacles shall be provided for disposal of all waste food. Such receptacles shall be emptied at least once daily and shall be maintained free of residues. See waste collection and disposal standards in §295.163(b) of this title (relating to Standards for General Sanitation) for more information.

(d) No food shall be stored, prepared or eaten in any area where there are any materials or substances present in quantities or concentrations which may contaminate food or be injurious to health.

(e) No food shall be stored or eaten in any toilet room.

§295.169. Standards for Food Service. The preparation, storage, and dispensing of food at any temporary place of employment shall be accomplished according to §§229.161-229.171 of this title (relating to Food Service Sanitation) as administered by the health authority having local jurisdiction.

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 October 5, 1992.

TRD-9213428 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 834-6600

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter E. Interim Approval of Local Government Dune Protection and Beach Access Plans

- **31 TAC §§15.70-15.79**

(Editor's Note: The General Land Office proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The General Land Office proposes new §§15.70-15.79, concerning the approval of the Nueces County and Cameron County dune protection and beach access plans, the identification and preservation of critical dune areas, and the preservation and enhancement of public beach access in those counties as required by recent amendments to state law.

Amendments to the Dune Protection Act and the Open Beaches Act require any local government with dune complexes and public beaches within its jurisdiction to manage development and other lands uses in the beach/dune system through issuances of permits and certificates. The geographic scope of this authority generally includes an area extending landward 1,000 feet from the mean high tide line, though in some cases it extends beyond that to the closest public road. The legislation also addresses local government's adoption of beach traffic ordinances and beach user fees.

The legislation places the General Land Office in an oversight role and gives local government new powers to manage dunes and beaches. It requires the General Land Office to promulgate rules that local governments must observe in exercising these new management powers. The General Land Office recently proposed permanent rules at §§15.1-15.10 (17 TexReg 6417) on management of the beach/dune system.

Nueces County and Cameron County have preceded the General Land Office in developing beach/dune system management programs. These counties have worked in close corporation with the General Land Office and the Attorney General's office. They have developed interim plans that basically meet the spirit and intent of the Open Beaches Act and Dune Protection Act. Because of the leadership role that Nueces County and Cameron County have played by pursuing early development of beach access and dune protection plans, and because their plans serve the purposes set out by the Texas Legislature, the General Land Office will grant interim approval of the plans.

Approval is granted on an interim basis because the plans will require further refinements and may also need revisions to be consistent with the permanent rules. These permanent rules will take effect early in 1993 and require local government to have permanent plans by June 1, 1993. The General Land office's approval of the Nueces County and Cameron County plans under this interim rule will therefore expire at midnight on May 31, 1993. Nueces County and Cameron County will then resubmit their interim plans, with changes, if any, for certification under the permanent rules on management of the beach/dune system by that time.

Spencer Reid, deputy commissioner, 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. The effect on state government for the first five-year period the sections are in effect will be limited to the period ending at midnight on May 31, 1993. Costs imposed on state government are not expected to exceed $1,000.

The estimated costs to local government are difficult to determine since the expenses vary depending on the services offered and fees charged. The following estimates are ranges comparing the costs to local governments that charge permit application or beach user fees with costs to those that do not charge fees.

The estimated cost to a local government that charges beach user fees is not expected to exceed $100 through May 1, 1993. The estimated cost to a local government that does not charge beach user fees is not expected to exceeds $1, 000 though May 31, 1993.

This subchapter is expected to affect only the real estate development business because it requires an applicant to comply with requirements in addition to the regular building permits presently issued by a local government. Estimated costs to business, both small and large, will be similar and are based on a one-time expense of obtaining a dune protection permit and beachfront construction certificate (unless construction takes longer than the time authorized by the permit or certificate). The estimated permit fee is $25 and represents and average of those proposed by local coastal governments. This permit fee is based upon the local government's cost of implementing the Dune Protection/Beachfront Certificate Program.

In addition to the permit costs, if the applicant proposes to destroy dunes, costs associated with mitigation and compensation can average $4,000/acre depending upon the location, availability of water and sand supplies, slope, and vegetation.

Estimated cost to all property owners is also based on an average one-time fee for obtaining the permits or certificates. Again, additional costs will be incurred if dunes or dune vegetation is damaged. The estimated permit cost is $25.

Mr. Reid 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: flood protection for private and public beachfront structures; guaranteed public beach use and access; natural resources and habitat protection; maintenance of the supply of natural material for beach renourishment after storms; and establishment and maintenance of beach facilities and services.

Comments on the proposal may be submitted to Ashley K. Wadick, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701, (512) 463-5019, FAX number (512) 463-5223. In order to be considered, comments on the rules must be receive in the General Land Office within 30 days of publication of the rules.

The new sections are proposed under the Texas Natural Resources Code, §§61.011, 61.015(b), and 63.121, which provides the General Land Office with the authority to identify and protect critical dune areas and to preserve and enhance public beach access, as well as the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion; and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

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-9213243 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-5007

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

Child Care Management Services Statewide Implementation

• 40 TAC §10.3414, §10.3424

The Texas Department of Human Services (DHS) proposes amendments to §10. 3414 and §10.3424, concerning exceptions to eligibility for a teen parent who needs child care; assessment of the fees for child care; and the deletion of the eligibility category of Refugee Cash Assistance in its Family Self-Support Services chapter. The purpose of the amendments is to clarify the eligibility exceptions for a teen parent who needs child care services in order to complete high school or the equivalent and allow the parent fee for those teens who receive DHS child care to be based on the teen's income rather than the income of the teen's parent. The deletion of the eligibility category of Refugee Cash Assistance is made to comply with the state's operation of the federal program for refugee assistance. The Refugee Cash Assistance Program for child care has ended.

Burton F. Raiford, commissioner, 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. 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 that child care services are targeted to the families most in need and support the teen's effort to stay in school. There will be no effect on small businesses. 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 Beverly Duffee at (512) 450-4172 in DHS's Self-Support Services program. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-249, 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 amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

§10.3414. Exceptions to Eligibility.

(a) The Child Care Management Services (CCMS) contractor grants eligibility exceptions to allow individual families to access services funded by Title XX social services block grant (SSBG), general revenue (GR), and child care and development block grant (CCDBG) funds when funds are available and in the following situations:

(1) a teen parent needs child care in order to complete high school or the equivalent, but she is ineligible because of her parents' income. She is permitted to receive child care if **all the following conditions are met:** [she does not have access to her parents' income or to any other resources to pay for child care;]

(A) her parent (the child's grandparent) refuses to pay for the child care needed;

(B) her family income does not exceed 200% of the federal poverty income level; and

(C) her parent (the child's grandparent) does not claim the teen or the teen's child(ren) on his income tax as dependents.

(2) a teen parent who meets income guidelines needs child care in order to complete high school or the equivalent, but she is ineligible because her parent is not employed or in training. She is permitted to receive child care if her parent (the grandparent) refuses to care for the child.[, or the home environment is not suitable for the care of the child; or]

(3) (No change.)

(b) (No change.)

§10.3424. Parent Fees.

(a) The Child Care Management Services (CCMS) contractor must assess parent fees based on the family's gross monthly income with the following exceptions.

(1) Parents who receive aid to families with dependent children (AFDC) or [,] supplemental security income (SSI)[, or refugee case assistance] are exempt from paying fees.

(2) Parents who receive child protective services (CPS) are exempt from paying fees unless the Texas Department of **Protective and Regulatory Services (PRS)** [Human Services (DHS)] CPS caseworker or the CPS in-home case management contractor authorizes the CCMS contractor to assess fees to a parent.

(3) Teen parents who reside in their parent's home and are not covered under exceptions outlined in paragraphs (1) and (2) of this subsection are assessed fees based solely on the teen parent's income.

(b)-(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 October 5, 1992.

TRD-9213391 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: December 21, 1992

For further information, please call: (512) 450-3765

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Chapter 15. Medicaid Eligibility

Subchapter D. Resources

The Texas Department of Human Services (DHS) proposes amendments to §§15.400, 15.415, 15.435, and 15.503, concerning resources and earned income deductions, in its Medicaid Eligibility chapter. The purpose of the amendments is to include in the Medicaid eligibility rules patrimonial asset transfers to religious orders that are not countable resources and not subject to the transfer of resource penalty; countable resources that are reduced by the amount of funds encumbered on the first day of the month; and nursing home refunds that are countable resources in the month after the month of receipt. Also, §15.503 is amended to add the exclusion of mandatory payroll deductions to the calculation of a dependent's earned income in spousal impoverishment cases.

Burton F. Raiford, commissioner, 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. 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 that policies regarding nursing home refunds and resources reduced by the amount of encumbered funds are applied statewide. Also, these sections introduce a resource exclusion for determining eligibility for individuals who transfer their assets to religious orders following a vow of poverty and provide greater allowance amounts for dependents with earned income in spousal impoverishment cases. There will be no effect on small businesses. 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 Judy Coker at (512) 450-3227 in DHS's Long Term Care section. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-239, 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 §§15.400, 15.415, 15.435, 15.503

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.

§15.400. General Resources.

(a) The Texas Department of Human Services (DHS) determines the amount of countable resources available as of 12:01 a.m. on the first day of the month. Changes in the amount of resources after the first day of the month do not affect countable resources for that month.

(b) If countable resources exceed the limit on the first moment of the month, an individual or a couple is not eligible for Medicaid for the entire month. Eligibility may be reestablished no sooner than the first day of the next month.

§15.415. Ownership and Accessibility.

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

(i) Patrimonial assets are assets irrevocably turned over to a religious order following a vow of poverty. The assets are not countable resources and the transfer of resources penalty does not apply.

§15.435. Liquid Resources.

(a) (No change.)

(b) Bank accounts.

(1) A client's bank balance, as of 12:01 a.m. on the first day of the month for which eligibility is being tested, is a countable resource. For reviews, the month being tested cannot be more than two months before the month in which the review is being worked.

(2) Countable resources are reduced by the amount of funds encumbered before 12:01 a.m. on the first day of the month. The Texas Department of Human Services (DHS) reduces an account balance as of 12:01 a.m. on the first day of the month by the amount of any checks written before that time that have not yet been processed by the financial institution.

(c) Patient trust funds **and nursing facility refunds.**

(1) A client may authorize a long-term care facility to manage his funds. The facility then acts as a fiduciary agent, using the funds only for the client's personal needs. The money in a patient trust fund is a countable resource.

(2) A nursing facility must refund any advance payments made by the client for periods that are also covered by Medicaid following certification. The refund becomes a countable resource as of 12:01 a.m. on the first day of the month after the month of receipt.

(d)-(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 October 5, 1992.

TRD-9213392 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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Subchapter F. Budget and Payment Plans

• 40 TAC §15.503

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.

§15.503. Protection of Spousal Income and Resources.

(a) Effective September 30, 1989, Public Law 100-360 provided for the protection of income for the community spouse and certain dependent family members when the other spouse is institutionalized. A standard spousal allowance is diverted to the community spouse whose income is less than the allowance. The allowance is deducted from the couple's combined monthly income.

(1) The dependent allowance is calculated by subtracting the dependent's income from 150% of the monthly federal poverty level (FPL) for a family of two, and dividing by three. **Mandatory payroll deductions as specified in §15.506 of this title (relating to Mandatory Payroll Deductions from Earned Income) also apply to a dependent's earned income.** A dependent family member may be the couple's child (minor or adult), or a parent or sibling (including half-sibling, step-sibling, or adopted sibling), of either member of the couple. The dependent family member must have been living in the client's home before the client's absence, must continue to live with the community spouse, and must be unable to support himself outside the home because of medical, social, or other reasons. There must be a community-based spouse for there to be a dependent allowance.

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

(b)-(h) (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 October 5, 1992.

TRD-9213393 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 48. Community Care for Aged and Disabled

In-Home and Family Support Program

• 40 TAC §48.2708

The Texas Department of Human Services (DHS) proposes an amendment to §48.2708, concerning service subsidy and capital expenditure, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to allow for other forms of verification of expenditures, in addition to receipts, in the In-Home and Family Support Program.

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 government 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 simplified program requirements, resulting in a more user-friendly program. 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 the proposal may be directed to Linda Lamb at (512) 450-3199 in DHS's Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-245, 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 35, which provides the department with the authority to administer public assistance and support services for persons with disabilities programs.

§48.2708. Service Subsidy and Capital Expenditure.

(a) (No change.)

(b) The service subsidy is issued in intervals no greater than six months during the 12-month period of eligibility [, contingent on the applicant's submittal of the required receipts for services]. The net amount of the **In-Home and Family Support Program** (IH/FSP) subsidy is divided by two to determine the amount of the biannual subsidy payments. The first payment is issued at the beginning of the first six months of eligibility. The remaining subsidy amount is issued at the beginning of the second six months of eligibility. **Continued program eligibility is contingent upon verification by the IH/FSP caseworker that all program benefits, including the copayment amount, are spent according to program requirements.**

(c)-(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 October 5, 1992.

TRD-9213394 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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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Administration

Employment Practice

• 43 TAC §1.71

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation proposes the repeal of §1.71, concerning minimum age. Repeal of this section is necessary because of the contemporaneous proposed adoption of new §§4.10 and 4.12-4.14, concerning job application procedures, which incorporate the provisions of the repealed section.

Leslie A Clark, director, Division of Human Resources, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Clark also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the inclusion of all rules relating to job application procedures and requirements within on subchapter. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9 a.m. on Thursday, November 5, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

Comments on the proposal repeal may be submitted to Leslie A. Clark, Director, Division of Human Resources, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The repeal is proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation.

§1.71. Minimum Age.

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 October 2, 1992.

TRD-9213373 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-8630

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• 43 TAC §1.72

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation proposes the repeal of §1.72, concerning husband and wife. Repeal of this section is necessary to eliminate an obsolete and inappropriate policy of unqualified prohibition against the employment of both a husband and wife within the department.

Leslie A. Clark, director, Division of Human Resources, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Clark also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an obsolete and inappropriate policy of unqualified prohibition against the employment of both a husband and wife within the department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9 a.m. on Thursday, November 5, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

Comments on the proposed repeal may be submitted to Leslie A. Clark, Director, Division of Human Resources, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The repeal is proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation.

§1.72. Husband and Wife.

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 October 2, 1992.

TRD-9213372 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-8630

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Chapter 4. Employment Practices

Subchapter B. Job Application Procedures

• 43 TAC §§4.10, 4.12-4.14

The Texas Department of Transportation proposes new §§4.10 and 4.12-4.14, concerning purpose, job vacancy notices, notification, and application.

Texas Civil Statutes, Article 6252-llb, require the posting of job vacancies occurring or to be filled in Travis County. House Bill 2556, 72nd Legislature, 1991, added Texas Civil Statutes, Article 5221g-2, to require a state

agency to list an opening with the Texas Employment Commission if persons from outside the agency will be considered for that opening. Senate Bill 352, 72nd Legislature, 1991, added Texas Civil Statutes, Articles 6668a, 6668b, and 6669a, to require, among other things, intraagency postings of all nonentry positions concurrently with any public posting, the preparation and maintenance of a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made free of discrimination, and the opening of all positions compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 21, of the classification salary schedule to applicants both from within and outside the department.

In order to meet the legislative intent of those statutes, the Texas Transportation Commission and the Texas Department of Transportation have determined that it is necessary to establish policies and procedures governing the content and distribution of job vacancy notices and the procedures by which an applicant may apply in response to a notice.

Section 4.10, purpose, states the employment policy of the commission and the department and outlines the purpose of the subchapter. Section 4.12, job vacancy notices, requires the department to develop and disseminate job vacancy notices, and describes the content of a notice. Section 4.13, notification, requires the department to notify its employees and the public of vacant positions, and describes how job vacancy information will be distributed and published. Section 4.14, application, describes the procedures by which an applicant may apply in response to a job vacancy notice, and provides that the department will not accept an application from an applicant who is not 17 years of age or older as of the date of hire.

Leslie A. Clark, director, Division of Human Resources, has determined that there will be fiscal implications for the state as a result of enforcing or administering the proposed sections. The estimated additional cost to the state will be approximately $20,000 for each of the next five years. There will be no fiscal implications for local governments as a result of enforcing or administering the proposed sections.

Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

Mr. Clark 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 the enhancement of equal employment opportunities for all department positions and assurance that job vacancies are filled free of discrimination.

Mr. Clark has determined that there will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the proposed new sections.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 9 a.m. on Thursday, November 5, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Comments on the proposed sections may be submitted to Leslie A. Clark, Director, Division of Human Resources, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The new sections are proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, Article 6668a, which requires intraagency postings of all nonentry positions concurrently with any public postings, and Article 6669a, which requires the department to open certain positions to applicants both from within and outside the department.

§4.10. Purpose. It is the policy and practice of the Texas Transportation Commission and the Texas Department of Transportation to ensure and promote internal and external equal employment opportunity and to use affirmative action to achieve these ends. In keeping with this policy and with the requirements of Texas Civil Statutes, Articles 5221g-2, 6252-llb, 6668a, 6668b, and 6669a, this subchapter prescribes the procedures by which the department fills vacant positions.

§4.12. Job Vacancy Notices. The department shall develop and disseminate job vacancy notices that clearly describe the duties, responsibilities, and qualification requirements of each vacant position.

(1) Job vacancy notices will include the following information appropriate to each job vacancy:

(A) job functional and classification titles;

(B) functional class code;

(C) salary group and class number;

(D) rate of compensation;

(E) work location address;

(F) number and type of openings;

(G) travel requirements;

(H) job description with minimum qualifications (license, education, experience);

(I) preferences (skills, education, licenses); and

(J) remarks (application procedures, special requirements).

(2) All job vacancy notices will include a closing date by which date applications must be received by the department.

§4.13. Notification. The department shall notify its employees and the public of vacant positions by:

(1) distributing job vacancy information statewide to each department area, district, and division office;

(2) distributing notices of vacancies in salary groups 21 and above, and all jobs for which the public will be considered, with the Texas Employment Commission; and

(3) publishing vacancy information as appropriate in newspapers and recognized minority publications of general circulation in the state.

§4.14. Application.

(a) An applicant applying in response to a job vacancy notice shall:

(1) carefully review the job vacancy notice relative to the qualifications described; and

(2) submit a completed department application form and such other information as may be required by the department that responds specifically to the qualifications and location criteria described in the job vacancy notice, including infor-

mation or documentation regarding minimum qualifications and applicant knowledge, skills, and abilities as they pertain to the requirements of the job.

(b) An application will not be accepted if the applicant will not be 17 years of age or older upon date of hire.

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 October 2, 1992.

TRD-9213374 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-8630

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Chapter 23. Division of Travel and Information

• 43 TAC §23.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation proposes the repeal of §23.1, concerning highway routes through incorporated towns. Repeal of this section is necessary because existing §25.8, entitled Maintenance of Designated Highways in Incorporated Cities, Towns, or Villages more adequately describes current department policies and procedures concerning the subject matter.

J. Don Clark, director, Division of Travel and Information, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Clark also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to eliminate the possibility of confusion among the public over two sections in two different chapters concerning the same subject. There will be no effect on small businesses, and no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9 a.m. on Friday, October 30, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

Comments on the proposed repeal may be submitted to Don Clark, Director, Division of Travel and Information, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The repeal is proposed under Texas Civil Statutes, Articles 6666 and 6673b, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to enter into contracts with municipalities for maintenance of state highways.

§23.1. Highway Routes through Incorporated Towns.

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 October 2, 1992.

TRD-9213379 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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For further information, please call: (512) 463-8630

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• 43 TAC §23.2

(Editor's note. The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation proposes the repeal of §23.2, concerning naming of memorial highways, structures, and rest areas. Repeal of this section is necessary because the subject matter of the section falls within the functional responsibilities of the department's Division of Maintenance and Operations, and therefore, belongs in Chapter 25, Division of Maintenance and Operations. The subject matter will be reenacted in new §25. 9 which is being contemporaneously proposed for adoption in an amended form to clarify and update the provisions of the rule, and to include provisions for historical routes.

J. Don Clark, director, Division of Travel and Information, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Clark also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to eliminate the possibility of confusion among the public over the respective responsibilities of the division of travel and information and the division of maintenance and operations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal and new section. The public hearing will be held at 9 a.m. on Friday, October 30, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

Comments on the proposed repeal may be submitted to Don Clark, Director, Division of Travel and Information, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The repeal is proposed under Texas Civil Statutes, Articles 6666 and 6673e-4, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and provide for the designation of memorial highways and historical routes by local governments and the Texas Transportation Commission.

§23.2. Naming of Memorial Highways, Structures, and Rest Areas.

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 October 2, 1992.

TRD-9213380 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-8630

Subchapter A. General Provisions

• 43 TAC §23.1, §23.2

The Texas Department of Transportation proposes new §23.1 and §23.2, concerning purpose and definitions.

These sections are proposed for adoption contemporaneously with the proposed repeal of existing §23.1, relating to highway routes through incorporated towns and §23.2, relating to the naming of memorial highways, structures, and rest areas.

Texas Civil Statutes, Article 6144e, empower the department, for the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, to compile and publish, for free distribution, such pamphlets, bulletins, and documents as deemed necessary and expedient for informational and publicity purposes concerning the highways of the state. Article 6144e further empowers the department to publish a map showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by the highways.

New Subchapter A, General Provisions contains two new sections. Section 23. 1, purpose, describes the purpose of the chapter and describes the responsibilities of the division of travel and information. Section 23.2, definitions, provides definitions of terms used in the chapter.

J. Don Clark, director, Division of Travel and Information, 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. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

Mr. Clark 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 increased public awareness of the operations of the department's division of travel and information. The sections also provide definitions for rules concerning travel information which are being proposed for adoption contemporaneous to the proposed adoption of these sections. Mr. Clark has determined that there will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 9 a.m. on Thursday, October 29, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Comments on the proposed rules may be submitted to Don Clark, Director, Division of Travel and Information, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The new sections are proposed under Texas Civil Statutes, Articles 6666 and 6144e, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to compile and publish pamphlets, bulletins, and documents necessary for informational and publicity purposes concerning the highways of the state.

§23.1. Purpose. This chapter prescribes the policies and procedures for operation of the division of travel and information of the Texas Department of Transportation. The division directly serves the Texas Transportation Commission and the department's administration by administering public information and travel and tourism programs. Public information activities consist of preparing and disseminating, in accordance with Texas Civil Statutes, Articles 6555a, information of public interest concerning department policies, programs and procedures, including any aspect of transportation systems construction, operation, or maintenance. The travel and tourism functions, as authorized by Texas Civil Statutes, Article 6144e, include operation of the state's network of Texas travel information centers, producing and disseminating the state's travel and tourism literature, and in accordance with House Concurrent Resolution 26, 64th Legislature, Regular Session, 1975, publishing *Texas Highways* magazine.

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

Commission-The Texas Transportation Commission.

Department-The Texas Department of Transportation.

Director-The director of the division of travel and information.

Division-The division of travel and information of the Texas Department of Transportation.

Travel literature-Maps, pamphlets, brochures, documents, guidebooks, bulletins, or other printed materials and electronic media that are designed to inform the public, stimulate travel to and within the State of Texas, and publicize points of interest, recreational grounds, scenic places, historical facts, or other items of interest and value to the traveling public.

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 October 2, 1992.

TRD-9213376 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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For further information, please call: (512) 463-8630

Subchapter B. Travel Information

• 43 TAC §§23.10-23.12

The Texas Department of Transportation proposes new §§23.10-23.12, concerning travel literature, infoBords, and the *Texas Official Highway Travel Map*.

Texas Civil Statutes, Article 6144e, empower the department, for the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, to compile and publish such pamphlets, bulletins, and documents as deemed

necessary and expedient for informational and publicity purposes concerning the highways of the state. The statute mandates that literature published under Article 6144e be distributed free of charge. Article 6144e further empowers the department to publish a map showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by the highways.

Senate Bill 797, 72nd Legislature, 1991, amended Article 6144e to authorize the department to contract with private entities for the production, marketing, and distribution of travel materials, and provides that such contracts may include cooperative strategies considered by the department to be cost-beneficial, and further provides for the acceptance of paid advertising in travel materials if the quality and quantity of the travel materials are maintained.

New Subchapter B, travel information, contains three new sections. Section 23.10, travel literature, establishes policies and procedures: governing the selection of subject matter to be included in department travel literature; providing for equitable free distribution of travel literature while maximizing the resources of the department available to advertise the highways of the state and to promote travel to and within the state; governing the acceptance of advertising in travel literature, including bidding and contract procedures; and governing cooperative contracts with commercial entities for the production, marketing, and distribution of department travel literature. Section 23.11, InfoBords, establishes policies and procedures relating to the design, placement, content, and development of travel scene poster panels, referred to as InfoBords, in comfort station highway rest areas. Section 23.12, *Texas Official Highway Travel Map*, establishes policies and procedures relating to the content of the *Texas Official Highway Travel Map.*

J. Don Clark, director, Division of Travel and Information, has determined that there will be fiscal implications as a result of enforcing or administering the proposed rules. The provisions of the rules authorizing the acceptance of advertising will result in an estimated reduction in cost to the state of approximately $85,000 in 1993, $100,000 in 1994, $125,000 in 1995, $150,000 in 1996, and $175,000 in 1997. There will also be fiscal implications for local government as a result of enforcing or administering the provisions of the rules concerning the distribution of travel literature. Currently some municipal visitor services purchase travel literature from the department for resale The proposed rules will require entities that acquire bulk quantities of department travel literature to certify that redistribution will be free. This potential fiscal implication cannot be quantified.

Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section

Mr. Clark 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 more equitable distribution of travel literature, thereby maximizing the resources of the department available to advertise the highways of the state and to promote travel to and within the state, and lower production costs for travel literature and increased travel within the state due to the use of advertising in travel literature. Mr. Clark has determined that there will be an effect on small businesses, and there is an anticipated economic cost to some persons who are required to comply with the proposed new sections. There are some small businesses and state agencies that acquire bulk quantities of department travel literature for resale. The proposed rules will require these entities to certify that redistribution will be free. This potential fiscal implication cannot be quantified.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 9 a.m. on Thursday, October 29, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin. Texas

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Comments on the proposed rules may be submitted to J. Don Clark, director, Division of Travel and Information, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The new sections are proposed under Texas Civil Statutes, Articles 6666 and 6144e, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to compile and publish pamphlets, bulletins, and documents necessary for informational and publicity purposes concerning the highways of the state.

§23.10. Travel Literature.

(a) Purpose. The Texas Department of Transportation, pursuant to Texas Civil Statutes, Articles 4413(33) and 6144e, publishes travel literature for free distribution to the traveling public. This section sets forth department policies and procedures relating to the production, development, printing, advertising content, and distribution of that literature.

(b) Subject matter.

(1) The director, or the director's designee, may select subject matter concerning geographic locations, events and other items or points of interest to the general traveling public for inclusion in department travel literature provided that:

(A) the subject matter is regularly accessible (open) to the general public; and

(B) the subject matter is not a routine commercial service, including, but not limited to:

(i) car rentals;

(ii) hospitals or medical facilities;

(iii) retail stores or shopping centers; or

(iv) commercial facilities such as theaters, bowling alleys, and gyms.

(2) The department may consider for inclusion in travel literature, subject matter submitted by a person or organization, with complete information to the division prior to the publishing deadline announced for each specific travel literature publication.

(c) Distribution.

(1) Policy. This subsection prescribes the policies and procedures of the department relating to the distribution and dissemination of travel literature to:

(A) provide for equitable free distribution, within budgetary constraints, of available travel literature; and

(B) maximize the resources of the department available to advertise the highways of the state and to promote travel to and within the state.

(2) Single copies. A single copy of a publication may be distributed free of charge to each individual requesting a publication.

(3) Multiple copies or bulk quantities.

(A) Except as provided in paragraph (4) of this subsection, the department may distribute multiple copies or bulk quantities of a publication to an individual or organization free of charge, provided that

the recipient certifies in writing, in a form prescribed by the department, that all copies of publications will be redistributed to the public or end user free of charge.

(B) The maximum number of copies that the department may provide per fiscal year for each individual requesting a publication in accordance with subparagraph (A) of this paragraph is:

(i) 400 current state "image" folders;

(ii) 25 *Texas Official Highway Travel Maps;*

(iii) six *Texas State Travel Guides;*

(iv) 25 other travel literature publications;

(v) 100 "Don't Mess with Texas" litter bags; and

(vi) 100 "Don't Mess with Texas" bumper stickers.

(4) Exceptions. The department may provide:

(A) free of charge, a maximum of 100 *Texas Official Highway Travel Maps, Texas State Travel Guides*, and other travel literature publications per year to each elected state and federal official; and

(B) multiple quantities of travel literature to the tourism division of the Texas Department of Commerce, the Texas Education Agency, local governmental entities involved in tourism, and other state and federal agencies, on such written terms and conditions as may be mutually agreed upon.

(5) Reimbursements. The department may provide quantities exceeding the maximum authorized under paragraphs (3)(B) or (4)(A) of this subsection if the recipient reimburses the department for its costs to print the additional quantities and satisfies the requirements of paragraph (3)(A) of this subsection.

(d) Advertising.

(1) Guidelines. The department may accept advertising in travel literature pursuant to the following guidelines.

(A) Each travel literature item to be published will be reviewed for the potential inclusion of advertising.

(B) Subject matter for advertising will be established for each publication consistent with the character and purpose of that publication.

(C) Volume of advertising acceptable for any publication will be determined by usefulness to the general-public user, provided that the quality of the primary informational content is not impaired by the volume of advertising.

(2) Acceptable subject. Advertising subjects acceptable in department travel literature include:

(A) Texas vacation, travel or tourism-related features, sites, facilities, destinations, accommodations, restaurants, and services employing accurate and factual text with no exaggerations;

(B) pleasure-driving features, equipment, facilities, destinations, and services;

(C) recreational features, sites, equipment, facilities, and services;

(D) camping, hiking, fishing, boating, and outdoor features, sites, equipment, facilities, and services;

(E) public transportation modes, products, facilities, and services; and

(F) other features, sites, products, equipment, facilities, and services of interest to traveling and vacationing individuals and families.

(3) Unacceptable subjects. Advertising subjects not acceptable in department travel literature include:

(A) out-of-state travel-tourism features, locations, destinations, facilities, and services unless augmenting Texas travel or tourism;

(B) alcoholic beverages;

(C) tobacco products;

(D) sexually-oriented products and services; and

(E) other subjects not related to family travel and tourism.

(4) Bids.

(A) The department may solicit bid proposals for each travel literature publication that is deemed by the department as appropriate for inclusion of advertising.

(B) To be considered for acceptance, a bidder must file with the director a sealed bid proposal in a form prescribed by the department.

(C) The proposals shall be opened at a public meeting conducted by the director. All bidders may attend and all bids shall be opened in their presence.

(5) Acceptance.

(A) The department may accept advertising from the highest bidders meeting all specifications for that publication, provided the bids are cost effective to the state and are accepted under paragraphs (1)-(3) of this subsection.

(B) The contract shall be in a form prescribed by the department and shall include terms and conditions the department deems advantageous to the state.

(e) Commercial cooperation. The department may, consistent with Texas Civil Statutes, Articles 601b and 601g, and Texas Constitution, Article XVI, §21, enter into cooperative contracts with commercial entities for production, marketing, and distribution of department travel literature to achieve:

(1) greater volume;

(2) reduced cost to the department;

(3) higher quality;

(4) wider circulation; and

(5) other considerations that will achieve more effective or more economical production and distribution of travel literature than could be attained by departmental efforts alone.

§23.11. InfoBords.

(a) Purpose. The department may design, place, and maintain travel scene poster panels, referred to as InfoBords, in comfort station highway rest areas to inform and remind travelers about sites of interest in the vicinity and along and adjacent to highways as a way of encouraging them to enjoy stops at such attractions. The department will determine the size, design, and location of InfoBords and will develop InfoBords in close coordination with local travel/tourism authorities to assure accuracy of details and information depicted on the panel.

(b) Content.

(1) InfoBords are intended to relay useful information to the motoring public, such as emergency telephone numbers, and may depict and inform about a city or town if:

(A) the city or town is on or in proximity to the highway served by the InfoBord; and

(B) at least one permanent site of genuine travel or tourism interest that is open to drop-in travelers on a regular basis is located at the city or town.

(c) Costs.

(1) The department may pay production and manufacturing costs for quantities required for exhibits in department facilities.

(2) InfoBords will be made available in duplicate form, at the time the panel is manufactured, to local authorities for exhibit in the local areas, provided that the production cost of the duplicate is paid by the local authorities.

(d) Exhibit. The department will select InfoBords for exhibit only at safety rest areas equipped with running water and rest room facilities.

§23.12. Texas Official Highway Travel Map.

(a) Purpose. Pursuant to Texas Civil Statutes, Article 6144e, the department publishes the *Texas Official Highway Travel Map* (map) for the general motoring public depicting major Texas highways, cities and towns, mileage between such points, locations of Texas State Parks, National Forests, National Parks and Wildlife Refuges, picnic and safety rest areas, major lakes and rivers, counties, and certain other geographic details.

(b) Content. Content will be determined by the department and may include:

(1) a city or town that meets one or more of the following criteria:

(A) located on the state-maintained highway system;

(B) has a population of 50 or more;

(C) has a United States post office;

(D) is near a significant park or recreational area, or a historical, recreational or scenic tourist interest facility that is open to the public continuously or on a regular seasonal basis; and

(E) has auto repair or service available in the area;

(2) highways designated by the commission, including:

(A) interstate highways;

(B) U. S. highways;

(C) state highways;

(D) Farm-to-Market (FM), Ranch-to-Market (RM), or Recreational (RR) roads that connect with one or more higher-grade highways or roadways; and

(E) FM, RM, RR, or park roads that provide access to widely recognized parks, lakes, or recreational areas;

(3) map insets:

(A) representing cities or areas, selected by the department, in descending numerical order, on the basis of annual traffic volume in each of the metropolitan areas, to best utilize the limited space available on the map; and

(B) designed insets to show only a few primary highways or through routes (not all city streets); and

(4) mileage chart containing a limited number of cities and towns selected on the basis of a matrix composed of the following factors:

(A) the significance of the location as a geographic reference point for calculating long-distance trips within Texas, to assure statewide balance in the selections;

(B) the importance of the location as a gateway or entrance point to the State of Texas;

(C) the status of the location as a primary travel or tourist destination;

(D) the population size of the location; and

(E) the use of the location as the site of significant highway intersections.

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 October 1, 1992.

TRD-9213375

Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-8630

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Chapter 25. Division of Maintenance and Operations

General

• 43 TAC §25.9

The Texas Department of Transportation proposes new §25.9, concerning the naming of memorial highways and historical routes. The section replaces existing §23.2, concerning the naming of memorial highways, structures, and rest areas, which is contemporaneously being repealed.

Texas Civil Statutes, Article 6673e-4, provides for the designation of memorial highways and historical routes by local governments and the Texas Transportation Commission. Existing §23.2 prescribes the policies and procedures governing the designation and maintenance of memorial highways. Proposed §25.9 reenacts the subject matter of §23.2 in an amended form to clarify and update the provisions of the rule, and to include provisions for historical routes. The subject matter of existing §23.2 is also being transferred to Chapter 25 since it is a function of the department's division of maintenance and operations.

Gary Trietsch, P.E., director, Division of Maintenance and Operations, 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. Trietsch has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section.

Mr. Trietsch 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 eliminating the possibility of confusion among the public over the respective responsibilities of the division of travel and information and the division of maintenance and operations, and to provide the public and local governments notice of the department's policies and procedures concerning naming of historical routes. There will be no effect on small businesses, and no anticipated economic cost to persons who are required to comply with the proposed new section.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal and new section. The public hearing will be held at 9 a.m. on Friday, October 30, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any

interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Comments on the proposal may be submitted to Gary Trietsch, Director, Division of Maintenance and Operations, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The new section is proposed under Texas Civil Statutes, Articles 6666 and 6673e-4, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and provide for the designation of memorial highways and historical routes by local governments and Texas Transportation Commission.

§25.9. Naming of Memorial Highways and Historical Routes.

(a) Purpose. Texas Civil Statutes, Article 6673e-4, authorize local governmental units, if approved by the department, to assign a memorial or other identifying designation to a part of the state highway system, and authorize a county historical commission to apply to the Texas Historical Commission and the department for the marking with the historical name of a farm-to-market or ranch road that follows a historical route. This section prescribes the policies and procedures by which memorial highways and historical routes are named.

(b) Commission. Unless otherwise required or authorized by law, the commission shall not officially name any road, bridge, street, or highway on the state highway system for a person or persons, living or dead; nor for any organization or event; nor shall the commission give these parts of the highway system any name or symbol other than the regular highway number.

(c) Local governments. Local governmental units, such as a city or county, may assign a memorial or other identifying designation to any part or parts of the highway system; provided, however, that any part of the highway system that is named locally will be marked only with the regular highway number.

(d) Markers. Local governmental units may buy and furnish to the department a suitable locally-identifying memorial marker of a size and type which must be approved by the department. Upon request, the department may erect such marker at a place most suitable to the department's maintenance operations.

(e) Continuous designations. When two or more local governmental units cooperate in seeking a single continuous memorial designation for a highway through their limits, markers may be furnished to the department to be erected at each end of the designated limits, and at such intermediate sites that markers shall be approximately 75 miles apart.

(f) Application. When a memorial designation is planned by a local governmental unit or units, the sponsor or sponsors shall submit to the executive director a complete description of the nature and objectives of the dedication, and the type and full description of the marker or markers to be erected. If approved by the executive director, a period of three months shall be required from date of approval to the actual erection of the marker or markers, in order for the department to select and prepare a proper site.

(g) Maintenance. Maintenance of grounds surrounding such markers shall be the responsibility of the department, but repairs or replacement of the markers shall be made by the sponsoring organizations.

(h) Historical routes.

(1) Application. A county historical commission may apply to the Texas Historical Commission and the department for the marking with a historical name of a farm-to-market or ranch road that follows a historical route.

(2) Certification. Before the department may mark the road with the historical name, the Texas Historical Commission must certify that the name has been in common usage in the area for at least 50 years. The certification must be based on evidence submitted by the applying county historical commission, which must include affidavits from at least five long-time residents of the area.

(3) Installation. On certification by the Texas Historical Commission, the department will prepare and install signs along the road indicating the road's historical name. The applying county historical commission shall pay for the preparation of the signs.

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 October 2, 1992.

TRD-9213378 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call. (512) 463-8630

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• 43 TAC §25.10

The Texas Department of Transportation proposes new §25.10, concerning signs on state highway right-of-way.

Senate Bill 1267, 72nd Legislature, 1991, added Texas Civil Statutes, Article 6674v-7, which: prohibits persons from erecting, placing, or maintaining a sign on the right-of-way of a highway designated as part of the state highway system unless authorized by state law; authorizes the department to remove and dispose of unauthorized signs; and authorizes the department to adopt rules for the enforcement of the article

New §25.10, signs on state highway right-of-way, provides as follows: subsection (a), purpose, states the purpose of the section; subsection (b), definitions, defines words and terms used in the section; subsection (c), removal, authorizes the department to remove an unauthorized sign without prior notice, except that the department will provide 14-day notice to the owner of a permanent sign prior to removal, if the name and address of the owner is reasonably ascertainable, and will provide 31-day notice to the owner of a regulated encroaching sign prior to remedying the encroachment; subsection (d), disposal, authorizes the department to dispose of a removed sign unless claimed by the owner, and requires the department, prior to disposal, to provide written notice to the owner of a removed sign if the name and address of the owner is reasonably ascertainable; and subsection (e), removal costs, provides that the owner of a removed sign must remit removal costs to the department, and describes how removal costs will be determined.

Gary T. Trietsch, director, Division of Maintenance and Operations, has determined that there will be fiscal implications for the state as a result of enforcing or administering the proposed section. The removal of unauthorized signs on state highway right-of-way will result in a reduction of highway maintenance costs to the state of approximately $166,500 for each of the next five years. The provisions of the section also require owners of unauthorized signs to reimburse the department for removal costs, and therefore, there will be no increase in costs to the state due to removal of signs. There will be no fiscal implications for local governments as a result of enforcing or administering the proposed section.

Mr. Trietsch has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section

Mr. Trietsch 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 the removal of unauthorized signs from state highway right-of-way, thereby protecting the safety of the traveling public, and enhancing the scenic beauty of the highway corridor and the quality of the natural environment.

Mr. Trietsch has determined that there will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the proposed new section. These determinations are based on the fact that Texas Civil Statutes, Article 6674v-7, already make it a Class C misdemeanor to place, maintain, or erect an unauthorized sign on state highway right-of-way.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new section. The public hearing will be held at 9 a.m. on Tuesday, October 27, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8: 30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Comments on the proposal may be submitted to Gary K. Trietsch, Director, Division of Maintenance and Operations, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on November 10, 1992.

The new section is proposed under Texas Civil Statutes, Articles 6666 and 6674v-7, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to adopt rules governing the removal and disposal of unauthorized signs.

§25.10. Signs on State Highway Right-of-Way.

(a) Purpose. Texas Civil Statutes, Article 6674v-7, prohibit persons from erecting, placing, or maintaining a sign on the right-of-way of a highway designated as part of the state highway system unless authorized by state law. The article further authorizes the department to remove and dispose of unauthorized signs and to adopt rules for the enforcement of the article. This section prescribes policies and procedures governing the removal and disposal of unauthorized signs.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department-The Texas Department of Transportation.

(2) Permanent sign-Any sign permanently affixed or attached to the ground or a structure, or which cannot be removed without special handling.

(3) Reasonably ascertainable name and address-If the name and mailing address of the owner are displayed on the sign, or a name is displayed on the sign from which the department can identify the name and address of the owner.

(4) Sign-Any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, or other thing that is designed, intended, or used to advertise or inform.

(c) Removal.

(1) Immediate removal. Except as provided in paragraphs (2) and (3) of this subsection, the department may immediately and without prior notice remove a sign erected, placed, or maintained, in whole or in part, on state highway right-of-way if the sign is not authorized by state law or approved by the department.

(2) Permanent signs. If the name and address of the owner of a permanent unauthorized sign is reasonably ascertainable, the department will notify the owner to remove the sign. If the owner does not remove the sign within 14 calendar days of the date notice is mailed, the department may remove the sign without further notice.

(3) Regulated signs. If a sign authorized under Texas Civil Statutes, Articles 4477-9a or 6674v-3 encroaches on state highway right-of-way, the department will notify the owner of the sign of the encroachment and request that the encroachment be remedied. If the owner does not remedy the encroachment within 31 calendar days of the date notice is mailed, the department will remove the portion of the sign that is in the right-of-way.

(4) Sign storage. Removed signs will be stored at a department maintenance office pending disposal.

(d) Disposal.

(1) The department may dispose of a sign removed under this section unless the sign is claimed by the owner not later than the 10th day after the date of removal or the date notice is mailed under paragraph (2) of this subsection, whichever date is later.

(2) If the name and address of the owner is reasonably ascertainable, the department will, within three working days of the date of removal, forward written notice by certified mail to the owner of the sign stating that the sign has been removed and will be disposed of by the department after the 10th day from the date of the letter unless claimed by the owner.

(e) Removal costs.

(1) The department will notify the owner of a sign removed under this section of the removal costs, and the owner shall remit the costs to the department within 30 days of the date of the notice. If the owner fails to remit all costs, the department may refer the matter to the Office of the Attorney General for collection.

(2) Removal costs will be determined as follows.

(A) The costs of removing a nonpermanent unauthorized sign will be the average cost for removing an unauthorized nonpermanent sign in the district in which the sign is located.

(B) The costs for removing a permanent unauthorized sign will be the average cost per square foot for removing an unauthorized permanent sign in the district in which the sign is located.

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 30, 1992.

TRD-9213377 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-8630

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5. 97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

Texas Department of Insurance Exempt Filing Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

The State Board of Insurance, at a Board meeting scheduled for November 12, 1992, at 9 a.m. will consider the adoption of amendments to the Texas Statistical Plan for Residential Risks. These amendments are necessary to incorporate changes made necessary because of the implementation of new and revised provisions contained in House Bill 2, enacted by the 72nd Legislature. The amendments consist of the amending of certain terminology to be consistent with the coverages provided; additions of new codes to capture statistical information for new premium charges and credits previously approved by the Board; new codes to reflect premium and losses for new insurance coverages previously approved by the board for homeowners, dwelling, farm and ranch and farm and ranch owners insurance; the addition of farm and ranch insurance as a personal lines coverage in lieu of a commercial coverage; and other editorial changes to ensure the proper gathering of statistical information.

Copies of the full text of the Texas Statistical Plan for Residential Risks are available for review in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Wanda Carr at (512) 463-6527, (refer to Reference Number P-0992-60-I).

The notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

Issued in Austin, Texas, on October 2, 1992.

TRD-9213364 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-6327

The State Board of Insurance, at a public hearing under Docket Number 1941 scheduled for 9 a.m. on November 12, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a petition filed by Texas Car and Truck Rental and Leasing Association which proposes to amend Endorsement Number 523A of the Texas Automobile Rules and Rating Manual. Texas Car and Truck Rental and Leasing Association's petition recommends amending the reimbursement for expenses incurred by the insured in renting a substitute automobile so that the endorsement shall read... "we will pay up to $25 per day to a maximum of $750. "

The $25 per day would include any taxes due from the rental of the substitute automobile, so that the insured will not be charged more than that amount for a daily auto replacement rental.

A copy of the full text of the petition is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number A-0892-50).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on October 2, 1992.

TRD-9213365 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Eearliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-6327

The State Board of Insurance, at a public hearing under Docket Number 1942 scheduled for 10:30 a.m. on November 12, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a petition filed by Roeder & Moon, Inc. Roeder & Moon, Inc. proposes revising the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employers' Liability with respect to amending the payroll for employees classified under Code 9610-Motion Picture: Production from total payroll to a maximum payroll of $1200 per week per employee. This petition would apply the upper payroll limitation to those workers involved in motion picture production. Roeder & Moon, Inc.'s petition (Reference Number W-0892-56), was filed on August 31, 1992.

The proposed wording as stated in the petition is as follows: Maximum Remuneration applicable in accordance with Basic Manual Rule V-F-2 "Payroll Limitation" and Rule V-F-3 "Executive Officers" and the footnote instructions for Code 9178--"Athletic Team: Non-Contact Sports," Code 9179--"Athletic Team: Contact Sports," Code 9186--"Carnival--Traveling" and Code 9610--Motion Picture: Production"........$1,200.

A copy of the full text of the petition is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number W-0892-56).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on October 2, 1992

TRD-9213366 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-6327

The State Board of Insurance of the Texas Department of Insurance, at a board meeting scheduled for November 12, 1992, at 9 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider procedures for adopting physical damage rating symbols for the Texas Automobile Rules and Rating Manual (the Manual). The board will also consider adopting physical damange rating symbols for certain new and/or adjusted 1991 and 1992 model private passenger automobiles for inclusion in the manual. The proposed symbols adopted were developed from manufacturer list price data and adjusted in accordance with the prescribed Vehicle Series Rating Rule contained in the Symbol and Identification Section of the manual for 1990 models and subsequent models. These symbols are for

various models of the following makes: Isuzu, Oldsmobile, Acura, Alfa Romeo, Audi, Avanti, BMW, Buick, Chevrolet, Chrysler, Daihatsu, Dodge, Eagle, Ford, Honda, Hyundai, Infiniti, Jaguar, Lexus, Lincoln, Mazda, Mercury, Mercedes Benz, Mitsubishi, Nissan, Plymouth, Pontiac, Saab, Subaru, Suzuki, Toyota, Volkswagen and Volvo. The amendments are to be effective on the 60th day after notice of the board's action is published in the *Texas Register.*

Copies of the full text of the proposed amendments to the Manual are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin. (Refer to Reference Number A-0992-61-I).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213388 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: November 9, 1992

For further information, please call: (512) 463-6328

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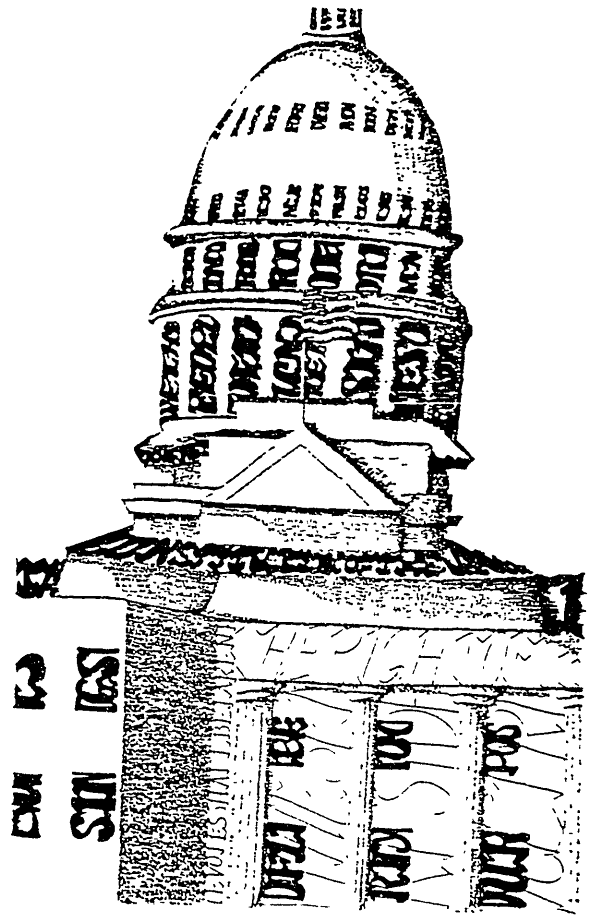

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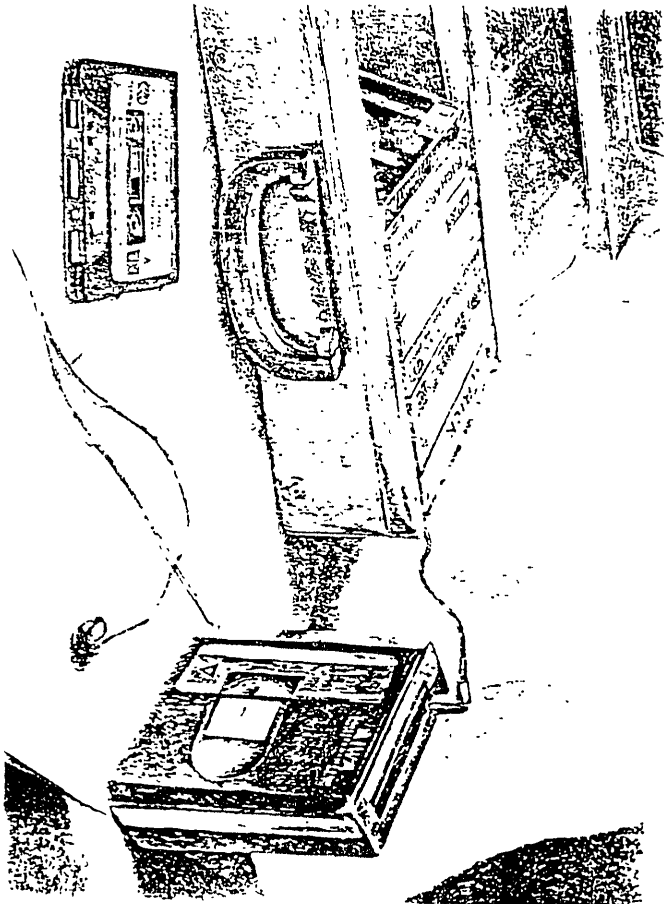

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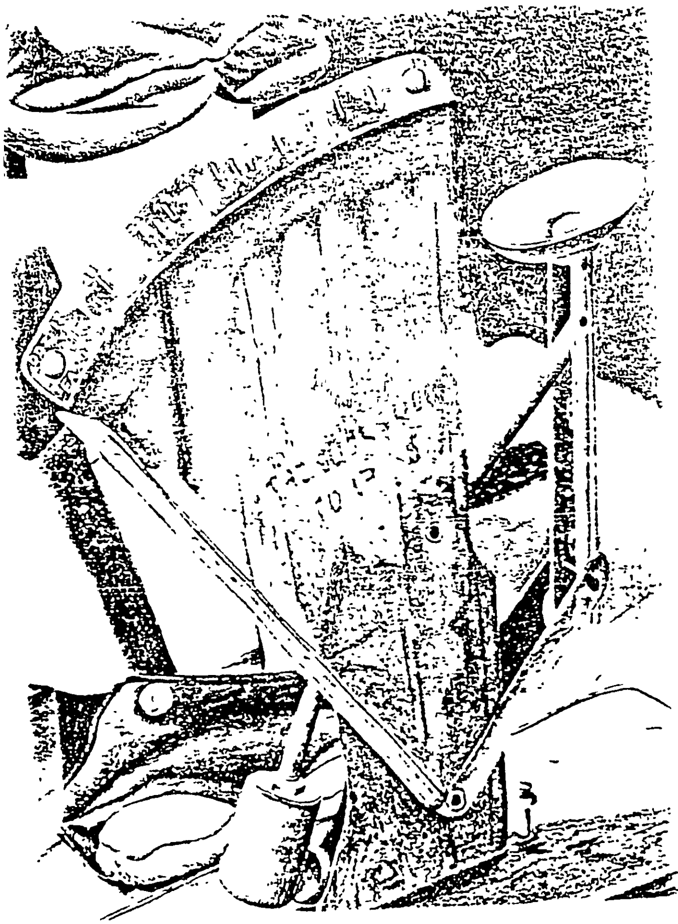

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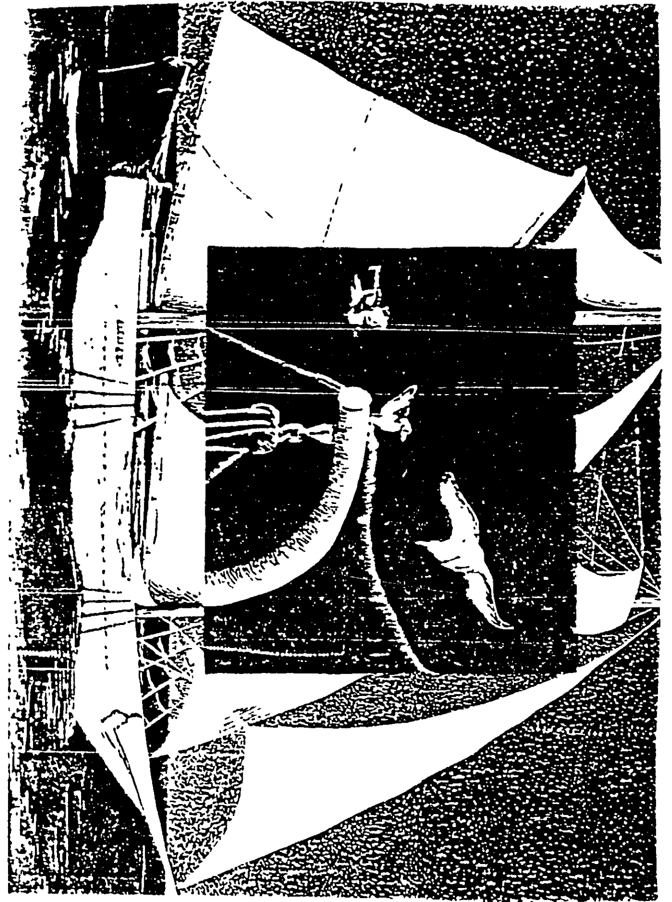

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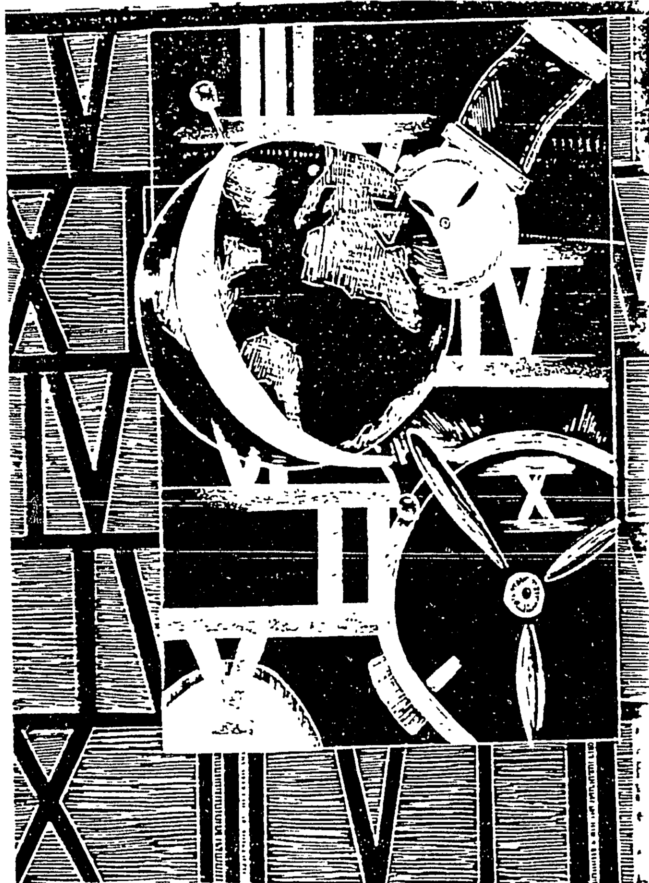

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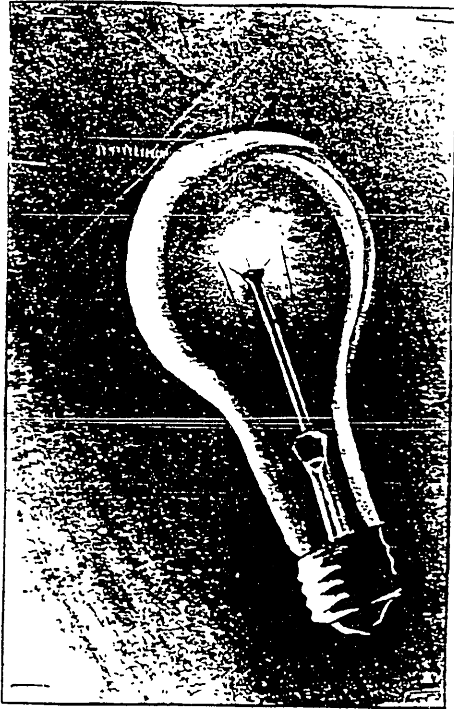

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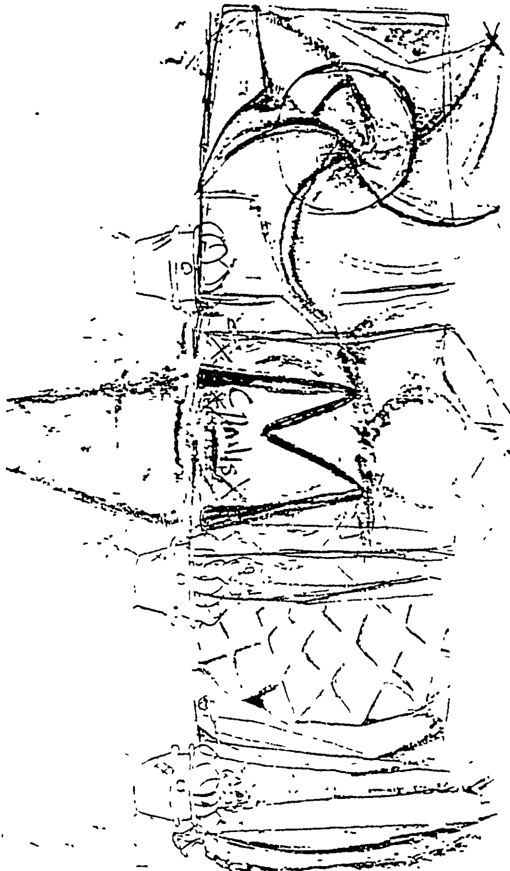

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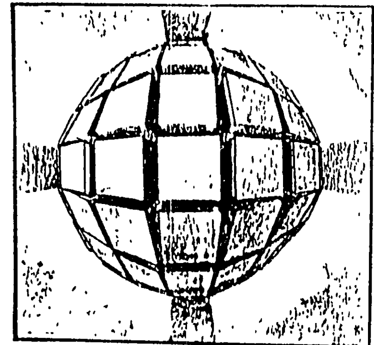

Withdrawn Sections

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 filling or 20 days after filing. If 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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 277. Occupational Safety

Federal Laws and Regulations Covering Occupational Safety

• 25 TAC §277.1, §277.2

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2371). The effective date of these withdrawn repeals is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213401 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Chapter 289. [Occupational Health and] Radiation Control

Control of Radiation

• 25 TAC §289.4

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2372). The effective date of the withdrawn repeal is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213402 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Environmental Standards in Industrial Establishments

• 25 TAC §§289.21-289.31

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2372). The effective date of these withdrawn repeals is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213403 Robert A MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Industrial Homework Standards

• 25 TAC §§289.41-289.46

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2372). The effective date of these withdrawn repeals is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213404 Robert A. MacLean, M.D
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Standards for Face and Eye Protection in Public Schools

• 25 TAC §§289.61-289.68

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2372). The effective date of these withdrawn repeals is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213405 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Sanitation at Temporary Places of Employment

• 25 TAC §§289.91-289.99

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2373). The effective date of these withdrawn repeals is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213406 Robert A. MacLean, M D
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Chapter 295. [Occupational] **Environmental** Health

Federal Regulations Adopted by Reference

• 25 TAC §§295.101-295.107

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2374). The effective date of these withdrawn repeals is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213407 Robert A MacLean, M D
Deputy Commissioner
Texas Department of Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

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Industrial Homework Standards

• 25 TAC §§295.121-295.126

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2375). The effective date of these withdrawn new sections is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213408 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

Standards for Face and Eye Protection in Public Schools

• 25 TAC §§295.141-295.148

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2382). The effective date of these withdrawn new sections is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213409 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

Sanitation at Temporary Places of Employment

• 25 TAC §§295.161-295.169

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections which appeared in the April 3, 1992, issue of the *Texas Register* (17 TexReg 2385). The effective date of these withdrawn new sections is October 5, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213411 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: October 5, 1992

For further information, please call: (512) 458-7236

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 112. Sulfur Compounds

Control of Sulfur Dioxide

• 31 TAC §§112.10-112.13, 112.22

The Texas Air Control Board has withdrawn from consideration for permanent adoption a proposed new §§112.10-112.13, and 112.22 which appeared in the June 24, 1992, issue of the *Texas Register* (17 TexReg 2934). The effective date of this withdrawal is October 2, 1992.

Issued in Austin, Texas, on October 2, 1992

TRD-9213367 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: October 2, 1992

For further information, please call: (512) 908-1451

Control of Hydrogen Sulfide

• 31 TAC §112.31

The Texas Air Control Board has withdrawn from consideration for permanent adoption a proposed amendment which appeared in the April 24, 1992 issue of the *Texas Register* (17 TexReg 2949). The effective date of this withdrawal is October 2, 1992.

Issued in Austin, Texas, on October 2, 1992.

TRD-9213368 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: October 2, 1992

For further information, please call: (512) 908-1451

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 IV. Office of the Secretary of State

Chapter 81. Elections

Voting Systems

• 1 TAC §81.60

The Office of the Secretary of State adopts new §81.60 concerning voting system certification procedures, with changes to the proposed text as published in the July 28, 1992, issue of the *Texas Register* (17 TexReg 5261). The Texas Election Code is silent concerning some of the specific procedures necessary to conduct a certification examination of voting systems. In paragraph (2), the word "vendor" was changed to "applicant" in order to better define who may apply for certification. The words "six codes" was changed to "six copies" to correct a typographical error. Paragraph (3) was changed in its entirety to better define the certification fee for a new voting system, and the certification fee for a modification to a voting system. In paragraph (4), the words "unless extenuating circumstances provide otherwise" were added to allow different examination dates for special circumstances. Paragraph (7) was changed in its entirety, and no longer concerns confidentiality statements. Paragraph (7) now provides that applicants must furnish sample ballots, which will facilitate the examination procedure.

The secretary of state is required to obtain and maintain uniformity in the application, operation, and interpretation of the Election Code and of the election laws outside the Election Code (Texas Election Code, §31.003 (Vernon 1986)). To perform this duty, the secretary is required to prepare detailed and comprehensive written directives and instructions relating to and based on the Election Code and the election laws outside the Election Code. Id. This directive is submitted to facilitate the certification of voting systems.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Election Code, §31.003, which provides the secretary of state with authority to obtain and maintain uniformity in the application, operation, and interpretation of election laws, and prepare detailed and comprehensive written directives and instructions relating to election laws.

§81.60. Voting System Certification Procedures. In addition to the procedures prescribed by Chapter 122 of the Texas Election Code, compliance with the following procedures is required for certification of a voting system.

(1) The entity applying for certification must complete Forms 100 and 101 prescribed by the secretary of state, and deliver them to the secretary of state no later than 45 days prior to examination.

(2) The applicant must deliver four copies of all relevant software and source codes and six copies of any user and/or reference manuals to the office of the secretary of state no later than 45 days prior to the examination.

(3) The certification fee for a new system is $3,000 and must be received by the secretary of state 45 days prior to examination. The certification fee for a modification of a voting system shall be determined by the secretary of state according to the complexity of the modification and must be received by the secretary of state 45 days prior to the examination.

(4) Certification examinations will be scheduled by the secretary of state three times a year during the months of January, May, and September, unless extenuating circumstances provide otherwise.

(5) The time and date of each examination will not be scheduled until after the entity applying for certification has delivered all forms, software, source codes, user and/or reference manuals, and fees to the secretary of state.

(6) All physical examinations of voting systems will take place at the Office of Secretary of State, Elections Division, in Austin, unless extenuating circumstances require otherwise.

(7) The applicant shall furnish sample ballots at the time of examination, which will allow the examiners to test the voting system(s) using all ballot styles permitted under Texas law.

(8) All examinations must be videotaped by the secretary of state.

(9) Each examiner must submit a written report to the secretary of state stating his or her findings for each voting system no later than the 45th day after examination.

(10) An examiner appointed by the secretary of state will be compensated after he or she files his or her written report.

(11) The secretary of state must approve or disapprove the voting system(s) within 30 days of receipt of all the examiners' reports.

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 October 2, 1992.

TRD-9213382

Tom Harrison
Deputy Assistant Secretary of State
Office of the Secretary of State

Effective date: October 23, 1992

Proposal publication date: July 28, 1992

For further information, please call: (512) 463-5650

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

(Editor's Note. House Bill 7, 72nd Legislature, First Called Session, (Texas Civil Statutes, Article 4413, Chapter 15, §1.15) provides for the transfer of the Low Income Home Energy Assistance Program and the Emergency Nutrition and Temporary Emergency Relief Program from the Texas Department of Human Services to the Texas Department of Housing and Community Affairs effective September 1, 1992.

The Texas Register is administratively transferring the following rules listed in the table below from Title 40. Part I. Texas Department of Human Resources to Title 10. Part I. Texas Department of Housing and Community Affairs. The table lists the new section number and the old section number that correspond to them. Copies of the rules may be obtain from the offices of the Texas Register by calling (512) 463-5561.)

Texas Department of Housing and Community Affairs

Chapter 5. Community Services Program

Subchapter B. Emergency Nutrition and Temporary Emergency Relief Program

Previously: Chapter 10. Emergency Nutrition and Temporary Emergency Relief Program and Oil Overcharge Funding Program

New Section Number	Old Section Number
5.101	10.4301
5.102	10.4302
5.103	10.4303
5.104	10.4304
5.105	10.4305
5.106	10.4306
5.107	10.4307
5.108	10.4308
5.109	10.4309
5.110	10.4310
5.111	10.4311
5.112	10.4312
5.113	10.4313
5.114	10.4314
5.115	10.4315
5.116	10.4316
5.117	10.6001
5.118	10.6002
5.119	10.6003
5.120	10.6004
5.121	10.6005

Chapter 7. Low Income Home Energy Assistance Program

Previously: Chapter 8. Home Energy Assistance Program

New Section Number	Old Section Number
7.1	8.1
7.2	8.2
7.3	8.3
7.4	8.4
7.5	8.5
7.6	8.6
7.7	8.7
7.8	8.8

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §9.7

The Texas Department of Housing and Community Affairs (TDHCA) adopts the repeal of §9.7, concerning governor's special assistance fund for small and minority businesses, without changes to the proposed text as published in the July 14, 1992, issue of the *Texas Register* (17 TexReg 5003).

The repeal deletes the requirements for the governor's special assistance fund for small and minority businesses which has been discontinued as a separate program.

The activities formerly available for funding under this section are now part of the small and minority businesses loan program of the Texas Capital Fund. (See 10 TAC §9.3).

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4413(501), §2. 07, which provides TDHCA with the authority to allocate community development block grant nonentitlement area funds to eligible counties and municipalities according to department rules.

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 29, 1992.

TRD-9213296

Susan J. Leigh
Executive Director
Texas Department of Housing and Community Affairs

Effective date: October 22, 1992

Proposal publication date: July 14, 1992

For further information, please call: (512) 475-9516

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.23

The Public Utility Commission (PUC) adopts an amendment to §23.23, concerning rates, with changes to the proposed text published in the March 31, 1992, issue of the *Texas Register*, (17 TexReg 2323).

The amendment being adopted allows utilities to request certification of long-term fuel contracts. Under the amendment, certification will be granted if the commission finds the contract to be reasonable as a whole. The amendment specifies the procedures and standards to be used in the certification process, as well as, the effect of certification.

The original proposal was more extensive and made changes to the manner in which the commission regulates fuel costs. Given the comments, the commission is adopting only the contract certification portion of the rule.

The commission solicited comments and replies to comments on the original proposal. Parties filing comments were Arco Oil and Gas Company and Arco Natural Gas Marketing (Arco), Association of Texas Intrastate Natural Gas Pipelines, Brazos Electric Power Cooperative (Brazos), Central and South West Services (CSW), Coastal States Management Corporation (Coastal), Consumers Union and Public Citizen (Consumers Union), City of El Paso (El Paso), El Paso Electric Company (EPEC), Environmental Defense Fund (EDF), Guadalupe Valley Electric Cooperative (GVEC), Gulf States Utilities Company (GSU), Houston Lighting & Power Company (HL&P), Lower Colorado River Authority (LCRA), an individual, a state representative, Office of Public Utility Counsel (OPC), San Miguel Electric Cooperative, Inc. (San Miguel), Southwestern Public Service Company (SPS), Tex-La Electric Cooperative of Texas, Inc. and Northeast Texas Electric Cooperative, Inc. (Tex-La), Texas Cotton Ginners' Association and Texas Agriculture Cooperative Council (Cotton Ginners), Texas Gas Association, Texas Electric Cooperatives, Inc. (Coops), Texas Utilities Electric Company (TU Electric), and Texas Industrial Energy Consumers (TIEC).

In addition to requesting comments and replies to comments, the commission held a one-day forum to discuss the proposal, and the commission's general counsel conducted four days of workshop discussions between the parties expressing an interest in the proposed amendments. The changes to the original proposal are a result of the comments, the discussions, and agreements made at the workshops, and the points made at the forum.

Some parties opposed the amendments as a whole. Brazos Electric Power Cooperative, (Brazos) contended that because of the additional burden placed on staff and the utilities, the proposed rule would be costly to taxpayers and ratepayers. Brazos saw no significant benefit to the rule and requested that costs be further quantified before the rule is adopted.

Consumers Union and Public Citizen (Consumers Union) opposed the proposal. They commented that both parts of the proposal, certification and semi-annual setting of the fuel factor, had been considered and rejected by the legislature in the last session. Consumers Union further commented that the proposal would interfere with Integrated Resource Planning by locking utilities into long-term contracts and thus remove any incentive to conserve.

Consumers Union commented that the proposal will put a substantial additional burden on an already burdened commission staff and OPC. Also, the rule should provide for reimbursement of municipal expenses.

Consumers Union commented that the time lines were too short and notice inadequate.

LCRA commented that the deadlines for filing comments on the proposal gave insufficient time to fairly analyze the rule proposal and that a committee of interested persons should be established.

Tex-La Electric Cooperative of Texas, Inc. and Northeast Texas Electric Cooperative, Inc., (Tex-La) opposed the rule proposal and recommended its denial. Tex-La commented that the existing fuel rule has worked reasonably well. Tex-La commented that Enron has underestimated the demands the rule would place on the commission.

Texas Cotton Ginners' Association and Texas Agriculture Cooperative Council (Cotton Ginners) commented that the rule had two parts, certification and the faster pass-through of costs, and both parts had been considered and rejected by the legislature.

The commission believes there is some merit to these comments to the original proposal. However, the proposal being adopted is substantially changed from that originally proposed. It is different from the proposal considered by the legislature and presents much less of a burden on the commission and the utilities. In addition, the commission is adopting only a portion of the original proposal. The changes that were made are discussed in the following.

Others parties supported the amendments as a whole and recommended only minor changes. HL&P was supportive of the proposal and recommended some minor modifications. HL&P commented that the rule provided for more timely changes in the fuel factor so it could better track cost and reduce refunds. HL&P also supported the requirement that reconciliations occur every two years. TU Electric supported the rule and recommended some relatively minor changes. However, TU Electric cautioned that the commission should not engage in micromanaging a utility via the contract certification process.

A number of parties filed comments in support of the proposed amendments concerning the certification of long-term natural gas contracts.

Arco commented that they generally supported the proposed amendments. Arco suggested that the commission should set guidelines for the purchase of natural gas that would allow the utilities great flexibility in creating a portfolio of spot, intermediate, and long-term contracts. Arco commented that long-term contracts offer distinct advantages by creating price stability, reducing transaction costs associated with a large number of spot contracts, and providing reliability through a security of supply. Arco noted that security of supply requires a premium to allow producers to explore for new gas.

Arco commented that the certification proposal gives the utilities security and stability.

Arco also commented that there are big picture benefits to long-term contracting for natural gas, including a stable gas market, Texas jobs, national energy security and balance of payment benefits, and impressive environmental benefits.

Association Of Texas Intrastate Natural Gas Pipelines (the Association), commented in support of the rule. The Association noted the benefits of natural gas, including the effect on state tax revenues. The Association commented that they believed that utilities were hesitant to enter long-term contracts for fear of regulatory treatment if there were unforeseeable changes in market conditions. The Association noted that utilities have increased their reliance on spot gas, putting at risk their customers to the hazards of wide market swings.

The Association commented that there is substantial risk to long term purchases of gas unless the commission reviews the purchases on a timely basis.

CSW supported the certification of long-term natural gas contracts but did express some concern that the commission's role would be overly intrusive and dampen a utility's ability to negotiate and renegotiate contracts.

Coastal States Management Corporation supported the rule, stating that certification of long-term gas contracts would support new pipeline construction, increase gas demand, benefit consumers by assuring supply and price stability, and provide producers with a stable cash flow. Coastal, however, had some concerns, those being that the rule did not limit certification to new contracts, that the rule should specify that inaction by the commission on an application for certification means the contract is deemed certified, that the commission should exercise restraint in the information requested in a certification proceeding, that the confidentiality of contracts used for comparison should be ensured, and that the commission should not become a negotiator of contracts under the rule.

EPEC supported the concept of certification of long-term natural gas contracts, but expressed some reservations: the possible hindrance of negotiation by delays in getting contracts certified; the commission may be put in the role of negotiator; the utility still faces risks in the administration of the contract; and it is questionable whether the commission has authority to certify such contracts.

An individual supported the rule. He commented on the severe plight of the natural gas industry in Texas and noted that long-term contracts are seen as one of the best solutions to the current uncertainty in the market. He urged the building of bridges between the gas industry and electric utilities in order to work together. He encouraged the commission to adopt whatever rule is most appropriate to encourage long-term contracting.

A state representative supported the proposal. He commented that he had sponsored House Bill 2853, which was intended to create incentives for natural gas, during the last legislative session. He noted that natural gas is considered to be one of the cleanest burning and least costly fuel alternatives.

Texas Gas Association supported the rule. They commented that the current reliance on short-term supplies was ill advised, as was displacing clean burning natural gas with other fuels. Texas Gas commented it was in the economic interest of Texas and its citizens to allow utilities to certify long-term gas contracts rather than have utilities take the risks of the current system of reviewing fuel costs.

Texas Electric Cooperatives, Inc. (Coops) supported the concept of certifying long-term contracts.

On the other side, several parties filed comments opposing the amendments concerning the certification of long-term natural gas contracts.

Brazos commented the certification of long-term contracts was not good public policy because the cost of implementing would exceed the benefit to be derived. Brazos viewed the proposal for certification to invite an overly intrusive role in the management prerogatives and into areas better suited for the Railroad Commission which could see the full picture of the natural gas industry.

Brazos believed that the additional cost caused by the certification of long-term natural gas costs would be substantial for both the commission and the utilities.

Brazos also stated that if the certifications are not mandatory, the natural gas sellers will oppose subjecting their contracts to the process and thus emasculate the rule.

Brazos suggested that the benefits of certification may be illusory because the commission may be inclined to generally deny certification because there is no consequence to doing so and administration of the contract is still subject to review.

Consumers Union commented that certification forwarded no public policy and would not result in lower costs to ratepayers if the contracts provided for automatic adjustments in price.

The City of El Paso commented that certification of long-term natural gas contracts may benefit gas suppliers and utility management, but it would not benefit ratepayers because of the risk a certified contract may result in unreasonable price.

El Paso stated that the commission has not been granted the authority to certify long-term natural gas contracts.

The Environmental Defense Fund (EDF) opposed the rule. EDF commented that the proposal will undermine IRP efforts, may lead to over-consumption of natural gas, and overburden the resources of the public and PUC. In regard to the conflict with IRP efforts, EDF maintained that the proposal provides a piecemeal approach rather than a broad review of the fuel purchase planning process. EDF commented that by locking into long term contracts, utilities may be forced to burn gas they otherwise would not have and this could discourage DSM initiatives and the use of renewables.

GSU commented that making contracts subject to certification may result in the supplier demanding a premium.

GSU commented that certification proceedings could develop into full blown hearings and would not reduce the work required in reconciliation because of the need to review the administration of the contract and utility operations.

GSU stated that the end result of the certification rule may be that the gas suppliers are given an advantage in negotiation.

OPC commented that the proposed rule should be rejected. OPC commented that the proposed rule is inconsistent with integrated resource planning. OPC maintained that the certification of long-term natural gas contracts approaches the problem from the wrong way; instead, a fuel procurement policy should be approved with the integrated resource plan. The utility would then know what fuel it needs rather than the piecemeal approach by the certification rule.

OPC commented that the proposed rule certification is unnecessary because the commission already has the authority to encourage utilities to increase the use of natural gas. It can encourage the use of natural gas by favoring the construction of generating units fuel by natural gas over units powered by other sources of fuel.

OPC commented that the proposed rule cannot be justified because of a failure of regulation. Comparing the situation to the treatment afforded utilities in regard to nuclear power plants, OPC pointed out that the wails regarding unfair treatment is not determinative of whether unfair treatment really occurred.

OPC commented that the proposed rule would intrude upon management prerogatives, and that traditional regulation does not involve the regulator with the day-to-day decisions of the utility. The commission should not carve out this exception.

OPC commented that the utility may already face a greater risk of disallowance with a coal or nuclear plant, and thus, there already is a reason for utilities to favor gas.

OPC expressed suspicion that the utilities were feeding Enron a line when the utilities represented that the reason that they were not buying gas was fear of disallowance and that the real reason may be the utilities already have all the gas they can use.

OPC commented that the proposed rule may fail to encourage the use of natural gas by utilities outside of Texas because certification of gas contracts would most likely be opposed, would be seen as a parochial effort by Texas to help Texas, and would be contrary to integrated resource plans already in place in the other states.

OPC commented that the proposed rule is overbroad in that partial certification would work as well. Enron's concern is the pricing, so the certification should be limited to pricing.

OPC commented that the proposed rule will create a proliferation of cases and thus stretch the commission's and OPC's resources. The Cotton Ginners also suggested

that the commission does not have the resources, particularly the fuel staff, to effectively review long-term contracts as would be required by this rule.

Southwestern Public Service Company (SPS) opposed the certification portion of the rule because it invited an overly intrusive role into negotiation of contracts by the commission.

SPS requested that a waiver provision be put into the rule to allow waiver from specific provisions upon the showing of special circumstances.

Texas Industrial Energy Consumers (TIEC) opposed the contract certification portion of the rule.

TIEC questioned the legality of the rule and noted that there is no specific authorization of certification of contracts in the Public Utility Regulatory Act (PURA).

TIEC commented that the provision of the rule that prevents further review of a contract after certification violates the requirements of PURA that a hearing be held on changes in fuel costs and that there be no automatic pass-through of costs.

TIEC commented that certification of long-term gas contracts is not good public policy, is contrary to the interests of ratepayers, and shifts risks that there may be changes in fuel prices from the utility to the ratepayer.

TIEC commented that the rule removes any incentive a utility has to remove itself from a bad contract.

TIEC noted that it would be extremely difficult for the commission and the ratepayers to judge the reasonableness of a contract at the time it is entered.

TIEC commented that it is the responsibility of the utility to prudently manage its business, and under the regulatory compact, the commission must be able to review utility actions.

TIEC commented that the utility is expected to shoulder certain risks and the utility is compensated in its return for this risk. If the risk is removed, the cost of equity should be reduced.

TIEC commented that the certification proposal may negate the ratepayer benefits occurring as a result of the restructuring of the natural gas industry-certification of long-term gas contracts may impede the flowthrough of the reduced prices resulting from the increased competition occurring in the gas industry as a result of the ongoing restructuring.

The commission believes that the potential benefits of the rule outweigh the problems that may exist, and many of the problems suggested by the comments do not exist. The standard for review of the prudence of a decision is the same whether it is made at the same time as the utility or at a later date. There is not a shifting of risk as suggested by the comments. This part of the proposal will eliminate the risk that the commission could years later find the original contract to be imprudent. The certification process allows contemporaneous review based on timely market information. The proposal being adopted will allow the commission to take a proactive approach to reviewing fuel issues, rather than an after-the-fact look, where the sole remedy is to disallow costs already incurred. This gives the commission a vehicle to communicate to utilities the need to manage their resource portfolio prudently before they get in trouble. These benefits are worth the additional burden it may impose on the commission.

The commission disagrees with the suggestion that the commission lacks authority to certify contracts. The commission is given broad discretion under PURA, §43(g). This is a legitimate exercise of that authority.

A number of the comments focused in on specific provisions of the contract certification portion of the proposal. The commission believes many of these comments have merit and changes have been made in response to those comments. Furthermore, changes were made in response to discussions at the workshops. These changes, as discussed following, ameliorate many of the problems with the original proposal.

Arco commented that certification should be not be limited to "non-interruptible" contracts. By limiting certification to "non-interruptible" supplies, Arco believes that the commission will be showing a preference for the most firm and thus most costly supplies. Arco submitted that utilities should be able to negotiate with more flexibility. Tex-La commented that if the rule is adopted it should not limit the type of long-term contract that could be certified, i.e.. interruptible contracts should be certifiable. The commission agrees. This change has been made.

Brazos commented that if the commission was going to adopt a certification rule, the rule should be extended to all types of fuel. CSW, HL&P, the Coops, and TU Electric recommended that all types of fuel contracts be eligible for certification in order to not create an improper preference for gas at the expense of a proper fuel mix. This change has been made.

Brazos commented that the requirement of comparison with "identified" contracts would require a larger staff and force investigation of areas beyond the commission's jurisdiction. GSU commented there may be confidentiality problems with the requirement that contracts be compared to other contracts or bids, subsection (a)(3)(A). OPC commented that there is a practical problem for all of the parties in getting comparable contracts and consequently being able to ascertain the lowest reasonable price. The Cotton Ginners noted that there is no provision requiring utilities to file all of their contracts with the commission so that all the contracts may be used to determine the reasonableness of the contract for which certification is requested. The Coops commented that the provision for comparison of the contract in question to proposals that the utility "could reasonably have obtained" is not workable because what could have been obtained is not provable. The commission recognizes that there are some problems inherent with comparing a contract to "identified contracts." Although this reference remains in the adopted version, the language has been changed to make it clear other, equally valid considerations may be made.

The Coops commented that the commission should not be limited to considering proposals for comparable supply, processing, or storage, because some other combination of contracts may serve the same end even better but not provide a comparable supply, processing, or storage. With the language of the proposal being adopted, other packages of services, as suggested by the Coops, may be considered.

Brazos stated that whether an economic out clause is reasonable depends on the particular facts of each contract. OPC commented that the existence of market-out clauses makes the concept of long-term contracts illusory. Tex-La commented that price adjustment clauses should be mandatory, should not track other utilities' gas supply costs, and should keep prices market sensitive. TIEC commented that economic-out clauses should be required. The commission agrees with Brazos's comment. Whether an economic-out or price adjustment clause is reasonable is dependent on the particular circumstances of the contract.

Brazos stated that many of the other terms should be identified, including the term "reasonable." The commission believes that there is not a need to provide additional definitions.

Brazos agreed any review should be "as of the time of" the execution of the contract. Brazos raised the question of how certification would be handled in proceedings other than a strictly certification proceeding. The commission does not see a need to clarify this; the same standards would apply except for the timelines.

Brazos requested that the criteria listed in the rule be clarified by spelling out the weight to be given and whether the factors are positive or negative. CSW commented that the criteria for certification should be based on the "unique set of circumstances, on the whole existing at the time of execution" and not on just specific contract provisions. Otherwise, a utility's ability to obtain the most favorable contract will be hindered. EPEC commented that the wording of subsection (a)(4)(D) be clarified to make it clear that the additional considerations listed there are not required in every contract. GSU commented that the criteria for consideration of the reasonableness of a contract are overly constrained and questioned why options such as purchased power or demand side management are not included. GSU also was concerned whether the same criteria would be applied to non-certified contracts in reconciliation proceedings. GSU also commented that flexibility may be diminished by specific criteria on fuel mix and that the focus of the rule appears to be on new contracts. GSU recommended that the criteria refer to conditions at the time the contract was entered. GSU also stated that the criteria should not be specific standards, otherwise there will be strict terms for certified contracts, and the result will be, the utility's flexibility will be impaired and suppliers will be in an advantageous position in negotiation. OPC commented that the criteria for certification should be open ended and not limited by the rule. The Coops commented that the criteria for certification should not be limited, particularly because the list in the proposal does not require comparison to al-

ternate fuels, and should include the criteria of reasonable, necessary, and in the public interest. The criteria have been changed to answer many of these concerns. The criteria in the amendment require specific items that the commission believes are necessary, yet is open-ended to allow parties to raise other issues. The commission believes this provides a proper balance between the competing concerns. The commission does not see a need to further clarify the criteria.

Brazos suggested clarification is needed as to: what is meant by "other affected parties" in the notice provision; and what is meant by the phrase "as a whole" in regard to the commission's consideration of the contract. The notice provisions have been changed. The commission does not believe the phrase "as a whole" needs clarification.

CSW and EPEC commented that all fuel contracts with a term greater than one year should be eligible for certification. The commission believes five years is more appropriate, particularly because of the time necessary to process a request for certification.

EPEC commented that the wording of subsection (a)(2) be changed to prevent hindsight from still being used to judge a contract that is not immediately filed for review after execution. The commission believes that this change is unnecessary. The prohibition against hindsight is well understood.

EPEC recommended that a deadline of 20 days be set for the review of a contract resubmitted for certification that was previously denied certification. The commission believes that this would be far too short.

Gulf States Utilities Company (GSU) commented that despite the statement in subsection (a), long-term contracts have not been determined to be per se in the public interest. This phrase has been eliminated.

GSU suggested that subsection (a)(1) be clarified as to whether a contract with less than five years remaining would be considered a long-term contract. The commission believes that this question is best addressed on a case-by-case basis.

HL&P commented that the phrase "in light of the price under the contract" in subsection (a)(3)(D) should be eliminated because all of the terms of the contract should be considered in certifying a contract. The commission agrees. This phrase has been eliminated.

HL&P suggested that subsection (a)(5)(C) should be clarified so that when the utility does not file the contract but requests a protective order, its filing will still be considered complete for purposes of receiving expedited treatment. The commission disagrees. Until the contract is filed, the timelines for expedited treatment should not be imposed.

HL&P recommended that the rule provide that payments under a certified contract are reasonable and necessary operating expenses and that in considering whether a certified contract was prudently administered in a later reconciliation, the utility's action will not be found to be imprudent if in the "reasonable judgment of the utility" the prudent action proposed by an intervenor or general counsel would constitute an actionable breach of the contract. HL&P also proposes the rule clearly place the burden of proof on the party alleging imprudent conduct. The effect of certification provision has been clarified, but the commission disagrees with these changes proposed by HL&P. The utility has the burden of proof, including the burden of showing it has properly administered its contracts.

HL&P recommended that the rule provide that if the commission denies certification to a contract, it should be required to give a detailed explanation of why the contract was denied certification. The commission believes this is unnecessary.

LCRA commented that the language in subsection (a) should be changed from "failure to seek certification" to "choosing not to seek certification" in order to remove an inference regarding a utility's decision not to seek certification. This change has been made.

LCRA recommended that the rule specify which respected forecasts will be used by the commission to predict gas prices. The commission believes that this is better done on a case-by-case basis.

LCRA commented that the rule should define "affected person" as used in the notice section of the certification part of the rule. The notice provisions have been changed and the result is that this comment is no longer applicable.

LCRA maintained that allowing the commission to later review a utility's exercise of discretion under the contract will undermine the potential benefits of the rule and cause utilities to avoid having discretion under the contracts. The commission believes it must retain the authority to review the reasonableness of the administration of a contract.

OPC commented that the proposed rule should be limited to the certification of natural gas contracts because no supplier of other types of fuel has claimed that the lack of certification has created an impediment to the selling of their product and because expanding the rule would take away any advantage the rule gives to gas. However, if lack of certification prevented utilities from making otherwise rational choices, OPC saw little justification for distinguishing gas. As mentioned previously, the rule has been expanded to all fuels given some of the comments.

OPC commented that it is unclear how the rule would treat contract extensions. The commission believes that this is better addressed on a case-by case-basis.

OPC, TIEC, and the Cotton Ginners commented that the schedules in the rule do not provide adequate time. The proposal has been changed to extend the time.

OPC and the Cotton Ginners commented that better notice should be required. The Coops recommended that notice in contract certification cases should be clarified and at a minimum be mailed to each of the parties to the utility's last case. The proposal has been changed to strengthen the notice requirements.

OPC commented that the proposal provides no protection against material deficiencies. The proposal has been changed to clarify what is required of the utility for a filing to be considered adequate.

OPC commented that the protective order provisions improperly place the burden on the intervenors to move for disclosure. The commission disagrees. The protective order provisions provide a balance to allow for administrative efficiency.

OPC stated that given the market-out clauses, the commission should not be precluded from reviewing the contract in a reconciliation proceeding. To the extent this comment means that the commission may review the utility's actions in regard to the contract, the commission agrees.

OPC commented that the staff should conduct workshops which would allow for greater and fairer public input. OPC maintained that written comments are insufficient to fully address the matter at hand. Workshops were conducted.

Tex-La commented that to properly review a contract, the utility's entire fuel strategy would have to be reviewed and the proposal does not provide for such a depth of review. The timelines for certification have been extended to allow for a greater review.

Tex-La commented that the rule puts a large responsibility on the commission and to meet that responsibility the commission will have to carefully investigate the supplier. The commission believes that whether the supplier needs to be "investigated" will have to be determined on a case-by case-basis.

The Cotton Ginners commented that municipal intervenors may have difficulty participating because they would not be reimbursed under PURA, §24. The commission does not believe it would be appropriate to address the question of municipal reimbursement in this rulemaking proceeding. That question should be addressed in a separate rulemaking.

Texas Electric Cooperatives, Inc. (Coops) recommended that to provide assurances of the reasonableness of the contract, guidelines should be established for competitive bidding for fuel supplies. The commission disagrees. The manner by which a utility obtains a reasonable contract should not be limited to competitive bidding.

The Coops commented that to prevent self-dealing, contracts with affiliates should not be eligible for certification. The commission disagrees, but believes such contracts will need to be carefully considered.

The Coops suggested that to insure thorough scrutiny, certification should always be done in a separate proceeding. The commission disagrees. In a rate case or a reconciliation proceeding, much of the information necessary to judge a contract will already be available.

The Coops commented that contracts should be certified only is they are reasonable, necessary, and in the public interest, not just if the terms and conditions are reasonable as a whole. The commission believes that the Coops are drawing artificial semantical distinctions Whether a contract is necessary or in the public interest is a consideration in

determining whether it is reasonable as a whole.

TIEC commented that if the proposed contract certification rule is adopted, the flexibility the contract provides should be considered and toward such end, the utility should be required to submit a sensitivity analysis. Furthermore, the utility should be required to provide documentation of comparative analysis of alternative fuel over the life of the contract. The commission believes such analyses are valid and should normally be done. The amendment has been changed to add these requirements.

TIEC commented that the utility should be required to provide a narrative explanation of its fuel purchase strategy which would be approved as part of the certification process. The commission agrees that an explanation of the fuel purchase strategy should be provided, but believes that approval of the strategy is unnecessary. The amendment has been changed to require a narrative explanation of the fuel procurement strategy.

TIEC commented that any affected person should be able to request a hearing. The commission agrees, but does not believe it is necessary to spell this out in the rule.

TIEC maintained that no contract that is tendered for certification should be treated as confidential because to keep such contracts secret is unfair and contrary to the policy of open government. The commission believes that under the law of this state, whether a document should be treated as confidential has to be determined on a case-by-case basis.

TU Electric recommended clarification of subsection (a)(2), which prevents the reconsideration of a contract that has been certified, by adding language that makes it clear that if the reasonableness of a contract has been considered in a previous reconciliation, its terms cannot be revisited by the commission in a later reconciliation. The commission believes that the law is what the law is regarding the re-trying of issues and that it is unnecessary to state it in the rule.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16 and §43(g), which provide the PUC with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.23. Rate Design.

(a) Guidelines for certifying long-term fuel contracts. The commission will certify long-term fuel contracts in accordance with the guidelines in this subsection for determining the reasonableness of the terms and conditions of such contracts. This subsection does not require long-term fuel contracts to be submitted for certification, and no adverse inference will result from a utility's decision not to seek certification.

(1) Definition. A long-term fuel contract is a contract, or an amendment to a contract, with a specified term of at least five years for the supply, transportation, processing, and/or storage of fuel for the generation of electricity.

(2) Initiation of review. Upon the petition of a utility, the commission will review the reasonableness of the terms and conditions of one, or more if entered within a 60-day period, long-term fuel contracts as of the time of execution. A petition for certification may be filed separately, with a petition to reconcile fuel expenses, or with a statement of intent to change rates; however, a utility may not have more than one separately filed petition for certification pending before the commission at one time. The commission may consolidate a certification proceeding with, or sever it from, another proceeding.

(3) Criteria. The commission will consider the following factors in determining whether to certify a long-term fuel contract:

(A) the pricing provisions and other terms, in light of, among other factors, identified contracts, offers, or proposals, if any, that the utility could reasonably have obtained for comparable supply, transportation, processing, and/or storage of fuel when the contract was executed;

(B) the quantity deliverable under the contract, in light of the utility's long-term load forecast, mix of fuel purchases, and the most recent commission approved integrated resource plan, if any;

(C) current and projected fuel prices when the contract was executed;

(D) the reliability of the supply;

(E) provisions allowing for variation in the purchase and receipt or supply and delivery of fuel; and

(F) any other appropriate factors, which may include, but are not limited to, environmental, health, and safety protection, and economic impacts.

(4) Additional considerations. Other matters relating to long-term fuel contracts will be handled as follows.

(A) A price-adjustment clause, if any, in a long-term fuel contract must either provide for specified or determinable adjustments or tie the price adjustments to appropriate market indexes.

(B) A long-term fuel contract may be contingent on certification, approval by other appropriate regulatory authorities, and other reasonable contingencies, but otherwise must be fully executed.

(C) A long-term fuel contract may provide for prepayments by the utility in return for dedicated long-term fuel supply.

(D) The reasonableness of any price premiums in a long-term fuel contract over short-term prices will be determined in light of all the benefits obtained under the contract as a whole.

(5) Procedural matters. Matters relating to procedural schedules and notice will be handled as follows.

(A) Upon motion by a utility for an expedited certification in a proceeding in which certification is the sole issue, the presiding officer shall determine within 35 days whether the utility has complied with the requirements of subparagraph (B) of this paragraph, and if so, set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

(i) within 120 days after the contract is submitted to the commission, if no hearing is requested within 60 days after the contract is submitted; and

(ii) within 180 days after the contract is submitted to the commission, if a hearing is requested within 60 days after the contract is submitted, except that this deadline is extended two days for each day in excess of five days on which the commission conducts a hearing on the merits of the case.

(B) Commission approval of a request for expedited certification is contingent on the utility's filing its entire direct case at the time it submits its contract to the commission. The direct case must include:

(i) testimony addressing each factor listed in paragraph (3)(A)-(E) of this subsection;

(ii) a sensitivity analysis showing the utility's economic dispatch of its generating units, and incorporating the corollary energy requirements over a reasonable range of load growth scenarios and a reasonable range of fuel price variations;

(iii) documentation of the comparative analyses performed on the alternative fuel supplies, initially and throughout the life of the contract; and

(iv) a narrative explanation of the utility's strategy for long-term versus short-term fuel purchases.

(C) A utility may file a petition for certification without submitting a contract if at the time of filing it requests entry of a protective order making the con-

tract available while protecting its confidentiality. The presiding officer shall promptly issue a protective order subject to any party's right to challenge the confidential designation of information in a contract. Issues involving the confidentiality of information will be resolved under subsection (b)(5) of this section.

(D) In any proceeding in which certification of a long-term fuel contract is requested, the utility shall provide a copy of the filing to the Office of Public Utility Counsel and the General Counsel and provide written individual notice of the proceeding to all other parties to the contract and each of the utility's customers.

(6) Certification. After considering the factors set forth in paragraph (3) of this subsection, the commission shall certify a long-term gas contract if it determines that the terms and conditions of the contract are reasonable as a whole; otherwise, the commission shall deny certification.

(7) Effect of certification. Certification of a long-term fuel contract establishes that the original prices, terms, and conditions of the contract were reasonable at the time the contract was entered and that it was reasonable to enter the contract and does not preclude commission review of the reasonableness of the utility's actions with respect to the contract. Denial of certification establishes that the contract is not eligible for certification, and precludes relitigation of the reasonableness of the contract as a whole. To the extent other ultimate issues of fact are actually litigated and are essential to the commission's decision not to certify the contract, relitigation of such issues is also precluded.

(b) Electric.

(1) Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, taking into consideration the need to conserve energy and resources.

(2) The provisions of this paragraph apply to all generating electric utilities.

(A) The commission shall monitor the utility's actual and projected fuel-related costs and revenues on a monthly basis. The utility shall maintain and provide to the commission in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues. This information includes, but is not limited to, generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and off-system sales revenues.

(B) Known or reasonably predictable fuel costs shall be determined at the time of the utility's general rate case, fuel reconciliation proceeding, or interim fuel proceeding under subparagraphs (D) and (E) of this paragraph.

(i) In determining known or reasonably predictable fuel costs, the commission shall consider all conditions or events which will impact the utility's fuel-related cost of supplying electricity to its ratepayers during the period that the rates will be in effect. These conditions or events include generation mix and efficiency, the cost of fuel used to produce the utility's generation, purchased power costs, wheeling costs, hydro generation, and other costs or revenues associated with generated or purchased power as approved by the commission.

(ii) Purchased power capacity costs, fuel handling costs, costs associated with the disposal of fuel combustion residuals, railcar maintenance costs, railcar taxes, and coal brokerage fees will not be included as known or reasonably predictable fuel costs to be recovered through the fixed fuel factor as defined in subparagraph (C) of this paragraph, unless the utility demonstrates that such treatment is justified by special circumstances.

(C) The utility shall recover its known and reasonably predictable fuel costs through a fixed fuel factor. The utility's fixed fuel factor shall be established during a general rate case, fuel reconciliation proceeding, or interim fuel proceeding as designated in subparagraphs (D) and (E) of this paragraph, and shall be determined by dividing the utility's known or reasonably predictable fuel cost, as defined in subparagraph (B) of this paragraph, by the corresponding kilowatt-hour sales during the period in which the factor will be in effect. If, due to unique circumstances, such a calculation is not appropriate for a particular utility, a different method of calculation may be used. When approved by the commission, the utility's fixed fuel factor:

(i) may be designed to account for seasonal differentiation of fuel costs; and

(ii) shall be designed to account for system losses and for differences in line losses corresponding to the voltage level of service.

(D) Unless requested by a party to the proceeding, petitions to lower a utility's fuel factor may be approved by the commission without an evidentiary hearing. A lower interim fuel factor may be established and placed in effect in the first full billing cycle beginning no earlier than five days after the tariff is approved. An initial prehearing conference shall be conducted in all such proceedings no later than the 21st day following the filing of the petition and any person who fails to attend such prehearing conference may be dismissed as a party or refused party status.

(i) An interim fuel proceeding, to lower a utility's fixed fuel factor shall be conducted when either:

(I) the utility has materially over-recovered and projects to materially over-recover its known or reasonably predictable fuel costs. In such instance, the utility shall file a petition with the commission to lower its existing fuel factor and establish a new interim fuel factor. The petition shall clearly state all of the reasons for lowering the utility's existing fuel factor, and provide support for the new interim fuel factor. The commission may establish standards for the information and format that shall be contained in such petitions; or

(II) upon information and belief, the commission's general counsel, or any affected person, avers that the utility has materially over-recovered and projects that the utility will materially over-recover its known or reasonably predictable fuel costs, and files a petition with the commission to lower the utility's existing fuel factor and establish a new interim fuel factor.

(ii) For the purposes of determining whether a utility has materially over-recovered or projects that the utility will materially over-recover its known or reasonably predictable fuel costs, fuel costs associated with a nuclear generation plant subject to a deferred accounting order of the commission, or which is not recognized as plant-in-service in rates by the commission, are not considered known or reasonably predictable fuel costs, and the recovery of fuel costs incurred in connection with such generation plant shall not be included in the utility's fuel factors, but shall be treated separately as the commission may order.

(iii) Materially or material as used in this paragraph shall mean that the cumulative amount of over- or under-recovery, including interest, is the lesser of $40 million or 4.0% of the annual known or reasonably predictable fuel cost figure most recently adopted by the commission, as shown by the utility's fuel filings with the commission

(E) If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have resulted in a material under-recovery of known or reasonably predictable fuel costs, the utility may file a petition with the commission requesting an emergency interim fuel factor. Such emer-

gency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections with interest at the utility's composite cost of capital as established in the utility's most recent rate proceeding before the commission. Such interest shall be calculated on the cumulative monthly over-recovery balance. If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned utilities.

(F) All refunds shall be made by the utility pursuant to the methods outlined in subparagraph (G) of this paragraph.

(i) A utility may petition for interim refunds at any time. Such refund petitions may be approved by the commission without a hearing.

(ii) Any petition filed under subparagraph (D)(i)(II) may include a petition for interim refunds. Such refund petitions may be approved by the commission without a hearing, upon agreement of the parties.

(iii) If, at the conclusion of a general rate case, reconciliation proceeding, or interim fuel proceeding, the commission determines that, sometime since the utility's last general rate case, reconciliation proceeding, or interim fuel proceeding, a material over-recovery of known or reasonably predictable fuel costs had occurred and was concurrently projected to continue to occur, and the utility failed to file a petition pursuant to subparagraph (F)(i) of this paragraph, the refunds to be made may include a penalty of up to 10% of the amount that should have been refunded at that time.

(G) All refunds shall be made using the following methods.

(i) Interest shall be paid by the utility at its composite cost of capital, as established by the commission, during the period the rates were in effect. Such interest shall be calculated on the cumulative monthly over- or under-recovery balance.

(ii) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the utility.

(iii) Interclass allocations of refunds including associated interest shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative over-recovery occurred, adjusted for line losses using the same commission approved loss factors that were used in the utility's applicable fixed or interim fuel factor.

(iv) Intraclass allocations of refunds shall depend on the voltage level at which the customer receives service from the utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given refunds based on their individual actual historical usage recorded during each month of the period in which the cumulative over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds based on the historical kilowatt-hour usage of their rate class.

(v) All refunds shall be made through a one-time bill credit unless it can be shown that this method would provide an incentive for customers to benefit from excessive usage of electricity. However, refunds may be made by check to municipally-owned utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump sum credit. All other customers shall be given a credit based on a refund factor which will be applied to their kilowatt-hour usage over a one-month period. This refund factor will be determined by dividing the amount of refund allocated to each rate class, by forecasted kilowatt-hour usage for the class during the month in which the refund will be made.

(H) Final reconciliation of fuel costs shall be made at the time of the utility's general rate case or reconciliation proceeding, and shall cover all months following the utility's last final reconciliation through the most current month for which records are available. Any affected person, or the commission's general counsel, may file a petition for a reconciliation proceeding, provided such petition may only be filed if it has either been over one year since that utility's last final reconciliation or the utility has materially under-recovered its known or reasonably predictable fuel costs. In reconciliation of fuel costs the utility shall have the burden of proving that:

(i) it has generated electricity efficiently;

(ii) it has maintained effective cost controls;

(iii) for all nonaffiliated fuel and fuel-related contracts, its contract negotiations have produced the lowest reasonable cost of fuel to ratepayers To the extent that the utility does not meet its burden of proof, the commission shall disallow the portion of fuel costs that it finds to be reasonable;

(iv) for all fuels acquired from or provided by affiliates of the utility, all fuel-related affiliate expenses are reasonable and necessary, and that the prices charged to the utility are no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items.

(I) The affiliate fuel price shall be at cost; no return on equity or equity profit may be included in the affiliate fuel price. The commission may consider the inclusion of affiliate equity return in rate of return and rate base during the utility's general rate case; however, affiliate equity return or profit shall not be considered part of fuel cost.

(II) Operational investigations of all affiliate fuel suppliers and fuel supply services shall be performed at the discretion of the commission. The commission may use the results of such investigations during succeeding general rate cases, fuel cost reconciliation proceedings, emergency request proceedings, and elsewhere as it deems appropriate.

(III) The affiliated companies shall establish, maintain, and provide for commission audit, all books and records related to the cost of fuel. These records shall explicitly identify all salaries, contract expenses, or other expenses paid or received among any affiliated companies, their employees, or contract employees. Under-recovery reconciliation shall be granted only for that portion of fuel costs increased by conditions or events beyond the control of the utility.

(I) Upon final reconciliation, in determining the final over- or under-recovery amount, interest shall be paid by the utility or to the utility in reconciliation of any over- or under-recovery of fuel costs at the utility's composite cost of capital as established by the commission in connection with the utility's base rates in effect during the periods the over- or under-recovery occurred Such interest shall be calculated on the cumulative monthly over- or under-recovery balance. Upon final reconciliation, if refunds are owed to the utility's ratepayers, they shall be made in

accordance with the provisions of subparagraph (G)(ii)-(v) of this paragraph.

(3) The provisions of this paragraph apply to all investor-owned electric distribution utilities, river authorities and cooperative-owned electric utilities.

(A) An electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority, or from qualifying facilities may be allowed to include within its tariff a purchased power cost recovery factor (PCRF) clause which authorizes the utility to charge or credit its customer for the cost of power and energy purchased to the extent that such costs varies from the purchased power cost utilized to fix the base rates of the utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and/or energy. The terms and conditions of such PCRF clause, which may include the method in which any refund or surcharge from the utility's wholesale supplier will be passed on to its customers, shall be approved by an order of the commission.

(B) Any difference between the actual costs to be covered through the PCRF and the actual PCRF revenues recovered shall be credited or charged to the utility's ratepayers in the second succeeding billing month unless otherwise approved by the commission.

(C) If the utility purchases power from an unregulated entity, such as a political subdivision of the State of Texas, the utility shall submit the purchased power contract to the commission for approval of the terms, conditions, and price. If the commission issues an order approving the purchase, a PCRF may be applied to such purchases.

(D) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period:

(i) investor-owned electric distribution utilities shall be subject to a 10% penalty on excess collection,

(ii) cooperative-owned electric utilities shall report to the commission the justification for excess collection.

(E) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor the costs recovered through the PCRF clause. This information includes, but is not limited to, the total estimated PCRF cost for the month, the actual PCRF cost on a cumulative basis, total revenues resulting from the PCRF, and the calculation of the PCRF.

(4) The provisions of this paragraph apply to all investor-owned generating electric utilities and river authorities.

(A) An electric utility which purchases electricity from qualifying facilities may be allowed to include within its tariff a PCRF clause which authorizes the utility to charge or credit its customers for the costs of capacity purchased from cogenerators and small power producers. These costs shall be included in the PCRF only to the extent that such costs vary from the costs utilized to fix the base rates of the utility and to the extent that they comply with §23.66(h) of this title (relating to Arrangements between Qualifying Facilities and Electric Utilities). The terms and conditions of such PCRF shall be approved by an order of the commission.

(B) Purchased power costs that are recovered through the PCRF shall be excluded in calculating the utility's fixed fuel factor as defined in paragraph (2)(C) of this subsection.

(C) Costs recovered through a PCRF shall be allocated to the various rate classes in the same manner as the embedded costs of the utility's generation facilities allocated in the utility's last rate case, unless otherwise ordered by the commission. Once allocated, these costs shall be collected from ratepayers through a demand or energy charge.

(D) Any difference between the actual costs to be recovered through the PCRF and the PCRF revenues recovered shall be credited or charged to the customers in the second succeeding billing month.

(E) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period, the electric utility shall be subject to a 10% penalty on excess collections.

(F) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor costs recovered through the PCRF. This information includes, but is not limited to, total estimated PCRF cost for the month, the actual PCRF cost, total revenue resulting from the PCRF and the calculation of the PCRF clause.

(c)-(d) (No change.)

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 30, 1992.

TRD-9213273 John W. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Effective date: October 21, 1992

Proposal publication date: March 31, 1992

For further information, please call: (512) 458-0100

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TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

- **22 TAC §§213.1-213.3, 213.5, 213.7-213.13, 213.15-213.18, 213.21**

The Board of Nurse Examiners adopts amendments to §§213.1-213.3, 213.5, 213.7-213.13, 213.15-213.18, and 213.21, concerning practice and procedure, without changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5500).

The amendments are being adopted for the purpose of bringing the board's rules in alignment with the new hearings process through the State Office of Administrative Hearings (SOAH), established by Senate Bill 884.

Any Registered Nurse required to appear for a proceeding will have a clearer understanding of the process.

Section 213.1. Definitions.

Comment. ... We support the use of the title "executive director" over that of "executive secretary" ... However, to change the statutorily created position should be done overly and formally rather than by simply changing a definition.

Response. The board does not agree. Functional titles are permitted and routinely used by other agencies. The term, executive director, is used in the Appropriations Act.

Comment. Your definition of "contested case" is inconsistent with that in the Administrative Procedure and Texas Register Act. ... We suggest the term "administrative hearing". ...

Response. The board does not feel that its definition of contested case conflicts with the definition in the APTRA. Under the NPA the opportunity for settlement takes place after charges are filed.

Section 213.5. Motion for Continuance.

Comment. With the administrative hearings being held before the SOAH, we do not understand why the executive director, the party bringing the charges, should be involved in deciding whether continuance should be granted. Will this process not create confusion with the SOAH? ...

Response. The board does not agree. The ALJ may grant continuances after the cases come under the jurisdiction of SOAH. However, prior to that time and up to three days before the hearing, the executive director can make that determination.

Section 213.7. Preliminary Notice to Respondent.

Comment. While we do not object to the proposed amendment, we would point out that the actual practice of the staff is not to follow this rule. The staff's letters sent out under this section, as required by APTRA, §18(c), do not give respondents 10 days from the date that the notice is served, but require a response within 10 days of the date of the letter. And, in some instances, the date on the letter is earlier than the date on that the letter is mailed as marked on the agency's envelope. We would urge you to personally investigate the form letter that the staff uses in sending out these §18(c) letters

Response. The licensee is given an opportunity to show compliance with the law in accordance with APTRA, §18(c). No request for extension of time to respond to an investigatory letter has ever been denied. Therefore, the board believes that no changes are necessary in the proposed text.

Section 213.8. Commencement of Disciplinary Proceedings and Filing of Charges.

Comment. Subsection (d) as it exists and as proposed to be amended is violative of APTRA, §18(c). The staff may not amend its charges to add additional charges because §18(c) prohibits the institution of formal proceedings without providing the respondent the opportunity to respond to the conduct alleged to warrant the agency's intended action. Simply allowing the staff to add new charges without notice and an opportunity to respond prior to the filing of formal charges would allow any respondent to have those additional charges stricken by an ALJ or overturned on appeal. Therefore, this subsection should be stricken from your rules. If the staff wants to file additional charges, then it will have to comply with APTRA, §18(c), as well as §213 7 and §213.8 of your rules Consolidating such separately filed charges into a subsequent docket would not be a problem.

Response. The board believes no changes are necessary because §213.8(d) does allow the respondent an opportunity to respond to amended charges in accordance with APTRA, §18(c).

Section 213.9. Respondent's Answer.

Comment. Allowing only 10 days from the date of receiving formal charges to file an answer is not reasonable. A reasonable amount of time is the Monday after 20 days after service is accomplished as the Texas Supreme Court, based upon many years of experience, has set in the Texas Rules of Civil Procedure. ..

Response. The board believes no change is necessary in §213.9 as proposed as it does comply with APTRA. Furthermore, the ALJ's of the SOAH have consistently determined that staff have met the notice requirements of APTRA. No request for an extension to file an answer has ever been denied by this agency. Furthermore, the investigatory letter is sent to the nurse giving the nurse preliminary notice of allegations as soon as a complaint comes to staff's attention.

Section 213.10. Depositions and §213.11. Subpoenas.

Comment. The ALJ should make a decision of whether a commission should issue rather than a party to a proceeding, i.e., the executive director who is the head of the staff. Section 213.11(a) Again, the ALJ rather than the executive director should make the decision on the issuance of subpoenas.

Response. APTRA requires that the agency issue the commission and any subpoena to take depositions. No request for a commission or subpoena to take deposition has ever been denied by this agency. Therefore, no changes in the proposed text is necessary.

Section 213.12. Hearing Procedure.

Comment. Subsection (b)(2). The following language should be added to this paragraph so that if the respondent is exonerated on appeal, the respondent will not have to bear the cost of the record unjustly: "If a party appeals the final decision of the board and prevails on appeal, then the non-prevailing party on appeal shall reimburse the prevailing party for the cost it paid for the preparation of the original and any certified copy of the record of the agency proceeding that was required to be transmitted to the reviewing court."

Response. The board disagrees with this recommendation since it is not required by APTRA or the NPA.

Section 213.13. Decision of the Board

Comment. Subsection (a). The term Administrative Law Judge has already been defined as an acronym in §213.1, why spell it out again?

Response. The board agrees, however, the acronym was spelled out by the *Texas Register*

Comment. Subsection (c). A copy of an order that finds that the charges have not been substantiated should not be sent to the respondent's last known employer as a professional nurse! . .

Response. No order is issued if the charges have not been substantiated.

Section 213.15. Hearings Before the Executive Director

Comment. Subsection (d). The language "governing the same manner" is confusing and should be changed to "regarding this complaint" and inserted between "formal disciplinary proceeding" and "pursuant to." Also, should not the second time the word "board" is used be replaced by "staff"?

Response. The board would make the determination that charges would be filed if a consent order is not ratified.

Section 213.16. Prehearing Conference.

Comment. Commenter addressed concern over §213.16(c). As there is no §23.16(c), we believe he was referring to §213.18(c). "As is the case with agreed orders entered into without prehearing conferences, should not the language in this subsection include a statement that the agreed orders proposed as a result of a prehearing conference are not final and effective until approved by the board, so that this section is consistent with §213.17."

Response. There are no agreed orders without prehearing conferences.

Section 213.17. Agreed Orders.

Comment. Again, because the term Administrative Law Judge has been defined as an acronym in §213.1, it should be used as an acronym not both as a term and an acronym.

Response. We submitted it as an acronym, the *Texas Register* changed it.

Section 213.18. Reinstatement Process.

Comment. Subsection (e). Again, ALJ can be used alone without being restated because it was defined as an acronym. The punctuation at the end of each paragraph under subsection (g) needs to be a semicolon rather than colon.

Response. Both changes were made by the *Texas Register.*

Comment. With respect to paragraph (5) in subsection (g), the requirement that the sworn notarized statements be sent directly to the board from qualified people seems to be an onerous burden placed upon a petitioner. ... Why not allow the petitioner to have some control over the ability to present a case rather than leaving it in the hands of people while good intention, may be forgetful and overlook "direct mailing" these statements to the board?

Response. The board disagrees with the commenter and because of prior problems with falsified notarizations, have made no changes in this provision.

The only comment received was from the law firm of Scanlan and Buckle, P.C. offering suggested changes.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1, which provides the Board of Nurse Examiners with the authority to make and enforce and rules and regulations necessary for the performance of its duties and proceedings before it.

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 30, 1992.

TRD-9213252 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: October 21, 1992

Proposal publication date: August 7, 1992

For further information, please call: (512) 835-8650

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services–Part A

The Texas Department of Health (department) adopts amendments to §§157.3, 157.11-157.15, 157.31, 157.41, 157.44, 157.45, and 157.61-157.63; the repeal of existing §§157.19, 157.51, 157.64, 157.65, 157.77, and 157. 79; and new §§157.19, 157.21, 157.22, 157.32-157.35, 157.51, and 157.64, concerning emergency medical care. New §§157.32-157.35 are adopted with changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register*. The remaining sections as well as the repeals are adopted without changes and and the rules will not be republished.

Most of these amendments and new rules are a result of legislative changes made by the 72nd Legislature. This legislation added administrative penalties; a first responder organization registry; confidentiality of patient records; and criminal history investigation. The remaining rules are house keeping for training requirements; criteria for emergency suspension and revocation of a provider license; and automated external defibrillation.

A summary of comments received are as follows.

Concerning §157.11(a)(1)(F)(iv)(IV), quality assessment, one commenter felt a service should be allowed to develop the objectives and how they are measured. The department disagrees in that the itemized list delineates minimum standards. A provider may adopt objectives above and beyond these.

Concerning §157.11(a)(1)(F)(iv)(VI)(-d-), one commenter said that response data to be collected by the providers would be redundant to that already provided to the state The department disagrees, because response data is to be collected for internal use by provider quality management staff and may be more comprehensive than data required by the state.

Concerning §157.12(c), one commenter felt a certain number of isolation kits should be added to requirements. The department disagrees in that this would be a substantive change.

Concerning §157.19(c)(1), a commenter felt the wording should be changed so the employer is not totally responsible for the actions of employees. The department disagrees, because even though a provider cannot be totally responsible for an employee's actions, it cannot absolve themselves from responsibility to the consumer.

Concerning §157.19(c)(1)(P), obtaining any fee by fraud, one commenter felt it would give the bureau broadbased discretionary power and should be withdrawn. The department disagrees in that fraud or misrepresentation by a licensed provider is a consumer protection issue. Further, the provider has the right to a hearing and appeal by administrative rule.

Concerning §157.19(c)(1)(S), warning devices, one commenter questioned who would determine unnecessary use and felt the section should be withdrawn. The department disagrees in that any issue which impacts patient or public safety is a relevant concern.

Concerning §157.19(c)(1)(U), violating any rule or standard that jeopardizes the safety of a patient, one commenter felt the rule should be withdrawn because it would give discretionary power to the bureau. The department disagrees in that the provider has the right to a hearing and appeal by administrative rule.

Concerning §157.31(b) regarding automated external defibrillator (AED), a commenter felt the words EMS medical director should be deleted in favor of course medical director. The department disagrees because subsection (b) specifically speaks to delegation of the AED skill and delegation is the responsibility of the EMS medical director.

Concerning §157.32(a)(1) and §157.33(a)(1), a commenter felt hazardous material should be expanded and the OSHA rules about blood borne pathogens should be added to both rules. The department disagrees in that this is to be addressed by the division of occupational health.

Concerning §157.32(a)(4) and §157.33(a)(3), a commenter felt the wording should read "course medical director" rather than "EMS service medical director." The department agrees, and "course medical director" will be added to the rule.

Concerning §157.41(i), certification and wallet size certificate, one commenter felt the requirement should be deleted and the requirement to carry a wallet card while on duty should be dropped. The department disagrees in that this would be a substantive change.

Concerning §157.41(m)(1)-(3), certifying at a lower level if you are an EMT-I or EMT-P, a commenter felt it was degrading to retest and felt it could be handled administratively. The department disagrees, because certification can only be obtained through a formal testing.

Concerning §157.45(e)(2), a commenter felt the wording needed changing when describing certification retests because it doesn't mention skills testing in the last part of the section.. The department disagrees that a wording change is needed, since the retest fee applies only to the written exam.

In addition, the department made minor editorial changes.

The commenters were Cooke County EMS, Richland Hills Fire Department, East Texas EMS Medical Center, and Amoco Chemical Company. The commenters were neither for or against the section in its entirety; however, they did express concerns as earlier mentioned.

• 25 TAC §157.3

The amendment is adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services.

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 30, 1992.

TRD-9213298 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 458-7550

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Emergency Medical Services-Provider Licenses

• 25 TAC §§157.11-157.15, 157.19, 157.21, 157.22

The amendments and new sections are adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services.

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 30, 1992.

TRD-9213265 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date· October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 458-7550

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Emergency Medical Services Provider Licenses

• 25 TAC §157.19

The repeal is adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services.

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 30, 1992.

TRD-9213274

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 458-7550

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Emergency Medical Services Training and Course Approval

• 25 TAC §§157.31, 157.32, 157.33-157.35

The amendment and new sections are adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services.

§157.32. Emergency Care Attendant Training Course.

(a) Course curricula.

(1) The minimum curricula shall be the Department of Transportation (DOT) Emergency Medical Services (EMS) First Responder Training Course and the current Federal Emergency Management Agency document entitled "Recognizing and Identifying Hazardous Materials" which are adopted by reference. Copies may be reviewed during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(2) In addition to the minimum curricula in paragraph (1) of this subsection, the course shall include curricula on the following subjects:

(A) "Aids to Resuscitation";

(B) blood pressure by palpation and auscultation in the unit containing "Diagnostic Signs and Patient Examination" and the unit containing "Shock, Bleeding, and Primary Patient Survey";

(C) oral suctioning in the unit containing "Aids to Resuscitation";

(D) spinal immobilization;

(E) patient assessment; and

(F) adult, child, and infant cardiopulmonary resuscitation.

(3) The course shall include a minimum of 40 hours of didactic instruction on the approved curricula.

(4) The automated external defibrillator curriculum as adopted by reference in §157.31 of this title (relating to Automated External Defibrillator Training Course) shall be optional. This curriculum shall be taught only with the approval of an EMS medical director or course medical director and shall be in addition to the 40 hours of instruction in paragraph (3) of this subsection.

(5) A student shall successfully complete all course requirements including course written and course skills examinations prior to being placed on a course completion certificate and becoming eligible for state certification skills and written examinations.

(b) Application procedures are outlined in the EMS Education and Training Manual which is adopted by reference. The manual is available for review during normal working hours in the Texas Department of Health, Bureau of Emergency Management offices, 1100 West 49th Street, Austin, Texas 78756.

(c) Course approval criteria.

(1) Criteria for course approval shall be outlined in the EMS Education and Training Manual which is adopted by reference in subsection (b) of this section.

(2) Approval of an emergency care attendant (ECA) training course application shall be dependent upon:

(A) meeting the requirements in subsections (a) and (b) of this section; and

(B) meeting all the requirements in the EMS Education and Training Manual relating to ECA training courses.

(3) If the application meets the criteria in this section, the training program shall receive a letter of approval from the department with an assigned course number.

(d) Criteria for course denial.

(1) A course may be denied for, but not limited to, the following reasons if the applicant:

(A) submits an incomplete application;

(B) fails to submit an application in accordance with requirement in subsection (b) of this section;

(C) has a history of a high failure rates of students in previous courses on certification examinations;

(D) has a history of poor course evaluations from students in previous courses;

(E) fails to meet standards for training facilities as defined in the EMS Education and Training Manual based on a site evaluation; and/or

(F) submits names of instructors who are not certified to the appropriate level for the training course as required in §157.61 of this title (relating to Certification of Course Coordinator, Program Instructor, and Examiner) and who are not listed as guest lecturers.

(2) If an application is denied, a letter will be forwarded to the applicant detailing specific reasons for the denial.

§157.33. Emergency Medical Technician Training Course.

(a) Course curricula.

(1) The minimum curricula for the emergency medical technician (EMT) training course shall be the Department of Transportation (DOT) Basic Training Program for EMT-Ambulance and the current Federal Emergency Management Agency document titled "Recognizing and Identifying Hazardous Materials" which are adopted by reference. Copies may be reviewed during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(2) Objectives pertaining to the use of the pneumatic antishock garment (PASG) shall be optional. Teaching of this optional skill shall be at the discretion of the course coordinator.

(3) The automated external defibrillator (AED) curriculum as adopted by reference in §157.31 of this title (relating to Automated External Defibrillator Training Course) is optional and shall be taught only with the approval of an emergency medical services (EMS) medical director or course medical director and shall be in addition to the 100 hours of instruction in paragraph (4) of this subsection and in addition to the clinical and field internship requirements in paragraphs (5) and (6) of this subsection.

(4) The course shall include a minimum of 100 hours of didactic instruction on the approved curricula.

(5) In addition to the 100 hours of instruction in paragraph (4) of this subsection, the student shall be required to complete a minimum of 20 hours of clinical, in-hospital training. A minimum of eight hours are required in the emergency department. The remaining hours may be

completed in other clinical areas of the hospital.

(6) Twelve hours of clinical, in-hospital training may be completed in a primary care facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Accreditation Association Ambulatory Health Care (AAAHC), such as a minor emergency health care facility, if an exception to paragraph (5) of this subsection is requested from the department.

(7) The student shall be required to complete a minimum of three supervised ambulance runs on an authorized EMS vehicle. The supervision of these runs shall be provided by an individual certified as at least an EMT or by an appropriately qualified program instructor as determined by the course coordinator. An ambulance run is one in which a patient is transported from the scene to a primary care facility because the patient's condition requires care or one in which the student observes or assists with care at the scene, but the patient is transported by a helicopter, advanced life support (ALS), or mobile intensive care unit (MICU) vehicle.

(8) A student shall successfully complete all course requirements including course written, course skills examinations, clinical training, and EMS field internship prior to being placed on a course completion certificate and becoming eligible for state certification skills and written examinations.

(b) Application procedures are outlined in the EMS Education and Training Manual which is adopted by reference. The manual is available for review during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(c) Course approval criteria.

(1) Criteria for course approval shall be outlined in the EMS Education and Training Manual which is adopted by reference in subsection (b) of this section.

(2) Approval of an EMT training course application shall be dependent upon.

(A) meeting the requirements in subsections (a) and (b) of this section; and

(B) meeting all the requirements in the EMS Education and Training Manual relating to basic emergency medical technician training courses.

(3) If the application meets the criteria in this section, the training program shall receive a letter of approval from the department with an assigned course school number.

(d) Criteria for course denial.

(1) A course may be denied for, but not limited to, the following reasons. If the applicant:

(A) submits an incomplete application;

(B) fails to submit an application in accordance with requirement in subsection (b) of this section;

(C) has a history of high failure rates of students in previous courses on certification examinations;

(D) has a history of poor course evaluations from students in previous courses;

(E) fails to meet standards for training facilities as defined in the EMS Education and Training Manual based on a site evaluation;

(F) fails to meet standards for clinical training as defined in the EMS Education and Training Manual based on a site evaluation;

(G) fails to meet standards for EMS field internship as defined in the EMS Education and Training Manual based on a site evaluation; and/or

(H) submits names of instructors who are not certified to the appropriate level for the training course as required in §157.61 of this title (relating to Certification of Course Coordinator, Program Instructor, and Examiner) and who are not listed as guest lecturers.

(2) If an application is denied, a letter will be forwarded to the applicant detailing specific reasons for the denial.

(e) EMT completion course.

(1) Eligibility for the EMT Completion Training Course shall be current certification as an emergency care attendant (ECA).

(2) The minimum curriculum for the EMT Completion Training Course shall be the Texas Department of Health EMT Completion Training Course which is adopted by reference. Copies of this curricula may be reviewed during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(3) Objectives pertaining to the use of the pneumatic antishock garment (PASG) shall be optional. Teaching of this optional skill shall be at the discretion of the course coordinator.

(4) The AED curriculum as adopted by reference in §157.31 of this title (relating to Automated External Defibrillator Training Course) is optional and shall be taught only with the approval of an EMS medical director and shall be in addition to the 60 hours of instruction in paragraph (5) of this subsection and in addition to the clinical and field internship requirements in paragraphs (6) and (7) of this subsection.

(5) The course shall include a minimum of 60 hours of didactic instruction on the approved curriculum.

(6) In addition to the 60 hours of instruction in paragraph (5) of this subsection, the student shall be required to complete a minimum of 20 hours of clinical, in-hospital training. A minimum of eight hours are required in the emergency department. The remaining hours may be completed in other clinical areas of the hospital.

(7) Twelve hours of clinical, in-hospital training may be completed in a Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Accreditation Association Ambulatory Health Care (AAAHC) accredited primary care facility, such as a minor emergency health care facility, if an exception to paragraph (5) of this subsection is requested from the department.

(8) The student shall be required to complete a minimum of three supervised ambulance runs on an authorized EMS vehicle. The supervision of these runs shall be provided by an individual certified as at least an EMT or by an appropriately qualified program instructor as determined by the course coordinator. An ambulance run is one in which a patient is transported from the scene to a primary care facility because the patient's condition requires care or one in which the student observes or assists with care at the scene, but the patient is transported by a helicopter, ALS, or MICU vehicle.

(9) Application procedure for an EMT Completion course shall be as outlined in subsection (b) of this section.

(10) Approval or denial of an EMT Completion Training Course shall be in accordance with this subsection as well as subsections (c) and (d) of this section.

(11) A student shall successfully complete all course requirements including course written, course skills examinations, clinical training, and EMS field internship prior to being placed on a course completion certificate and becoming eligible for

state certification skills and written examinations.

§157.34. EMT-Intermediate Training Course.

(a) Course curricula

(1) The minimum curricula for the Emergency Medical Technician-Intermediate (EMT-I) training course shall be the Department of Transportation (DOT) EMT-I training curriculum adopted by reference. Copies may be reviewed during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(2) The curriculum shall include objectives pertaining to endotracheal intubation.

(3) Objectives related to manual defibrillation shall be optional and may be included only at the discretion of the course medical director.

(4) The automated external defibrillator (AED) curriculum described in §157.31 of this title (relating to Automated External Defibrillator Training Course) may be included as an optional skill at the discretion of the course medical director

(5) If the course medical director includes optional skills in paragraph(s) (3) and/or (4) of this section, the instruction shall be in addition to the 60 hours in paragraph (6) of this section

(6) The course shall include a minimum of 60 hours of didactic instruction on the approved curriculum

(7) In addition to the 60 hours of instruction in paragraph (6) of this subsection, the student shall be required to complete a minimum of 50 hours of clinical, in-hospital training A minimum of 24 hours shall be required in the emergency department

(8) The student shall be required to complete a minimum of 50 hours of supervised experience on an authorized EMS vehicle operating as at least an advanced life support vehicle

(9) At least three runs shall be completed during which the patient receives ALS care The supervision of this experience shall be provided by an individual certified as at least an EMT I or an appropriately qualified program instructor as determined by the course coordinator

(10) During the clinical and/or EMS field internship the student shall be required to successfully demonstrate proficiency in endotracheal intubation and peripheral intravenous needle or catheter insertion to the satisfaction of the course medical director and course coordinator.

(11) A student shall successfully complete all course requirements including course written examination, course skills examination, clinical training, and EMS field internship prior to being placed on a course completion certificate and becoming eligible for state certification skills and written examinations.

(b) Enrollment.

(1) Students enrolling in an EMT-I training course shall be currently certified as an EMT, or may be enrolled in an EMT training course and shall have completed the classroom portion of the course.

(2) The student shall successfully complete the EMT training course and be certified at the EMT level before certification at the EMT-I level.

(3) An EMT whose certification expires while enrolled in an EMT-I course is not certified at any level until:

(A) successfully completing the recertification requirements for EMT certification; or

(B) successfully completing the certification requirements for EMT-I certification.

(4) An EMT who is enrolled in an EMT-I course and whose EMT certification expires before the end of the EMT-I course shall have a period not to exceed 90 days to complete recertification requirements for the EMT certificate if:

(A) an application and fee for the EMT recertification is received before the expiration date of the EMT certificate; or

(B) an application and fee for the EMT-I certification is received before the expiration date of the EMT certificate.

(c) Application procedures are outlined in the EMS Education and Training Manual which is adopted by reference. The manual is available for review during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(d) Course approval criteria.

(1) Criteria for course approval shall be outlined in the EMS Education and Training Manual which is adopted by reference in subsection (c) of this section.

(2) Approval of an EMT-I Training course application shall be dependent upon:

(A) meeting the requirements in subsections (a), (b), and (c) of this section; and

(B) meeting all the requirements in the EMS Education and Training Manual relating to emergency medical technician-intermediate training courses.

(3) If the application meets the criteria in this subsection or this section, the training program shall receive a letter of approval from the department with an assigned course number.

(e) Criteria for course denial.

(1) A course may be denied for, but not limited to, the following reasons. If the applicant:

(A) submits an incomplete application;

(B) fails to submit an application in accordance with requirement in subsection (c) of this section;

(C) has a history of high failure rates of students in previous courses on certification examinations;

(D) has a history of poor course evaluations from students in previous courses;

(E) fails to meet standards for training facilities as defined in the EMS Education and Training Manual based on a site evaluation;

(F) fails to meet standards for clinical training as defined in the EMS Education and Training Manual based on a site evaluation.

(G) fails to meet standards for EMS field internship as defined in the EMS Education and Training Manual based on a site evaluation; and/or

(H) submits names of instructors or examiners who are not certified to the appropriate level for the training course as required in §157.61 of this title (relating to Certification of Course Coordinator, Program Instructor, and Examiner) and who are not listed as guest lecturers.

(2) If an application is denied, a letter will be forwarded to the applicant detailing specific reasons for the denial.

§157.35. EMT-Paramedic Training Course.

(a) Course curricula.

(1) The minimum curricula for the Emergency Medical Technician-Paramedic (EMT-P) training course shall be the Department of Transportation (DOT) EMT-P adopted by reference. Copies may be reviewed during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(2) Objectives pertaining to the use of rotating tourniquets may be included as an optional skill at the discretion of the course medical director and shall be in addition to the 160 hours in paragraph (3) of this subsection.

(3) The course shall include a minimum of 160 hours of didactic instruction on the approved curriculum.

(4) In addition to the didactic instruction in paragraph (3) of this subsection, the student shall be required to complete a minimum of 140 hours of clinical training in a facility which has patient and staff resources to support the number of students assigned to a clinical area. A minimum of 40 hours shall be required in the emergency department.

(5) The student shall be required to complete a minimum of 100 hours of supervised experience on an authorized emergency medical services (EMS) vehicle operating as an mobile intensive care unit (MICU) which has capabilities of voice telecommunication with on-line medical direction.

(6) least five runs shall be completed during which the patient receives advanced life support (ALS) care. The supervision of this experience shall be provided by an individual certified as at least an EMT-P or an appropriately qualified program instructor as determined by the course coordinator.

(7) During the clinical and/or EMS field internship, the student shall be required to successfully demonstrate proficiency in endotracheal intubations, peripheral intravenous needle or catheter insertions, and patient assessments, to include cardiac monitoring, to the satisfaction of the course medical director and course coordinator.

(8) A student shall successfully complete all course requirements including course written examinations, course skills examinations, clinical training, and EMS field internship prior to being placed on a course completion certificate and becoming eligible for state certification skills and written examinations.

(b) Enrollment.

(1) Students enrolling in an EMT-P training course shall be currently certified as an EMT, or may be enrolled in an EMT training course and shall have completed the classroom portion of the course.

(2) The student shall successfully complete the EMT training course and be certified at the EMT level before certification at the EMT-P level.

(3) An EMT whose certification expires while enrolled in an EMT-P course is not certified at any level until:

(A) successfully completing the recertification requirements for EMT certification; or

(B) successfully completing the certification requirements for EMT-P certification.

(4) An EMT who is enrolled in an EMT-P course and whose EMT certification expires before the end of the EMT-P course shall have a period not to exceed 90 days to complete recertification requirements for the EMT certificate if:

(A) an application and fee for the EMT recertification is received before the expiration date of the EMT certificate; or

(B) an application and fee for the EMT-P certification is received before the expiration date of the EMT certificate.

(c) Application procedures are outlined in the EMS Education and Training Manual which is adopted by reference. The manual is available for review during normal working hours in the Texas Department of Health, Bureau of Emergency Management Offices, 1100 West 49th Street, Austin, Texas 78756.

(1) EMS training entities without accreditation from the Committee on Allied Health Education Accreditation (CAHEA) may obtain an application for course approval from the Texas Department of Health (department) or the public health region EMS offices.

(2) The completed course approval application must be signed by a certified coordinator and the course medical director and shall be submitted to the department a minimum of six weeks before the starting date of the course.

(3) An EMS training entity which has been accredited by CAHEA shall submit to the department a copy of the self study for accreditation and a copy of the formal accreditation approval from CAHEA. The EMS training entity shall submit to the department:

(A) copies of updates submitted to CAHEA as well as any correspondence from CAHEA affecting the EMS training entity's accreditation; and

(B) a semester or quarter plan and schedule for EMS training courses to be taught during that period.

(d) Course approval criteria.

(1) Criteria for course approval shall be outlined in the EMS Education and Training Manual which is adopted by reference in subsection (c) of this section.

(2) Approval of an EMT-P training course application shall be dependent upon:

(A) meeting the requirements in subsections (a), (b), and (c) of this section; and

(B) meeting all the requirements in the EMS Education and Training Manual relating to EMT-P training courses and/or CAHEA accredited programs.

(3) If the application meets the criteria in this subsection, the training program shall receive a letter of approval from the department with an assigned course number.

(e) Criteria for course denial.

(1) A course may be denied for, but not limited to, the following reasons. If the applicant:

(A) submits an incomplete application;

(B) fails to submit an application in accordance with requirement in subsection (c) of this section;

(C) has a history of a high failure rate of students in previous courses on certification examinations;

(D) has a history of poor course evaluations from students in previous courses;

(E) fails to meet standards for training facilities as defined in the EMS Education and Training Manual based on a site evaluation;

(F) fails to meet standards for clinical training as defined in the EMS Education and Training Manual based on a site evaluation;

(G) fails to meet standards for EMS field internship as defined in the EMS Education and Training Manual based on a site evaluation; and/or

(H) submits names of instructors or examiners who are not certified to the appropriate level for the training course as required in §157.61 of this title (relating to Certification of Course Coordinator, Program Instructor, and Examiner) and who are not listed as guest lecturers.

(2) If an application is denied, a letter will be forwarded to the applicant detailing specific reasons for the denial.

(f) EMT-P completion course.

(1) Enrollment.

(A) Students enrolling in an EMT-P completion course shall be currently certified as an EMT-I; or may be enrolled in an EMT-I training course and shall have completed the classroom portion of the course.

(B) The student shall successfully complete the EMT-I training course and be certified at the EMT-I level before certification at the EMT-P level.

(C) An EMT-I whose certification expires while enrolled in an EMT-P completion course is not certified at any level until:

(i) successfully completing the recertification requirements for EMT-I certification; or

(ii) successfully completing the certification requirements for EMT-P certification.

(D) An EMT-I who is enrolled in an EMT-P completion course and whose EMT-I certification expires before the end of the EMT-P course shall have a period not to exceed 90 days to complete recertification requirements for the EMT-I certificate if:

(i) an application and fee for the EMT-I recertification is received before the expiration date of the EMT-I certificate; or

(ii) an application and fee for the EMT-P certification is received before the expiration date of the EMT-I certificate.

(2) Course curricula.

(A) The minimum curriculum for the EMT-P Completion Training course shall be the following divisions of the Department of Transportation (DOT) national training course Emergency Medical Technician-Paramedic as adopted by reference:

(i) Division 1 to include 1.4.3, 1.4.4, 1.4.7-1.4.14, SL.4.29b, 1.5.1-1.5.11, 1.6.1-1.6.13, and 1.7.1-1.7.13;

(ii) Division 2 to include 2.2.5, 2.2.9, 2.2.12, 2. 2.22, 2.3.9, 2.4.2, 2.4.8, 2.4.28-2.4.30, S2.4.42, 2.5.1-2.5.40, and S2.5. 41-S2.5.44; and

(iii) Divisions 3-6 to include all sections.

(B) Objectives pertaining to the use of rotating tourniquets may be included at the discretion of the course medical director, but if taught shall be in addition to the 100 hours in subparagraph (E) of this paragraph.

(C) The course shall include a minimum of 100 hours of didactic instruction on the approved curriculum.

(D) The student shall be required to complete a minimum of 90 hours of clinical in-hospital training.

(E) A minimum of 24 hours shall be required in the emergency department.

(F) The student shall be required to complete a minimum of 50 hours of supervised experience on an authorized EMS vehicle operating as an MICU which has capabilities of voice telecommunication with on-line medical direction.

(G) At least five runs shall be completed during which the patient receives ALS care. The supervision of this experience shall be provided by an individual certified as an EMT-P or by an appropriately qualified program instructor as determined by the course coordinator. An ambulance run is one in which a patient is transported from the scene to a primary care facility because the patient's condition requires care or one in which the student observes or assists with care at the scene, but the patient is transported by a helicopter or other MICU vehicle.

(H) During the clinical and/or EMS field internship, the student shall be required to successfully demonstrate proficiency in endotracheal intubations, peripheral intravenous needle or catheter insertions, and patient assessments, including cardiac monitoring, to the satisfaction of the course medical director and course coordinator.

(I) A student shall successfully complete all course requirements including course written examination, course skills examinations, clinical training, and EMS field internship prior to being placed on a course completion certificate and becoming eligible for state certification skills and written examinations.

(3) Application procedure for an EMT-P completion course shall be as outlined in subsection (c) of this section.

(4) Approval or denial of an EMT-P completion course shall be as outlined in this subsection and in subsections (d) and (e) of this section.

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 30, 1992.

TRD-9213275 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call (512) 458-7550

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Emergency Medical Services Personnel Certification

• 25 TAC §§157.41, 157.44, 157.45, 157.51

The amendments and new section are adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213276 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call. (512) 458-7550

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Emergency Medical Services Personnel Certification

• 25 TAC §157.51

The repeal is adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services. The proposal will affect the Code, Chapter 773.

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 30, 1992.

TRD-9213277 Robert A. MacLean, M.D. Deputy Commissioner Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 458-7550

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Emergency Medical Services Course Coordinator, Program Instructor, and Examiner Certification

• 25 TAC §§157. 61-157.63, 157.64

The amendments and new section are adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services.

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 30, 1992.

TRD-9213278 Robert A. MacLean, M.D. Deputy Commissioner Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 458-7550

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• 25 TAC §157.64, §157.65

The repeals are adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services. The proposal will affect the Code, Chapter 773.

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 30, 1992.

TRD-9213279 Robert A MacLean, M D Deputy Commissioner Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 458-7550

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Emergency Medical Services-Part B.

• 25 TAC §157.77, §157.79

The repeals are adopted under Health and Safety Code, Chapter 773, which provides the Board of Health with authority to adopt rules concerning emergency medical services. The proposal will affect the Code, Chapter 773.

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 30, 1992.

TRD-9213280 Robert A. MacLean, M.D. Deputy Commissioner Texas Department of Health

Effective date: October 21, 1992

Proposal publication date: June 5, 1992

For further information, please call· (512) 458-7550

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TITLE 28. INSURANCE

Part I. Texas Department Of Insurance

Chapter 21. Trade Practices

Subchapter H. Unfair Discrimination

• 28 TAC §21.702

The State Board of Insurance of the Texas Department of Insurance adopts an amendment to §21.702, concerning the use of actual or reasonably anticipated experience in setting life and health insurance rates, without changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2925).

The amendment is necessary to clarify the use of actual or reasonably anticipated experience in setting life and health insurance rates for physical and mental impairment based on sound actuarial principles.

The amendment will clarify that actual or reasonably anticipated experience used in setting life and health insurance rates for physical or mental impairment must be based on sound actuarial principles. This amendment clarifies the existing regulation and industry practices. The amendment is adopted as part of Title 28, Part I. Chapter 21, Subchapter H, relating to identification of specific acts or practices which are prohibited by the Insurance Code.

A comment was received from an insurance carrier which stated that the rule treated experience as entirely contained within actuarial principles and noted that while some underwriters would agree with that, more cautious underwriters would regard the two elements as separate and co-equal in importance. The commenter noted that actual experience had led underwriters to know that AIDS was a fatal disease prior to actuarial analysis of the data relating to AIDS deaths. That commenter also objected to the use of the phrase "without exception" in the proposed regulation, stating that the use of that phrase might delete the regulatory history which included NAIC drafting notes which the commenter believed was crucial to the understanding of what the NAIC was attempting to do with the regulations with respect to blindness. The commenter asked that these drafting notes be included in the regulation. A second comment was received which stated that the rule was believed to be intended to apply to risk classification and not to mandate the inclusion of any particular coverages and believed that this was in accord with the NAIC Model Regulation on which §21.702(a)(1) was initially based. The comment included as an attachment a copy of Actuarial Standard of Practice Number 12 which the commenter stated was relevant to this regulation. The commenter also stated that it believed there was a conflict between the regulation and Insurance Code, Article 21.21-3 which prohibits discrimination against handicapped individuals, and which uses the disjunctive when referring to "actuarial principles or actual or reasonably anticipated experience" The department responds to the comments as follows. The rule is proposed under Article 21.21, §13 as that is the statute which allows the State Board of Insurance broad authority to promulgate rules to accomplish the purposes of Article 21.21, and which specifically provides that petitions may be submitted to the board for such regulations. A petition was filed with the board requesting that the board prohibit discrimination against the mentally ill without adequate basis. The board believed this petition to be meritorious and directed agency staff to draft the proposed rule to make it clear that any rate differentials must be based upon sound actuarial principles including actual or reasonably anticipated experience because the board is of the opinion that the actual or reasonably related experience must be utilized in connection with and supported by sound actuarial principles. The department is of the opinion that this rule is in accord with Article 21.21-5 which forbids discrimination on the grounds of disability in setting of rates, rating manuals or the nonrenewal of policies unless such discrimination is justified by sound actuarial principles To the extent that Article 21.21-3 might be read to be in conflict with Article 21.21-5, assuming for the sake of argument only that it could not be harmonized with that statute, it would be impliedly overruled by Article 21.21-5 which was passed by the 72nd Legislature during the Second Called Session in 1991 Article 21 21-3 was passed during the 1983 legislative session The department, therefore, is of the opinion that the rule as proposed is authorized by the Insurance Code, Article 21.21, §13 and is in accord with Insurance Code, Article 21.21-5 and furthers the legislative intent of both statutes. The department is of the opinion that the phrase "without exception" was added to allow the paragraph to be written in a clearer, more easily understood manner and does not substantively change the prior regulation. The department does not believe that the drafting

department does not believe that the drafting notes of the NAIC should be made a part of this regulation. The department also notes that regardless of the prior regulatory history or the drafting notes of the NAIC, any actions taken by an insurer or an HMO which fall within the scope of Article 21.21-5 must meet the criteria set forth in that statute.

FOR: No comments were received for the sections during the comment period. AGAINST: Comments were received against the sections from the American Council of Life Insurance (ACLI) and Health Insurance Association of America (HIAA), and from one insurance carrier.

The amendment is adopted under the Insurance Code, Articles 21.21 and 1.04, and Texas Civil Statutes, Article 6252-13a, §§4 and 5. Article 21.21, §13 authorizes the State Board of Insurance to promulgate and enforce reasonable rules and regulations as are necessary to accomplish the purposes of Article 21.21. Article 1.04 authorizes the board to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures. Section 5 prescribes the procedures for adoption of rules by a state administrative agency.

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 October 2, 1992.

TRD-9213361 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: October 23, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 111. Control of Air Pollution from Visible Emissions and Particulate Matter

Visible Emissions

• 31 TAC §111.111

The Texas Air Control Board (TACB) adopts an amendment to §111.111, concerning visible emissions, with changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2934).

The amendments to §111.111 include requirements to install and operate continuous emissions monitoring systems (CEMS) in response to federal guidance.

Public hearings were held in Houston on May 21, 1992, and in Beaumont on May 22, 1992. A total of seven commenters submitted testimony on the proposal during the comment period which was extended until July 9, 1992. All of the commenters opposed the proposal. Submitting testimony on the proposal were: Eastman Kodak Company (Kodak), ASARCO, Inc. (ASARCO), United States Environmental Protection Agency (EPA), Fina Oil and Chemical Company (Fina), Witco Corporation (Witco), Aluminum Company of America (ALCOA), and an individual.

EPA commented that language should be added in subsection (a)(1) that would achieve consistency in the compliance methods stated in subparagraphs (D) and (F) of the paragraph and include all approved test methods. Specifically, EPA wanted Test Method 9 added to the methods in subparagraph (D) and CEMS and Alternate Method 1 to Method 9 added in subparagraph (F). EPA also commented that the rule should state that the highest opacity reading obtained using the specified test methods will be used to determine compliance with the standard. The final comment by EPA on paragraph (1) concerned incomplete references to the Code of Federal Regulations (CFR) in subparagraph (F). Kodak and ALCOA also mentioned this incomplete reference.

The staff agrees with EPA's suggestion and has added language concerning compliance and test methods. This adds the flexibility of enforcing opacity standards by several methods, including visual observation and clarifies the fact that CEMS are optional in vents of less than 100,000 actual cubic feet per minute (acfm). In order to achieve consistency in the rule regarding compliance methods, the staff has moved opacity compliance requirements from subparagraph (D) to subparagraph (F).

An individual stated that CEMS should be required on all facilities regardless of whether they maintain 15% opacity or less and that CEMS performance records should be retained for five years to be consistent with the TACB compliance history requirements and to document compliance trends. This same individual requested that language be added specifying that local, state, and federal enforcement agencies have access to these records. ALCOA and ASARCO commented that language in subparagraph (D) could be misinterpreted as removing the option to use CEMS in vents having flow rates of less than 100, 000 acfm.

The TACB staff believes that requiring CEMS on sources maintaining less than 15% opacity, with a flow rate of less than 100,000 acfm, is not justifiable when considering cost and benefit. These sources contribute relatively little particulate matter due to their generally clean exhaust streams and remain subject to enforcement from visual observation of emissions. The retention of CEMS performance records for two years is consistent with federal policy and will not affect source compliance record retention, which must be held for five years. A requirement that records be available for inspection by federal, state, and local air pollution agencies would be consistent with a similar requirement in TACB Regulation II, concerning control of air pollution from sulfur compounds, and the staff has included appropriate wording in paragraph (1)(D).

Witco testified that CEMS are a new source performance standard (NSPS) requirement, that the carbon black industry is not defined under NSPS, and that their facilities are "grandfathered" under the Federal Clean Air Act. They also stated that CEMS will be subject to particulate and water fouling if installed in carbon black plants. Witco acknowledged that the TACB regulations allow the substitution of opacity readers for determining opacity, but stated that the training of these readers is a redundant expense and an ineffective use of skilled personnel.

While some carbon black plants may be "grandfathered" or exempted from permitting requirements, they are not exempt from Regulation I, concerning control of air pollution from visible emissions and particulate matter, opacity requirements. The TACB and federal regulations allow for alternative methods of opacity determination from sources where the vent gases have characteristics that would not allow accurate CEMS readings or would damage the equipment. In these instances, the staff believes that the training of personnel to perform visible emission observations (EPA Method 9) is a reasonable and economical method for a facility to verify and track compliance.

Kodak objected to language in subparagraph (D) that would require sources subject to CEMS requirements under NSPS to also comply with 40 CFR 51, Appendix P, CEMS requirements. They stated that this does not coincide with EPA's intent to exempt NSPS sources from the Appendix P requirements.

The staff agrees that the subparagraph, as written, would require sources regulated under this section to comply with both sets of federal standards. Language referring to 40 CFR 51, Appendix P, requirements has been deleted from subsection (a)(1)(D) and added to subsection (a)(2).

Witco commented that the March 1, 1994, deadline for CEMS installation and operation provides insufficient lead time for operating companies to acquire and calibrate the equipment. The adopted deadline is a federal mandate representing a period of 18 months from the adoption of the proposal. It applies to three categories of sources: solid fossil fuel steam generators with a heat input of greater than 250 million British thermal units per hour, steam generators burning oil or a mixture of oil and gas that require particulate collection equipment to meet opacity standards, and catalyst regenerators for fluid bed catalytic cracking units of greater than 20,000 barrels per day total feed capacity. This limits the number of sources required to install CEMS, and the staff believes the deadline is timely and reasonable.

An individual testified that the public should be consulted prior to the TACB approval of an alternate method of determining opacity other than an opacity monitor. Fina commented that language in subsection (a)(3) would elim-

inate consideration of alternative opacity monitoring methods where a CEMS cannot be used due to uncombined water in the gas stream. Fina was particularly concerned about the use of alternative methods on fluid catalytic cracking units. Southwestern Public Service Company suggested that the requirements of this paragraph be modified to allow the use of CEMS in sources where occasional interference by condensed water vapor occurs.

Under 40 CFR 51, Appendix P, a state does have the option of substituting alternative monitoring methods where an opacity CEMS cannot be used. Any proposed alternative method must receive EPA approval prior to use. The staff has modified the rule language of subsection (a)(3) to allow this option for affected sources. The review of an alternate monitoring method will involve an analysis of its technical merits. Only systems that are proven accurate and reliable will be approved. A public hearing to approve an alternative method would unnecessarily prolong the process. The staff retained language allowing the approval process to remain with the TACB executive director and EPA. The use of CEMS in stacks that occasionally contain condensed water vapor is not excluded. The executive director will determine if the occurrence of condensed water vapor is of such a frequency as to render CEMS data unreliable.

EPA commented that the frequency of compliance surveillance should be specified. EPA also stated that Method 9, identified in 40 CFR 60, Appendix A, should be added to the proposed methods of determining compliance.

These additions will improve the enforceability of the rule and have been included in subsection (a)(3) with a specification that compliance be determined daily.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting Air Quality Planning Program staff at (512) 908-1457, (512) 908-1500 FAX, or 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

The amendment is adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§111.111. Requirements for Specified Sources.

(a) Visible emissions. No person may cause, suffer, allow, or permit visible emissions from any source, except as follows.

(1) Stationary vents. Visible emissions from any vent shall not exceed the following opacities and must meet the following requirements.

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

(C) Opacity shall not exceed 15% averaged over a six-minute period for any source having a total flow rate greater than or equal to 100,000 actual cubic feet per minute, unless an optical instrument capable of measuring the opacity of emissions is installed in the vent in accordance with subparagraph (D) of this paragraph. Facilities utilizing such instruments shall meet opacity limits outlined in subparagraph (A) or (B) of this paragraph as applicable. Records of all such measurements shall be retained as provided for in §101.8 of this title (relating to Sampling).

(D) Any opacity monitoring system installed as provided for in subparagraph (C) of this paragraph must satisfy the new source performance standards requirement for opacity continuous emissions monitoring systems (CEMS) as contained in 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 1. In order to demonstrate compliance with Performance Specification 1, the system shall undergo performance specification testing as outlined in 40 CFR 60.13. The facility will maintain records of all such testing for a period of not less than two years which shall be available for inspection by federal, state, and local air pollution control agencies. Compliance with this provision shall be accomplished within one year of the effective date of this rule, except as specified in paragraph (2) of this subsection.

(E) (No change.)

(F) Compliance with subparagraphs (A), (B), and (C) of this paragraph shall be determined by applying the following test methods, as appropriate. The highest reading obtained shall determine compliance with the appropriate visible emission limit:

(i) CEMS as described in subparagraph (D) of this paragraph;

(ii) Test Method 9 (40 CFR 60, Appendix A);

(iii) Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A); or

(iv) equivalent test method approved by the executive director of the Texas Air Control Board (TACB) and United States Environmental Protection Agency (EPA).

(G) Current certification of opacity readers for determining opacities under 40 CFR 60, Appendix A, Method 9, shall be accomplished by the successful completion of a TACB visible emissions evaluator's course by opacity readers no more than 180 days before the opacity reading.

(2) Sources requiring continuous emissions monitoring. Beginning March 1, 1994, all stationary vents located at the sources specified in this paragraph shall be equipped with a calibrated and properly operating CEMS for opacity. The system shall be calibrated, installed, operated, and maintained as specified in 40 CFR 51, Appendix P, hereby incorporated by reference:

(A) steam generators fired by solid fossil fuel with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1974, and with a heat input of greater than 250 million British thermal unit per hour;

(B) steam generators that burn oil or a mixture of oil and gas and are not able to comply with the applicable particulate matter and opacity regulations without the use of particulate matter collection equipment, and have been found to be in violation of any visible emission standard contained in a state implementation plan;

(C) catalyst regenerators for fluid bed catalytic cracking units of greater than 20,000 barrels per day of total feed capacity.

(3) Exemptions from continuous emissions monitoring requirements. Opacity monitors shall not be installed or used to determine opacity from any gas stream or portion of a gas stream containing condensed water vapor which could interfere with proper instrument operation, as determined by the executive director. Opacity monitoring techniques as listed in subsection (a)(1)(F) of this section may be substituted with the approval of the executive director and EPA, the highest reading of which will be used to determine compliance with the appropriate opacity standard. If opacity is determined through 40 CFR 60, Appendix A, Method 9, readings shall be made daily, unless weather or other conditions prevent visual observation.

(4) Gas flares.

(A) Visible emissions from a gas flare shall not be permitted for more than five minutes in any two-hour period, except as provided in §101.11(a) of this title (relating to Exemptions from Rules and Regulations). Acid gas flares, as defined in §101.1 of this title (relating to Definitions), are subject only to the provisions of subsection (a)(1) of this section.

(B) Compliance with subparagraph (A) of this paragraph shall be

determined daily by applying the following test methods, as appropriate:

(i) (No change.)

(ii) Test Method 9, 40 CFR 60, Appendix A; or

(iii) equivalent test method approved by the executive director and EPA.

(5) Motor vehicles. Motor vehicles shall not have visible exhaust emissions for more than 10 consecutive seconds. Compliance shall be determined as specified in 40 CFR 60, Appendix A, Method 22.

(6) Railroad locomotives or ships.

(A) (No change.)

(B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate:

(i) (No change.)

(ii) equivalent test method approved by the executive director and EPA.

(7) Structures.

(A) (No change.)

(B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate:

(i) (No change.)

(ii) equivalent test method approved by the executive director and EPA.

(8) Other sources.

(A) (No change.)

(B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate:

(i) (No change.)

(ii) equivalent test method approved by the executive director and EPA.

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

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 October 2, 1992.

TRD-9213370 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: October 23, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 908-1451

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Chapter 112. Control of Air Pollution from Sulfur Compounds

Control of Sulfur Dioxide

• 31 TAC §§112.1-112.14, 112.16-112.20

The Texas Air Control Board (TACB) adopts the repeal of §§112.1-112.14 and §§112.16-112.20, concerning control of sulfur dioxide, without changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2934). In concurrent action, TACB adopts §§112.1-112.9 and §§112.14-112.21, concerning control of sulfur dioxide.

The repeals delete provisions which are obsolete or incompatible with new federal requirements. The concurrently adopted new sections contain substantial changes to the texts of some existing sections and include some renumbering of sections. The provisions of the new sections simplify allowable emissions calculations, combine similar requirements of the repealed sections, and meet federal requirements for continuous emissions monitoring and rule enforceability. In some cases, the content of a new section may be similar or identical to a section being repealed.

Public hearings were held in Houston on May 21, 1992, and in Beaumont on May 22, 1992, to consider the proposed repeals. No one commented on the repeals.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting Air Quality Planning Program staff at (512) 908-1457, (512) 908-1500 FAX, or 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

The repeals are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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 October 2, 1992.

TRD-9213369 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: October 23, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 908-1451

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Control of Sulfur Dioxide

• 31 TAC §§112.1-112.9, 112.14-112.21

The Texas Air Control Board (TACB) adopts new §§112.1-112.9 and 112. 14-112.21, concerning control of sulfer dioxide, with changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2934).

The new sections represent a reorganization of the existing sulfur dioxide (SO_2) rules to include combinations of similar requirements, the removal of obsolete language, and an overall simplification of this undesignated head. The sections also satisfy federal requirements for the installation and use of continuous emission monitoring systems (CEMS) for SO_2 and rule enforceability.

Public hearings were held in Houston on May 21, 1992, and in Beaumont on May 22, 1992. A total of 20 commenters submitted testimony on the proposal during the comment period which was extended until July 9, 1992. All of the commenters opposed the proposal.

The emission limits and standards proposed for SO_2 were drafted initially to address exceedances of the SO_2 standard in the Houston/Galveston and Beaumont/Port Arthur areas. However, the proposals were very stringent and were anticipated to be quite costly. The staff believes that, under developing circumstances, it would be preferable to conduct workshops and form working groups to reach a consensus on appropriate controls. Since the exceedances in the Beaumont/Port Arthur area were attributable to source upset conditions and since EPA has expressed a willingness to reconsider the nonattainment status of the Houston/Galveston area, the immediate need for these stringent measures has diminished. Industry within the area is offering voluntary reductions which the staff believes will be sufficient to demonstrate attainment. Additionally, there have been no monitored SO_2 exceedances in the area for eight consecutive quarters. The TACB staff, United States Environmental Protection Agency (EPA), and a private contractor have developed a modeling protocol for the attainment demonstration. For these reasons, the staff has withdrawn all provisions within the proposal not associated with federal CEMS requirements and enforceability improvements.

The Greater Houston Partnership (GHP) commented extensively on the Houston SO_2 modeling activity. GHP also stated that the four new industrial categories added to the rule, fluid catalytic cracking units (§112.10), catalyst reclamation plants (§112.11), carbon black plants (§112.12), and refinery fuel gas combustion units (§112.13), were not mentioned in the preamble, nor did they contain a compliance schedule. GHP also stated that new SO_2 standards proposed in §112.3(a)

and §112.7(c) were not identified in the preamble. Additionally, GHP commented that these proposed sections contained provisions not required by EPA, the Federal Clean Air Act (FCAA), or the Texas Clean Air Act (TCAA). GHP asked for the withdrawal of these sections and all other changes not required by EPA guidance and expressed their willingness to meet with TACB and help develop alternative proposals. GHP objected that no consultation with affected industry occurred prior to this proposal to determine if the change was necessary to address a particular problem. GHP also stated that a more extensive analysis of the costs to meet the proposal should have been included and requested a 60-day extension of the public comment period.

GHP stated that the resources of the regulated community in Texas should be conserved to meet the pending regulations on volatile organic compounds and oxides of nitrogen which are required under the new amendments to the FCAA. GHP commented that the expensive SO_2 controls required under the proposal would place Texas industry at a competitive disadvantage in relation to domestic and foreign competitors.

The sections referenced by GHP were mentioned in the preamble. However, given the extent of the proposal, the staff agrees that a greater emphasis should have been made. The staff further agrees that there was an unfortunate and inadvertent element of surprise associated with this complex proposal. The proposed change in SO_2 standards and the addition of new industrial categories to the coverage of the rule were initially drafted on the anticipated classification of the Houston/Galveston and Beaumont/Port Arthur areas as nonattainment for SO_2. Subsequent actions and developments, as mentioned previously, have indicated that the Houston/Galveston area will likely remain in attainment. The staff believes that these developments make the proposed revisions unnecessary at this time. All proposed new SO_2 limits and industrial categories as proposed in §§112. 10-112.13 have been withdrawn.

In a separate written comment, GHP identified two other instances where allowable SO_2 limits were lowered and applied to a wider geographical area in response to an anticipated nonattainment classification. Section 112.9 would have extended limitations on sulfur content of liquid fuel to Galveston and Orange Counties and within 30 miles of Harris, Galveston, Jefferson, and Orange Counties. The section would also lower the allowable limits to 50 parts per million by volume (ppmv) beginning in 1996. Section 112. 7 would have extended emission limits for sulfur recovery plants in a similar manner.

These proposed revisions are also unnecessary due to industry voluntary reductions and additional air quality modeling. The proposed new limits in §112.7 and §112.9 have been withdrawn. The comments of GHP were endorsed and emphasized by Texas Mid-Continent Oil and Gas Association, Exxon Company, U.S.A., Amoco Oil Company, Lyondell Petrochemical Company, and Phibro Energy USA, Inc.

Gulf States Utilities Company (GSU) stated that utilities should be exempt from SO_2 standards contained in this regulation. They cited the 1990 FCAA amendments which will limit emissions under the Acid Rain Program. Additionally, GSU quoted EPA statistics that show utilities in Texas emitting SO_2 at a rate of less than a third of the national average and stated that there is no public health or welfare threat posed by exceedances of the national ambient air quality standard (NAAQS).

The staff acknowledges the effort of the Texas utility industry to control SO_2 emissions and the fact that the FCAA will impose strict limits on these emissions. However, the FCAA is principally implemented through state regulations and an exemption from those regulations is clearly inappropriate. The staff disagrees that the health and welfare of the public is not threatened by exceedances of the NAAQS. In fact, the NAAQS is based on health effects studies. The regulations controlling SO_2 emissions are designed to protect the NAAQS, and no exemptions for utilities are to be granted.

A substantial amount of testimony related to the proposed revisions which have been withdrawn. In many cases, the testimony covered topics already discussed. In others, the comments related to effects of the proposal on individual companies and their operations. This analysis does not address each of these comments individually. However, the comments are a part of the public record and were considered in reaching the adopted rule language. These comments will be considered in developing any future rule revisions as needed. The additional commenters included: Electric Reliability Council of Texas (ERCOT), Aluminum Company of America (ALCOA), J.M. Huber Corporation (Huber), Environmental Health Association of the Carbon Black Industry, Fina Oil and Chemical Company, Olin Chemicals, Marathon Oil Company (Marathon), Witco Corporation (Witco), GSU, ASARCO, Inc. (ASARCO), Southwestern Public Service Company (SPS), Texas Utilities Services, Inc. (TU), and Houston Lighting and Power (HLP). The comments that follow address issues in those portions of the proposal where sections were adopted with changes to the proposed language. It should be noted also that language was added to some section titles to achieve consistency in wording.

EPA requested that a specific citation of the TCAA be added in the opening paragraph of §112.1. TU commented that the definition for "continuous monitoring" should specify "continuous emissions monitoring" to differentiate from fuel sampling and other monitoring systems. TU also stated that the definition for "in-stack concentration" should refer to pollutant concentration. Additionally, TU observed that the equation for "in-stack concentration" was missing a division symbol.

The staff agrees that these changes make the definitions more precise and has added the appropriate language. The equation for "in-stack concentration" has been corrected The designation for the term "Cx" has been changed to read "measured pollutant concentration" to clarify terms used in the definition.

Huber commented that language should be added to §112.2 to include raw material feedstock in sulfur content sampling procedures since this is the primary source of SO_2 in carbon black plants. ASARCO suggested that the monitoring requirements of this section be transferred to a section dealing with the particular source category required to have CEMS under federal requirements. Marathon stated that facilities complying with §112.13, concerning allowable rates-refinery fuel gas combustion units, not be required to install CEMS. GSU, ERCOT, and TU commented that the deadline for installing CEMS should be January 1, 1995, to be consistent with the FCAA. An individual stated that the general public should be allowed a comment period prior to the executive director making a determination to substitute fuel analysis for CEMS.

The staff has added language that would specify the sampling of raw material feedstock as an additional testing requirement since this is a source of SO_2 emissions in carbon black plants. Additionally, federally mandated monitoring requirements, along with any options allowed under 40 CFR 51, Appendix P, have been transferred to the section covering the specific source category. Refinery fuel gas combustion units are not included under the federal mandate and, therefore, are not required to install CEMS.

There is no provision in the adopted rule that will require CEMS installation in these units. The staff has made the deadline for CEMS installation consistent with the FCAA where appropriate. For the purposes of this revision, a date consistent with 40 CFR 51, Appendix P, is usually required instead of the Title IV, FCAA requirements. The determination of the use of a fuel analysis system in place of CEMS is based solely on technical requirements. Some sources are configured or have substances in the effluent stream which render CEMS ineffective in monitoring emissions. The staff believes a public comment period on substitution of a fuel analysis system would unnecessarily delay the review process and has retained the language as proposed.

ASARCO, SPS, HLP, ERCOT, TU, and GSU objected to language in §112.3 prohibiting emissions that would cause or contribute to an exceedance of the NAAQS for SO_2. They stated that such a linking of stack emissions and NAAQS could only be related through dispersion modeling As a result, each source would be responsible for modeling to establish emission limitations, and each source in an area where the NAAQS was exceeded would be individually responsible for the exceedance. The commenters stated that this linking of NAAQS and source emissions is the responsibility of the state The responsible agency can set individual source limitations through the state implementation plan and permitting processes to protect NAAQS

The staff agrees that a number of complexities would arise in emissions determination, compliance demonstrations, modeling, and enforcement. These proposed revisions to §112 3 have been withdrawn

Witco commented that there is no scientific basis for the lower maximum ground level concentrations of 0 28 ppm of SO_2 specified for Harris and Galveston Counties as opposed to the rest of the state.

The lower concentrations in Harris and Galveston Counties are specified to protect NAAQS due to the number of SO_2 sources in these counties. This requirement existed in Regulation II prior to the proposal, and the staff does not support any relaxation of the standard.

GHP commented that the specification of an "ambient" ground level concentration in §112.3(a), as opposed to a "net" level is a new concept and is unnecessary, given the current SO_2 attainment status within the state.

The staff agrees that the concept of an individual source protecting an ambient standard should not be adopted. The reasons for this recommendation were stated in the discussion on the linking of individual source emissions and NAAQS.

ALCOA commented that there should be flexibility in §112.3(e) monitoring requirements that would consider multiple stacks on one baghouse unit or multiple baghouses for one unit.

The staff has deleted monitoring requirements from this section, including the requirement under specific source categories. The adopted monitoring requirements do not include monitoring baghouses for SO_2.

An individual commented that source compliance records should be made available for public view.

The staff does not agree that public inspection of source compliance records be included in this section. However, these records are available to the public upon request under the TCAA, §381.020.

New language that was proposed for §112.4 would apply exemptions from net ground level concentrations (NGLC) only in El Paso County. This would reverse the current situation where exemptions are allowed statewide, except for the Houston/Galveston and Beaumont/Port Arthur areas, and El Paso County. GSU commented that the proposed language removes the previous exemption for sources utilizing best available control technology (BACT) which do not contribute to an exceedance of NAAQS. They further stated that there is no EPA requirement to remove the exemption. ASARCO stated that the proposed language was unnecessary as exemptions are currently available for El Paso County under approved area control plans. They mentioned their own plant which currently operates under such a plan. ASARCO stated that the proposed change would upset the current legal structure.

The staff has considered these comments in conjunction with the SO_2 attainment status of affected areas of the state and agrees that the current exemption conditions and areas of applicability should be retained along with the option of using an approved area control plan. It should be noted that one of the conditions under which an exemption may be granted is that NAAQS not be exceeded. The staff believes the language change is not needed and places an unnecessary burden on industries outside of El Paso County and the Houston/Galveston and Beaumont/Port Arthur areas. The language as adopted preserves the original intent of this section.

An individual expressed his objection to exemption of El Paso County sources from established NGLC of SO_2.

As previously discussed, an exemption for El Paso County sources is not to be included in this section. Any exemptions to NGLC will be granted only after a source meets the requirements of BACT and demonstrates its emissions will not cause a violation of NAAQS. These exemptions are available under §112.19, Application for Area Control Plan, for all areas of the state except Harris, Galveston, Jefferson, and Orange Counties.

Sections 112.5, 112.6, and 112.7 each contained proposed revisions requiring reduction in SO_2 allowable emissions and compliance demonstrations. The allowable emissions reductions which applied only in Harris, Galveston, Jefferson, and Orange Counties and within a 30-mile radius of Harris, Galveston, Jefferson, and Orange Counties are not needed at this time since an enforceable voluntary reduction program is being developed. These reductions will need to be sufficient to demonstrate attainment, and necessary compliance demonstrations will be required under §112.2. Therefore, the compliance demonstration requirements identified in §§112.5, 112.6, and 112.7 are not necessary, and have been withdrawn. The current SO_2 emission limitations required under these sections has been retained.

During a meeting held on July 1, 1992, between EPA, the TACB staff, and affected industries, two issues concerning §112.8 were discussed. EPA requires that SO_2 emission standards be averaged over a three-hour period. The affected industries commented that source monitoring requirements under 40 CFR Part 51, Appendix P, would be best located in the sections concerning that particular source category. Solid fossil fuel-fired steam generators of greater than 250 million British thermal unit heat input per hour have such a monitoring requirement.

The staff has added averaging times to the section to meet EPA enforcement requirements. For reasons of rule clarity, the required monitoring proposed in §112.2 has been transferred to §112.8. As stated previously, the staff has transferred source monitoring requirements to the section concerning a specific source category. Additionally, compliance dates for the monitoring requirements have been set by agreement between TACB, EPA, and the affected industries.

A private citizen opposed to the TACB/TU joint study of SO_2 and the "white haze" phenomenon in the Dallas/Fort Worth area.

The referenced study is a past amendment to this rule and was not an issue in this proposal. No changes for the existing section language were included in this proposal.

TU commented that the amendment to §112.9, lowering SO_2 standards from 440 ppm to 350 ppm, is not necessary since all parts of the state are in attainment for this pollutant. They also stated that this revision would eliminate the use of Number 5 or 6 fuel oils for alternative fuels. HLP and GSU commented that it will be impossible to meet the retroactive compliance date in subsection (b) for the lowering of SO_2 standards to 150 ppm as averaged over three hours. HLP objected to the linking of source emission standards and NAAQS and to the necessity of a compliance demonstration. GSU commented that ambient SO_2 levels in Jefferson, Orange, Harris, and Galveston Counties do not warrant the lowering of the emission standards to 50 ppm in 1996.

After review of available monitoring data, the staff agrees that a new statewide standard of 350 ppm is not necessary and has deleted that provision. As mentioned previously in this discussion, industries in Harris, Galveston, Jefferson, and Orange Counties have voluntarily reduced their allowable SO_2 emissions. Considering this and the fact that the counties are in attainment of the NAAQS, subsection (b) has been deleted. For reasons stated earlier, the staff has withdrawn all language linking point source emissions and NAAQS. Also, the staff has added an averaging time to the emission limits in subsection (c) to comply with EPA enforceability requirements.

Section 112.10, concerning allowable rates-fluid catalytic cracking units, §112.11, concerning allowable rates-catalyst recovery and catalyst metal reclamation plants, §112.12, concerning allowable rates-carbon black plants, and §112.13, concerning allowable rates-refinery fuel gas combustion units were intended to provide additional SO_2 controls for specific source categories in the Houston/Galveston and Beaumont/Port Arthur areas due to an anticipated reclassification of the areas to nonattainment for SO_2. As discussed previously, the staff believes this reclassification will not occur, and the new standards are not necessary. The language in these sections has been deleted and the sections are held in reserve.

ASARCO questioned the revision of §112.14 since there are no SO_2 nonattainment problems associated with nonferrous smelters in Texas. ASARCO pointed out that current modifications to their facility include the application of BACT and compliance demonstrations. ASARCO also objected to lowering the emission standard for reverberatory furnaces to 650 ppmv during the current modification of their facility. While ASARCO will have no trouble in meeting a much lower standard once the plant modifications are complete, the TACB proposal would require immediate compliance. After completion of the reverberatory furnace modification, ASARCO's source permit will allow emissions of 500 ppmv. ASARCO believes that, regardless of their ability to meet a lower standard, there is no reason to lower the current reverberatory furnace limit of 6,000 ppmv. ASARCO also stated that it is inappropriate to impose new source performance standard and compliance demonstrations on sulfuric acid plants used for emission control at smelters. In further comment on this section, an individual stated that language requiring the control of SO_2 emissions from gas collection systems such that leakage will be "prevented to the maximum extent possible" is insufficient and should provide exact limits. EPA suggested language to clarify the equations in this section.

The staff is aware of ASARCO's initiative in updating the emissions control technology at their El Paso plant and applauds this effort. An effective date has been included in this section that will allow current emission levels and a six-hour averaging time until a permit modification is complete. EPA requires the compliance test for sulfuric acid plants. Regardless of the primary purpose of the acid plant, it has SO_2 emissions and should be subject to control. The proposed language of §112.14(e) has been adopted as proposed. Prevention of all SO_2 leaks from smelting processes is not practicable due to the nature of the operation. Field inspectors can make an accurate determination on whether a facility is controlling these leaks to the maximum extent possible. The language concerning control of leakage in §112.14(f)(2) has been adopted as proposed, and the EPA suggested language to clarify the equations has been added.

Commenting on §112.15, Witco asked for a definition of "fuel" as it would apply to the filing of a fuel shortage plan. Witco questioned whether the definition of fuel applies to raw material used in the production of saleable products, as is the case with carbon black plants, or only to the production of heat. Witco challenged the need for statements concerning the availability and price of lower sulfur fuels. An individual objected to the allowance of any exemptions from ground level concentration standards in this section and §112.16. EPA commented that a clear basis for the executive director's approval of a fuel shortage plan should be stated.

Specification has been added to require that fuel oil used as raw material feed stock be included in the filing requirements of this section since this is the primary source of SO_2 in carbon black plants. While carbon black plants are not included under specific SO_2 source limits, knowledge of the sulfur content of raw materials used in the production process is important for accurate emission inventories. Statements concerning the availability and price of low sulfur fuels are important in accurately evaluating a fuel shortage plan. Such statements are reasonable and the requirement has been retained in the adopted rule. Temporary fuel shortages do occur and industries need the flexibility to continue operation during such periods. Fuel shortage plans may exempt sources from complying with NGLC; however, they are still required to comply with NAAQS. The staff has retained the option for fuel shortage operating plans based on economic necessity, and has added language stating the basis on which the executive director will approve a fuel shortage plan.

Sections 112.19, 112.20, and 112.21 concern the implementation of area control plans to grant exemptions from NGLC of SO_2. ASARCO commented that there is no reason presented for revising the area control plan requirements and that the revisions appear to provide relief from the NAAQS. ASARCO also stated that the revision to §112.21 would allow a NGLC of 0.4 ppm which is the same as the generally applicable NGLC. This would mean an area control plan would have no effect. An individual objected to the concept of an area control plan and the exemptions it would provide from NGLC.

The staff has reviewed the situation concerning area control plans, particularly with regard to El Paso County, and has determined that no substantive change need be made to the procedures. The staff has made changes in section references to coincide with other changes made in this proposal. Sources operating under area control plans must not contribute to a violation of NAAQS. The staff believes these plans offer flexibility to the shifting operational requirements of industry and TACB is retaining this option in these sections.

TU commented that the March 1, 1994, compliance date in §112.22 should be changed to January 1, 1995, to be consistent with the FCAA amendment. HLP and GSU stated that deadlines contained in this section conflict with schedules in §112.9(b) and would require retroactive compliance.

Section 112.9(b) is not being adopted as its lower SO_2 limits are not necessary, and compliance schedules, consistent with federal requirements, are contained in the section concerning the category of source to which they apply. Therefore, §112.22 is not needed and has been withdrawn.

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The new sections are adopted under the TCAA, §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§112.1. Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA), §382.003 or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Continuous emissions monitoring–Sampling, analyzing, and recording at least one measurement of sulfur dioxide concentration in each 15-minute period from the effluent of each affected process or the emission control system serving each affected process.

Effective stack height–A value in feet calculated by the following equation:

$$He = H + 0.083\ Ve\ De \left[1.5 + 0.82 \left(\frac{Te - 550}{Te} \right) De \right]$$

Where:

He = Effective stack height in feet

H = Physical stack height above ground level in feet

Ve = Stack exit velocity in feet per second

De = Stack exit inside diameter in feet

Te = Stack exit temperature in degrees Rankine

In-stack concentration-The concentration of a pollutant inside the stack measured in parts per million by volume (ppmv) referenced at 0% stack gas oxygen on a dry basis averaged over a period of one hour with oxygen determined by the equation:

$$Ci = 20.9\ Cx / (20.9 - Co)$$

Where:

Ci = in-stack pollutant concentration corrected for 0% oxygen in ppmv

20.9 = % of oxygen in the air

Cx = measured pollutant concentration

Co = % dry oxygen measured in the stack

Secondary metal recovery facility-A facility which recovers metals and alloys from new and used scrap and dross. It does not mean assembling, sorting, and breaking up scrap metal, without smelting and refining.

Short-stack reduction factor-The factor by which the allowable emission rate must be multiplied if the source has an effective stack height less than the standard effective stack height. The short-stack reduction factor is calculated by the following equation:

$$\text{Short-stack reduction factor} = \left(\frac{He}{Hs}\right)^2$$

Where:

He = Effective stack height

Hs = Standard effective stack height

§112.2. Compliance, Reporting, and Recordkeeping.

(a) When requested under §101.8(a) of this title (relating to Sampling), a facility that is subject to the sulfur dioxide (SO_2) limits of this chapter shall demonstrate compliance by Method 6, 6A, or 6C as described in 40 Code of Federal Regulations (CFR), Part 60, Appendix A. Any person affected by this subsection may request approval by the executive director of the Texas Air Control Board (TACB) and by the United States Environmental Protection Agency of alternative test methods, including sampling and analysis of fuel or raw material feedstock, as described in Method 19 of 40 CFR, Part 60, Appendix A, to determine compliance.

(b) A facility that is required to demonstrate compliance with SO_2 emission limits under this chapter shall report the results so obtained, when requested, to the appropriate regional office of TACB within a reasonable time specified by and on forms furnished by the executive director.

(c) A facility that is required to demonstrate compliance with SO_2 emission limits under this chapter shall maintain records on site of any SO_2 emissions data, fuel sampling data, or sampling data of fuel oil used as raw material for two years. These records shall be available for inspection by federal, state, or local air pollution control agencies.

§112.3. Net Ground Level Concentrations.

(a) Except as specified in subsections (b) or (c) of this section or §112.4 of this title (relating to Net Ground Level Concentration-Exemption Conditions), no person in the State of Texas may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) from a source or sources operated on a property or multiple sources operated on contiguous properties to exceed a net ground level concentration of 0.4 part per million by volume (ppmv) averaged over any 30-minute period.

(b) No person in Galveston or Harris County may cause, suffer, allow, or permit emissions of SO_2 from a source or sources operated on a property or multiple sources operated on contiguous properties to exceed a net ground level concentration of 0.28 ppmv averaged over any 30-minute period.

(c) No person in Jefferson or Orange County may cause, suffer, allow, or permit emissions of SO_2 from a source or sources operated on a property or multiple sources operated on contiguous properties to exceed a net ground level concentration of 0.32 ppmv averaged over any 30-minute period.

§112.4. Net Ground Level Concentration-Exemption Conditions. The executive director, in consideration of a request from an affected party, may find that, except in El Paso County, a property or contiguous properties are exempt from the requirements of §112.3(a) of this title (relating to Net Ground Level Concentrations), if the new or modified emission source is constructed and operated on such property or properties under all the following conditions.

(1) The construction and operation of the new or modified emission source meets all applicable federal new source performance standards and uses best available control technology, with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(2) The permit application contains a demonstration using appropriate diffusion modeling, as approved by the United States Environmental Protection Agency and the Texas Air Control Board Modeling Division, that the construction and operation of the new or modified emission source does not cause or contribute to a condition such that either the primary or the secondary sulfur dioxide national ambient air quality standards are exceeded in the area.

(3) Those sources proposed for an exempt property and those sources existing on an exempt property prior to the effective date of this section shall be in compliance with this section or with an area control plan obtained pursuant to §112.19 of this title (relating to Application for Area Control Plan).

§112.5. Allowable Emission Rates-Sulfuric Acid Plant Burning Elemental Sulfur.

(a) No person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) from any sulfuric acid plant burning elemental sulfur to exceed the emission limits specified by the equation:

$$E = 0.01983\ q$$

Where:

E = allowable emission rate in pounds per hour

q = stack effluent flow rate in standard cubic feet per minute (scfm)

(b) If a source has an effective stack height less than the standard effective stack height determined by the equation:

$$He = 0.885\ q^{0.5}$$

Where:

He = standard effective stack height in feet

q = stack effluent flow rate in scfm

(c) Beginning September 30, 1994, sulfuric acid plants of greater than 300 tons per day production capacity, with production being expressed as 100% acid, and to which this section applies, shall be equipped with a continuous emissions monitoring system (CEMS) for SO_2. The CEMS shall be installed, calibrated, and operated as specified in 40 Code of Federal Regulations Part 51, Appendix P, hereby incorporated by reference.

§112.6. Allowable Emission Rates-Sulfuric Acid Plant.

(a) Except as provided in §112.5 of this title (relating to Allowable Emission Rates-Sulfuric Acid Plant Burning Elemental Sulfur), and in §112.14 of this title (relating to Allowable Emission Rates-Nonferrous Smelter Processes), no person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) from any sulfuric acid plant to exceed the emission limits specified by the equation:

$$E = 0.0347\ q$$

Where:

E = allowable emission rate in pounds per hour

q = stack effluent rate in standard cubic feet per minute (scfm)

(b) If a source has an effective stack height less than the standard effective stack height determined by the equation:

$$He = 1.17\ q^{0.5}$$

Where:

He = standard effective stack height in feet

q = the stack effluent flow rate in scfm

(c) Beginning September 30, 1994, sulfuric acid plants of greater than 300 tons per day production capacity, with production expressed as 100% acid, and to which this section applies, shall be equipped with a continuous emissions monitoring system (CEMS) for SO_2. The CEMS shall be installed, calibrated, and operated as specified in 40 Code of Federal Regulations Part 51, Appendix P, hereby incorporated by reference.

§112.7. Allowable Emission Rates-Sulfur Recovery Plant.

(a) No person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) from any sulfur recovery plant to exceed the emission limits specified for stack effluent flow rates less than or equal to 4,000 standard cubic feet per minute (scfm) as determined by the equation:

$$E = 123.4 + 0.091\ q$$

and the emission limits, specified for stack effluent flow rates in excess of 4,000 scfm, as determined by the equation:

$$E = 0.614\ q^{0.8042}$$

Where:

E = allowable emission rate in pounds per hour

q = stack effluent flow rate in scfm

(b) If a source has an effective stack height less than the standard effective stack height determined for stack effluent rates less than or equal to 4,000 scfm by the equation:

$$He = 7.4\ (123.4 + 0.091\ q)^{0.5}$$

and determined for stack effluent rates greater than 4,000 scfm, by the equation:

$$He = 5.8\ q^{0.402}$$

Where:

He = standard effective stack height in feet

q = stack effluent flow rate in scfm

then, the allowable emission limit in subsection (a) of this section must be reduced by multiplying it by the short-stack reduction factor.

§112.8. Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators.

(a) Except as provided in subsection (b) of this section, no person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) from any solid fossil fuel-fired steam generator to exceed 3. 0 pounds per million Btu (MMBtu) heat input averaged over a three-hour period.

(b) No person may cause, suffer, allow, or permit emissions of SO_2 from any solid fossil fuel-fired steam generator located in Milam County, which began operation prior to January 1, 1955, to exceed 4.0 pounds per MMBtu heat input averaged over a three-hour period.

(c) Units having a design heat input of greater than 1,500 MMBtu per hour and, which on January 1, 1991, were not subject to new source performance standards, shall meet one of the following requirements:

(1) after July 31, 1996, no person may cause, suffer, allow, or permit emissions of SO_2 from any solid fossil fuel-fired steam generator to exceed 1.2 pounds per MMBtu heat input averaged over a three-hour period or an equivalent in total allowable annual site emissions; or

(2) the owner/operator of the unit(s) shall fund and support a research study of winter atmospheric haze, also known as "white haze," in the Dallas/Fort Worth (DFW) area, to be completed by July 31, 1996. Within 90 days from the effective date of this rule, the owner/operator shall submit a formal proposal for this study designed to allow successful completion of this study by the date specified previously. The proposal shall include milestone dates, the study's general approach and objectives, and shall include minimum and maximum financial responsibilities on the part of the owner/operator. The Texas Air Control Board (TACB) executive director shall approve or reject the study within 120 days from date of the proposal submittal. The TACB shall base its approval or rejection on the technical merits and adequacy of approach to the research study. Should the proposal be rejected, an extension not to exceed 60 days for renegotiation may be granted at the discretion of the executive director. Should this extension expire without proposal approval, then paragraph (1) of this subsection shall apply. Following such approval, the study shall be directed by a steering committee selected by TACB in consultation with the owner/operator of the unit(s) and shall be controlled, comprehensive, state-of-the-art, and quality-assured. The steering committee shall define the scope of the study and establish appropriate milestones to assure completion of the study by July 31, 1996. The study shall be designed to demonstrate conclusively whether or not a reduction of SO_2 emissions from the affected unit(s) to 1.2 pounds per MMBtu will significantly improve winter visibility in the DFW area. No later than October 31, 1996, TACB shall make a finding based on the study as follows, either:

(A) that reductions of SO_2 emissions from the affected unit(s), as defined in subsection (c) of this section, will significantly improve winter visibility in the DFW area. If such finding is made, then the affected unit(s) shall achieve compliance with a SO_2 emission limit of 1.2 pounds per MMBtu or an equivalent in total allowable annual site emissions by July 31, 2000; or

(B) that reductions of SO_2 emissions from the affected unit(s), as defined in subsection (c) of this section, will not significantly improve winter visibility in the DFW area. If such a finding is made or if TACB cannot make a finding on the basis of the study by October 31, 1996, then the affected unit(s) shall maintain compliance with subsection (a) of this section.

(d) Except as provided in subsection (e) of this section, beginning Septem-

ber 30, 1994, solid fossil fuel-fired steam generators of greater than 250 MMBtu heat input per hour which are equipped with SO_2 ·ntrol equipment shall be equipped with a ntinuous emissions monitoring system .EMS) for SO_2. The CEMS shall be installed, calibrated, and operated as specified in 40 Code of Federal Regulations Part 51, Appendix P, hereby incorporated by reference.

(e) In lieu of the requirements of subsection (d) of this section, beginning September 30, 1994, sources subject to the Federal Clean Air Act, §412(c), as amended in 1990 shall meet the requirements of §412(c) and the regulations promulgated there-under.

§112.9. Allowable Emission Rates-Combustion of Liquid Fuel.

(a) No person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) from any liquid fuel-fired steam generator, furnace, or heater to exceed 440 parts per million by volume (ppmv) at actual stack conditions and averaged over a three-hour period.

(b) If a source has an effective stack height less than the standard effective stack height as determined from the equation:

$$He = 0.49\ q^{0.50}$$

.re:

He = standard effective stack height in feet

q = stack effluent flow rate in standard cubic feet per minute

the allowable emission concentration must be reduced by tiplying it by the short-stack reduction factor.

(c) No later than July 31, 1993, no person in Harris or Jefferson County may cause, suffer, allow, or permit the use of liquid fuel for combustion from any stationary liquid fuel-fired steam generator, furnace, or heater with a sulfur content greater than 0.3% by weight or emissions of SO_2 from any liquid fuel-fired steam generator, furnace, or heater to exceed 150 ppmv, as calculated based on 20% excess air and as averaged over a three-hour period. The requirements of this subsection are not intended to apply to sulfuric acid plants.

(d) Except as provided in subsection (e) of this section, beginning September 30, 1994, liquid fossil fuel-fired steam generators of greater than 250 MMBtu heat input per hour which are equipped with SO_2 control equipment shall be equipped with a continuous emissions monitoring system (CEMS) for SO_2. The CEMS shall be installed, calibrated, and operated as specified in 40 Code of Federal Regulation Part 51, Appendix P, hereby incorporated by reference.

(e) In lieu of the requirements of subsection (d) of this section, beginning September 30, 1994, sources subject to the Federal Clean Air Act, §412(c), as amended in 1990 shall meet the requirements of §412(c) and the regulations promulgated there-under.

§112.14. Allowable Emission Rates-Nonferrous Smelter Processes.

(a) This section is applicable to all processes in nonferrous smelters, including, but not limited to, roasters, smelting furnaces, converters, sintering machines, blast furnaces, fuming furnaces, retorts, slag treatment plants, and sulfuric acid plants.

(b) No person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO_2) to the atmosphere from any process as specified in this section to exceed the applicable concentration of SO_2 as follows:

	SO_2 Parts Per Million by Volume (ppmv) Maximum	
	Two-Hour Average	Three-Hour* Average
(1) Primary Copper Smelter for all purposes other than those listed below:		650
(A) Reverberatory Furnace		6,000
(2) Primary Zinc Smelter	1,000	
(3) Primary Lead Smelter		
(A) Sinter Machine Discharge End (provided gases do not pass through Sinter bed),	2,500	
(B) Sinter Handling Equipment Emission Collecting Systems	2,500	
(C) All Other Processes	650	
(4) Other Primary Smelter	2,500	
(5) Secondary Metal Recovery Facility	3,500	
(6) Sulfuric Acid Plant		650

*The three-hour standards will be based on a six-hour average until September 30, 1994.

(c) Each stack or emission point in a primary smelter or secondary metal recov-y facility shall have a standard effective ck height not less than that determined the equation:

$$He = K(q)^{0.5}$$

Where:

He = standard effective stack height in feet

q = effluent flow rate in standard cubic feet per minute (scfm)

K = a constant dependent on the type of facility as follows:

Type of Facility	K
Primary Copper Smelter	0.50
Primary Lead Smelter (all processes except Sintering Machine, Discharge End, and Equipment Ventilation)	0.61
Metallurgical Sulfuric Acid Plant	0.61
Primary Zinc Smelter	0.61
Other Primary Smelters	0.90
Primary Lead Smelter Sintering Machine Discharge End and Equipment Ventilation	1.17
Secondary Metal Recovery Facilities	1.17

When two or more gas streams either wholly or in part are discharged through a single stack, the combined flow rate of all streams shall be used to determine the required stan-[illegible] effective stack height. If streams with different SO_2 concentration allowables, as determined in subsection (b) of this section, are combined into a single stream, the required effective stack height is determined as follows.

(1) Calculate a total combined stream SO_2 concentration allowable as follows:

$$PPMt = \frac{(PPM1)(SCFM1)+(PPM2)(SCFM2) + \ldots(PPMn)(SCFMn)}{(SCFM1 + SCFM2 + \ldots SCFMn)}$$

Where:

PPMt = Allowable SO_2 concentration in total combined stream, ppmv

PPM1 = Allowable SO_2 concentration in stream No.1, ppmv

PPM2 = Same as PPM1 except for stream No. 2

PPMn = Same as PPM1 except for Nth stream

SCFM1 = Effluent flow rate of stream No. 1, scfm

SCFM2 = Same as SCFM1 except for stream No. 2

SCFMn = Same as SCFM1 except for Nth stream

(2) Calculate interpolation constant (Kt) for the total combined stream as follows:

$$Kt = \frac{(PPMt-PPMx)\ (Kh-Kx)}{(PPMh-PPMx)} + K$$

Where:

Kt = Interpolation constant for use in the following standard effective stack height equation

PPMt = Allowable SO_2 concentration in total combined stream previously calculated and for the stated total ppmv, the other parameters are:

PPMt	PPMx	PPMh	Kx	Kh
650 to 1,000	650	1,000	0.50	0.61
1,000 to 2,500	1,000	2,500	0.61	0.90
> 2,500	2,500	3,500	0.90	1.17

(3) Calculate standard effective stack height for total combined stream as follows:

$$He = Kt\,(q)^{0.5}$$

Where:

He = Standard effective stack height in feet

Kt = Interpolation constant calculated previously

q = Total stack effluent flow rate in scfm (SCFM1 + SCFM2 + ... SCFMn)

(d) If a stack or emission point has an effective stack height less than the standard effective stack height as determined in subsection (c) of this section, the allowable concentration of SO_2 must be reduced by multiplying it by the short-stack reduction factor.

(e) The owner or operator of a nonferrous smelter shall utilize best engineering techniques to capture and vent fugitive SO_2 emissions through a stack or stacks. Such techniques shall include, but not be limited to, the following:

(1) operating and maintaining all ducts, flues, and stacks in a leak-free condition;

(2) operating and maintaining all process equipment and gas collection systems in such a fashion that leakage of SO_2 gases will be prevented to the maximum extent possible;

(3) collecting SO_2 emissions through the tallest stack or stacks serving the facility, whenever possible, using gas collection systems and/or ducting.

(f) The owner or operator of any primary smelter subject to the provisions of this section shall install, calibrate, maintain, and operate a measurement system or sys-

tems approved by the executive director for continuously monitoring SO_2 emissions in the effluent of each process subject to subsection (a) of this section. The executive director shall not require continuous monitoring for sources emitting less than 25 tons per year of SO_2 into the atmosphere.

§112.15. Temporary Fuel Shortage Plan Filing Requirements.

(a) Any person may file with the Texas Air Control Board (TACB) a temporary fuel shortage control plan if unable to comply with §112.3 of this title (relating to Net Ground Level Concentration), §112.9 of this title (relating to Allowable Emission Rates-Combustion of Liquid Fuel), or with any permit requirements, other than those required under the Federal Clean Air Act, §111, which limit sulfur dioxide emissions from any combustion unit solely because of the nonavailability of low sulfur fuels. The plan shall include all of the following:

(1) evidence of the nonavailability of low sulfur fuels, including, but not limited to, statements from fuel suppliers which address the availability and prices of lower sulfur fuels and the expected duration of any period of non-availability of particular fuels. The person filing the plan must annually request and receive an extension from the executive director or the plan will automatically expire one year after receipt of the plan by TACB;

(2) a statement that all emissions inventory data required by TACB are complete, accurate, and on file with TACB;

(3) data for each source within the entire plant that uses the higher sulfur fuel. The data shall include the type, quantity, and sulfur content of all the fuels to be burned, excess air to be used, and the associated sulfur abatement procedure to be used, if any;

(4) any other information as specified by the executive director. The executive director may require more frequent and extensive monitoring for persons affected by this section than would normally be required for persons affected by §112.3 of this title and §112.9 of this title.

(b) The executive director may make an independent determination of a need to operate under the temporary fuel shortage control plan based on the evidence of the nonavailability of low sulfur fuel. This determination/approval shall be effective on the date specified in the executive director's written notification of such determination.

(c) The requirements of this section and §§112.16, 112.17, and 112.18 of this title (relating to Temporary Fuel Shortage Plan Operating Requirements; Temporary Fuel Shortage Plan Notification Procedures; and Temporary Fuel Shortage Plan Reporting Requirements) shall also apply to shortages of low sulfur fuel oils where those oils are used as raw material in the production of a saleable product.

§112.16. Temporary Fuel Shortage Plan Operating Requirements.

(a) Following the approval of a temporary fuel shortage plan filed pursuant to §112.15 of this title (relating to Temporary Fuel Shortage Plan Filing Requirements), the provisions of a plan will govern the operation of the source with regard to emissions of sulfur dioxide (SO_2) during the periods of low sulfur fuel shortages.

(1) During operation under an approved fuel shortage plan, the source shall continue to comply with the following:

(A) permit conditions required under the Federal Clean Air Act (FCAA), §111;

(B) the national ambient air quality standard (NAAQS) for SO_2 or an SO_2 increment for prevention of significant deterioration (PSD) of air quality;

(C) §112.17 of this title (relating to Temporary Fuel Shortage Plan Notification Procedures).

(2) During operation under an approved fuel shortage plan, the source will be exempt from the following:

(A) §112.3 of this title (relating to Net Ground Level Concentrations);

(B) §112.9 of this title (relating to Allowable Emission Rates-Combustion of Liquid Fuel);

(C) existing permit conditions regulating emissions of SO_2, except as specified in paragraph (1)(A) of this subsection.

(b) An evaluation of the plan will be made by the applicant using appropriate diffusion modeling, as approved by the United States Environmental Protection Agency and the Texas Air Control Board Modeling Section, and following a signed modeling protocol agreement. If the plan cannot adequately demonstrate that the burning of higher sulfur fuels will not cause or contribute to a violation of any NAAQS and/or any PSD increment for SO_2, then the person filing the plan shall request that the governor file a petition for relief under the FCAA, §110(f) with the president of the United States.

§112.17. Temporary Fuel Shortage Plan Notification Procedures. Any person who operates a source under a temporary fuel shortage control plan filed pursuant to §112.15 of this title (relating to Temporary Fuel Shortage Plan Filing Requirements), shall comply with the following notification procedures.

(1) The executive director and the appropriate local air pollution control agency shall be notified in writing as soon as practicable of a fuel shortage or impending fuel shortage which causes or may cause an excessive emission that contravenes §112.3 of this title (relating to Net Ground Level Concentration) and §112.9 of this title (relating to Allowable Emission Rates-Combustion of Liquid Fuel), or any permit requirements. The notification shall include an estimate of the expected duration of the fuel shortage.

(2) The executive director of the Texas Air Control Board and the appropriate local air pollution control agency shall be notified in writing as soon as practicable of the termination of a fuel shortage which would allow the resumption of operations in compliance with §112.3 of this title, §112.9 of this title, and any permit requirements.

§112.18. Temporary Fuel Shortage Plan Reporting Requirements. Any person who files a temporary fuel shortage control plan under §112.15 of this title (relating to Temporary Fuel Shortage Plan Filing Requirements), and operates a source under that plan pursuant to §112.16 of this title (relating to Temporary Fuel Shortage Plan Operating Requirements) and §112.17 of this title (relating to Temporary Fuel Shortage Plan Notification Procedures), must submit to the Texas Air Control Board, on a semi-annual basis, a written report detailing the types, quantity, and sulfur content of fuels burned during the previous six months, the sources at which these fuels were burned, and the dates on which the higher sulfur fuels were burned.

§112.19. Application for Area Control Plan. The owner or operator a source which emits sulfur dioxide (SO_2) *may petition the Texas Air Control Board for relief from the requirements of §112.3(a) of this title (relating to Net Ground Level Concentrations), by filing with the Executive Director, an application for an area control plan. An application for an area control plan shall include, but is not limited to, a combination of evidence that best available control technology is being employed at all the affected sources, having due regard for the technical practicability and the economic reasonableness of reducing or eliminating the emissions of SO_2 from the affected source, and an ambient air sampling system to record SO_2 levels in the affected area.*

Any person who files an application for an area control plan shall demonstrate the capability of all sources in the affected area of the state to maintain all promulgated SO_2 ambient air quality standards.

§112.20. Exemption Procedure. Upon recommendation by the executive director, the Texas Air Control Board may enter a board order exempting a source from the requirements of §112.3(a) of this title (relating to Net Ground Level Concentrations), if the owner/operator has filed an application pursuant to §112.19 of this title (relating to Application for Area Control Plan), contingent upon the continued compliance by the owner/operator with the remaining terms of the board order.

§112.21. Allowable Emission Rates Under Area Control Plan. No person or persons who have been issued a board order establishing an area control plan pursuant to §112.20 of this title (relating to Exemption Procedure), may cause or contribute to a condition in which the ambient air quality in the affected areas of the state will exceed 0.5 parts per million by volume of sulfur dioxide averaged over a one-hour period.

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 October 2, 1992.

TRD-9213360 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: October 23, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 908-1451

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Part IX. Texas Water Commission

Chapter 292. River Authorities

The Texas Water Commission adopts new §§292.1-292.3 and 292.11-292.13, concerning general provisions, and administrative policies for water districts and river authorities, without changes to the proposed text as published in the August 14, 1992, issue of the *Texas Register* (17 TexReg 5671). These new rules are adopted in order to provide guidelines for supervision of certain districts and river authorities.

Subchapter A of Chapter 292 (relating to General Provisions) is comprised of §§292.1-292.3. Section 292.1 (relating to Objective and Scope of Rules) delineates the objective and scope of the rules. Section 292.2 (relating to Meaning of Certain Words) defines terms and phrases to be used in the rules. Section 292.3 (relating to Texas Water Commission Report to the Legislature) dictates that the executive director is to submit a report of findings made during the supervision of districts and authorities to the governor, lieutenant governor, and speaker of the house. This section also describes the contents of the report.

Subchapter B of Chapter 292 (relating to Administrative Policies) is comprised of §§292.11-292.13. Section 292.11 (relating to Administrative Policies to be Adopted by the Board) states that the provisions set forth in §292.13 (relating to Minimum Provisions) are to be considered the minimum standards by which the conduct of the board of a district or an authority is to be measured. Section 292.12 (relating to the Right of Executive Director to Review Policies and Other Documents) provides a basis for the executive director to determine if administrative policies comply with these rules and documents comply with the administrative policies. Section 292.13 (relating to Minimum Provisions) dictates that certain provisions are to be incorporated into the administrative policies adopted by the districts and authorities that are subject to this chapter. The provisions in this section include a code of ethics for river authority or district officials and employees, a travel expenditures policy, an investment policy for the funds of river authorities or districts, a policy for the selection of professional services, and a management policy.

During the 30-day comment period, which closed on September 14, 1992, we received one comment regarding these rules. The comment was received from a director of the Sabine River Authority, requesting clarification and direction in addressing the following administrative policies of river authorities paying for the preparation of wills for river authority employees; paying 25% of gross pay to employees' retirement benefit in addition to Social Security benefits; providing hospitalization insurance for directors, and paying $100 per diem to directors to read and review newspaper articles and authority correspondence.

In general, the comment letter received brings forth issues which may need clarification for each authority. However, the commenter did not express concerns on any specific section of this chapter. The commission believes that those issues identified should be processed as a complaint and addressed within the context of the operation of the authority. To the extent that these issues require additional legislative guidance, such issues will be incorporated into the report required pursuant to the Texas Water Code, §12. 081.

Subchapter A. General Provisions

- 31 TAC §§292.1-292.3

The new sections are adopted under the Texas Water Code, §§5.013, 5.103, 5.105, and 12.081, which provides the Texas Water Commission 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, to establish and approve all general policies of the commission, and to issue rules necessary to supervise districts and authorities.

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 30, 1992.

TRD-9213322 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: October 22, 1992

Proposal publication date: August 14, 1992

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

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Subchapter B. Administrative Policies

- 31 TAC §§292.11-292.13

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 12.081, which provides the Texas Water Commission 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, to establish and approve all general policy of the commission, and to issue rules necessary to supervise districts and authorities.

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 30, 1992.

TRD-9213323 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: October 22, 1992

Proposal publication date: August 14, 1992

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

- 34 TAC §3.413

The Comptroller of Public Accounts adopts the repeal of §3.413, concerning franchise tax reports and payments, 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 Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter V. The section will be replaced with a new 34 TAC §3.544, concerning Reports and Payments.

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 30, 1992.

TRD-9213246 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: October 21, 1992

Proposal publication date: June 19, 1992

For further information, please call: (512) 463-4028

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Subchapter V. Franchise Tax

• 34 TAC §3.544

The Comptroller of Public Accounts adopts new §3.544, concerning reports and payments, with changes to the proposed text as published in the May 26, 1992, issue of the *Texas Register* (17 TexReg 3824).

This new section replaces 34 TAC §3.413, concerning the same subject matter, which is being repealed in order that it can be adopted under the Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter V. This new section contains information concerning franchise tax reports and payments and the calculation of both the taxable capital and earned surplus components of the tax.

Paragraphs were added to clarify that a report must be filed, even if no tax is due, and to indicate that this new section applies to reports originally due on or after January 1, 1992.

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.

§3.544. Reports and Payments.

(a) Reports and due dates.

(1) Except as provided in subsection (f) of this section, each domestic and foreign corporation subject to the franchise tax levied by the Tax Code, §171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(A) "Beginning date" means:

(i) for a Texas corporation, the charter date; and

(ii) for a foreign corporation, the earlier of:

(I) the certificate of authority date; or

(II) the date the corporation begins doing business in Texas.

(B) Both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The initial franchise tax report and payment are for the privilege periods beginning on the beginning date and ending on December 31 following the first anniversary of the beginning date. For example, if a Texas corporation is chartered on June 1, 1992, the payment due with the initial report will be for the privilege periods from June 1, 1992-December 31, 1993. In addition, when the first anniversary occurs during the period from October 4 through December 31, there must also be computed and paid with the initial report an additional year's tax for the privilege period beginning on January 1 following the first anniversary and ending on the following December 31. For example, if a Texas corporation is chartered on November 1992, the payment due with the initial report will be for the tax periods from November 1, 1992-December 31, 1994. The taxable capital component of the tax computed on the initial report is based on the financial condition as of the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date. If there is no such ending date, then the initial report is based on the financial condition on the last day of the calendar month nearest to the end of the corporation's first year of business. The earned surplus component of the tax computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the corporation's first year of business.

(C) The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The annual tax is paid for the privilege period of the calendar year in which the report is due. The taxable capital component of the tax computed on an annual report is based on the financial condition as of the last day of the last accounting period ending in the calendar year before the calendar year in which the tax is originally due. The earned surplus component of the tax computed on an annual report is based on the business done during the period beginning with the day after the last date upon which the earned surplus component was based on a previous report, and ending with its last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due. For the 1992 annual report, the earned surplus component is based on the business done during the period beginning with the day after the date upon which the previous report was based, and ending with its last accounting period ending date for federal income tax purposes ending in 1991.

(D) See §3.565 of this title (relating to Survivors of Mergers) for special rules concerning corporations which are survivors of mergers.

(E) See §3.545 of this title (relating to Extensions for Annual Reports) for extensions of time to file an annual report.

(F) See §3.567 of this title (relating to Additional Tax on Earned Surplus) for information concerning the additional tax imposed by the Tax Code, §171.0011.

(G) See §3.572 of this title (relating to 1992 Transition) for special rules concerning mergers, reorganizations, and transfers of assets occurring after August 13, 1991, and before January 1, 1992.

(2) The postmark date (or meter-mark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing.

(3) An information report must be filed, even if no tax is due. A corporation must file an initial report as the information report for the privilege period covered by an initial report. A corporation must file an annual report as an information report for a regular annual privilege period not covered by an initial report.

(b) Penalty and interest.

(1) The Tax Code, §171.362, imposes a 5.0% penalty on the amount of franchise tax due by a corporation which fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of $1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. Simple interest accrues at an annual rate of 6.0% through March 31, 1980; at an annual rate of 7.0% from April 1, 1980-December 31, 1981; and, beginning January 1, 1982, at 10% per annum, for taxes due before September 1, 1991. For taxes due on or after September 1, 1991, the yearly interest rate on all delinquent taxes is 12%, compounded monthly.

(2) When a corporation is issued an audit assessment or other underpayment notice based on a deficiency, penalties under the Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination final 30 days after the date on which the service of the notice of the determination is completed. Service by mail is complete when the notice is deposited with the United States Postal Service.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under the Tax Code, §111.0081, of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of $1,000 tax, $100 penalty and $15 interest (assume interest accrues $1.00 per day), then on the 41st day after the deficiency notice is served, $1,256 would be due (i.e., $1,000 tax, $100 initial penalty for not paying when originally due, $100 penalty for not paying deficiency determination within 10 days after it became final, and $56 interest).

(B) A petition for redetermination must be filed within 30 days after the date on which the service of the notice of determination is completed, or the redetermination is barred.

(C) A decision of the comptroller on a petition for redetermination becomes final 20 days after service on the petitioner of the notice of the decision. The amount of a determination is due and payable 20 days after a comptroller's decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under §111.0081 of 10% of the tax assessed will be added. Using the previous example, on the 41st day after service of the comptroller's decision, $1,251 would be due (i.e., $1,000 tax, $100 initial penalty, $100 additional penalty and $51 interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under the Tax Code, §111.022, of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.

(c) Consolidated reporting. A consolidated or combined report, reflecting the financial data of a parent corporation and its subsidiaries or the financial data of other separate corporations as though they were a single economic entity, is not allowed.

(d) Amended reports. A corporation may file an amended report for the purpose of correcting a mathematical or other error in a report or for the purpose of supporting a claim for refund. Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. In filing an amended report, the corporation must type or print on the report, immediately above the corporation name, the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment.

(e) Comptroller. During the course of an audit or other examination of a corporation's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with his examination, the comptroller may also examine any of the corporation's officers or employees under oath.

(f) Jeopardy determination. If a jeopardy determination is issued to a corporation for an estimated tax liability on an annual reporting period, payment of the estimated liability, plus applicable penalty and interest, shall satisfy the reporting requirements set forth in the Tax Code, §171.202.

(g) Rate. An annual tax rate of $6.70 per $1,000 of net taxable capital and an annual minimum tax of $150 applies to May 1, 1988-April 30, 1990, of any tax period.

(h) Effective date. This section applies to reports originally due on or after January 1, 1992, unless otherwise specified.

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 30, 1992.

TRD-9213245 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: October 21, 1992

Proposal publication date: May 26, 1992

For further information, please call: (512) 463-4028

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Part X. Texas Public Finance Authority

Chapter 223. Master Equipment Lease Purchase Program

• 34 TAC §§223.1, 223.3, 223.5, 223.7

The Texas Public Finance Authority adopts new §§223.1, 223.3, 223.5, and 223.7, concerning the master equipment lease purchase program, without changes to the proposed text as published in the June 23, 1992, issue of the *Texas Register* (17 TexReg 4513).

The Texas Public Finance Authority is adopting these sections to set forth the perameters by which the Master Equipment Lease Purchase Program will operate.

These sections define certain terms pertaining to the operation of the program, identifies the responsibilities of various parties in administering the program, and establishes basic procedures under which equipment users may participate in the program.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 601d, §9A, which pro-

vide the Texas Public Finance Authority with the authority to issue and sell obligations for a lease or other agreement concerning equipment and to promulgate rules for establishing the requirements for agencies wishing to use the program.

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 June 24, 1992.

TRD-9213254 Glen Hartman
Executive Director
Texas Public Finance Authority

Effective date: October 21, 1992

Proposal publication date: June 23, 1992

For further information, please call: (512) 463-5544

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 165. State Aid Distribution and Monitoring

Subchapter E. Performance Reward Program

• 37 TAC §§165.60-165.65, 165.68

The Texas Department of Criminal Justice adopts amendments §§165.60-165. 65 and §165.68, concerning the performance reward program. Section 165.62 is adopted with changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5431). Sections 165.60, 165.61, 165.63, 165.64, 165.65, and 165.68 are adopted without changes and will not be republished.

The purpose of the performance reward program is to provide a financial reward to those counties that divert offenders from incarceration in the Institutional Division of the Texas Department of Criminal Justice. These rules are promulgated to ensure the equitable distribution of funds in conformity with legislative intent.

These rules govern the following aspects of the performance reward program data collection, applications for funding, computation of funding, and record keeping: §165.60-Performance Reward Program-General; §165. 61-Performance Ranking Process; §165.62-Formula for Computation of Performance Reward Rankings; §165.63-Data Collection; §165.64-County Plan Submission Requirements; §165.65-Rules Governing Program Accountability and Audits; §165.68-Dispute Resolution Process.

The revised funding formula will limit program participation to approximately one-half of the counties in Texas, assuming a minimum of 127 counties submit data. Bonus funding based on the number of individuals impacted by the diversionary measures will making bonus funding proportional to the impact of each county's diversions on the criminal justice system.

The division received comments from five county officials concerning the proposed rules. Three of the five letters included suggestions as to needed clarifications of definitions on the proposed data gathering instruments. One commented that the revised computational formula will have a negative impact on small counties, but representatives of other small counties indicated that they did not take issue with the revised data collection forms and instructions. One county indicated that it would not compete in the program.

Some of the officials who submitted written comments on the proposed rules were affiliated with more than one county. The counties represented by those submitting comments included Lampasas, Walker, Grimes, Madison, Jasper, Newton, Sabine, San Augustine, Culberson, Hudspeth, El Paso, and Harris. Lampasas County indicated an opposition to the philosophical basis for the program, while the other counties suggested needed clarifications in the definitions of data to be used for computing the awards formula.

The comments concerning needed clarifications in definitions are being addressed by staff in the written explanations which will be sent out with the data collection instruments.

The amendments are adopted under the Texas Code of Criminal Procedure, Article 41.13, §13, which provides the Texas Department of Criminal Justice with authority to develop and implement a performance rewards program.

§165.62. Formula For Computation of Performance Reward Rankings and Distribution of Funds. It was the intent of the legislature in establishing the performance reward program to provide financial incentives to those counties which successfully divert offenders from confinement. In conformity with that intent, the board hereby adopts the following formula for computation of performance reward rankings and distribution of funds.

(1) County rates for each factor are calculated based on data collected from each county of the state and from state data systems. For the personal bond utilization rate, the pretrial diversion rate, the deferred adjudication rate, the probation rate, the probation revocation rates, and the utilization rate of residential and non-residential diversion programs, separate rates and scores will be calculated for felons and misdemeanants.

(2) For all factors except the probation revocation rates, the Institutional Division commitment rate, and the admissions per index crime rates, counties shall be ranked from 254 downward beginning with the county with the highest rate. If two or more counties have exactly the same rates for a given factor, the rank assigned to each of the counties shall equal the mean of the ranks that would have been assigned if the rates had not been equal. A county' rank on each rate shall be their score fo that rate. Counties that do not supply the data needed to calculate a specific rate or the source of the information shall receive a score of zero for the rate.

(3) For the probation revocation rates, the Institutional Division commitment rates, and the admissions per index crime rate, counties shall be ranked from 254 downward beginning with the county with the lowest rate. If two or more counties have exactly the same rates for a given factor, the rank assigned to each of the counties shall equal the mean of the ranks that would have been assigned if the rates had not been equal. A county's rank on each rate shall be their score for that rate. Counties that do not supply the data needed to calculate a specific rate or the source of the information shall receive a score of zero for the rate.

(4) The scores for the technical and non-technical revocation rates shall be multiplied by 0.5 and summed to obtain a singe score for the misdemeanor and felony probation revocation rates. Scores for all felony and misdeameanor rates within a single factor shall be multiplied by 0.5 and summed to obtain a single score for each factor.

(5) The scores for each factor are summed to obtain the total score for the county.

(6) The 127 counties with the highest total scores are eligible for performance rewards funding.

(7) The number of eligible counties is multiplied by $50,000 to obtain the amount of funds required to comply with the statutory $50,000 minimum per eligible county. This amount is subtracted from the total amount of annual funds for the program to obtain the remainder to be allocated based on performance (bonus funding).

(8) Bonus funding shall be based on the county's proportion of the state total of eligible counties for each of the following variables:

(A) total number of individuals released on personal bond;

(B) total number of individuals placed on pretrial diversion;

(C) total number of individuals placed on deferred adjudication probation;

(D) total number of individuals receiving probated sentences;

(E) total number of individuals placed in residential/non-residential diversions programs.

(9) The county's proportion of the state total of the eligible counties shall be calculated for each variable in the following manner:

(A) The county totals for each variable are summed across eligible counties to obtain a state total.

(B) Each eligible county's total is divided by the statewide total to determine the county's proportion of the state total.

(10) The county's proportions for each variable are averaged to determine the overall proportion for the county.

(11) Each eligible county's overall proportion is multiplied by the total bonus funding amount to obtain the bonus funding for the county.

(12) The minimum $50,000 plus the bonus funding equals the total performance rewards funding to the county.

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 October 2, 1992.

TRD-9213385 Jackie Cox
General Counsel
Texas Department of Criminal Justice

Effective date: January 1, 1993

Proposal publication date: August 4, 1992

For further information, please call: (512) 463-9988

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 52. Emergency Response Services

Definitions

The Texas Department of Human Services (DHS) adopts amendments to §§52.101, 52.201, 52.202, 52.401, 52.402, 52.501, 52.503, and 52.601, in its Emergency Response Services chapter. The amendments to §52.401 and §52. 501 are adopted with changes to the proposed text as published in the August 25, 1992, issue of the *Texas Register* (17 TexReg 5788). The amendments to §§52.101, 52.201, 52.202, 52.402, 52.503, and 52.601 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to implement provider enrollment, add state licensure requirements, and delete references to DHS-purchased equipment.

The amendments will function by offering clients a choice of providers and assuring provider compliance with state licensure requirements.

No comments were received regarding adoption of the amendments. DHS, however, has initiated a change to the text of §52.401 to correct an error. DHS has replaced the word "manual" with the word "chapter." Also, the amendment to §52.501 is adopted with a minor editorial correction.

• 40 TAC §52.101

The amendment is adopted 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.

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 October 5, 1992.

TRD-9213395 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: November 15, 1992

Proposal publication date: August 25, 1992

For further information, please call: (512) 450-3765

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Contracting for Emergency Response Services

• 40 TAC §52.201, §52.202

The amendments are adopted 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.

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 October 5, 1992.

TRD-9213396 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: November 15, 1992

Proposal publication date: August 25, 1992

For further information, please call: (512) 450-3765

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Service Delivery Requirements

• 40 TAC §52.401, §52.402

The amendments are adopted 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.

§52.401. Initiation of and Referral for Services.

(a) The provider agency must begin services within 14 days from the date on the approval for Community Care for Aged and Disabled (CCAD) services-referral response form unless the referral is verbal. For verbal referrals, the provider agency must begin services on the date verbally negotiated with the caseworker.

(b) If the client is not in the home during the first 14 days from the date on the approval for CCAD services-referral response form, the provider agency begins services as soon as possible after the client returns home.

(c) If services do not begin on the date verbally negotiated, the coordinator telephones the caseworker on or before the day services were scheduled to begin and explains why services were not begun.

(d) If the caseworker and the coordinator disagree about the appropriateness of a referral or about service delivery issues involving the client, supervisory staff of the two agencies resolve the differences. The CCAD program manager is responsible for resolving differences among caseworker and provider agency staff. If they disagree about the appropriateness of a referral, the coordinator may request that the caseworker approve a delay in beginning services. The request to delay service initiation is documented on the case information form.

(e) The provider agency must secure two responders for each client on or before the date services begin, unless the provider agency is able to document that the client has no available responders and that only one resource is available that can respond to emergencies.

(f) To initiate services, the provider agency must conduct a home visit. During the home visit, the installer:

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

(g) The provider agency completes the client's card file after the home visit. The client's card file must include:

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

(h) The provider agency must notify the caseworker of the status of all referrals within 21 days from the referral date.

(i) The Texas Department of Human Services will encourage the client to

choose the most economical alternative for service provision.

(j) If a provider agency is delivering services according to the requirements in this chapter, a client may not change provider agencies within the first six months of authorization, unless the client and the provider agency mutually agree.

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 October 5, 1992.

TRD-9213397 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: November 15, 1992

Proposal publication date: August 25, 1992

For further information, please call: (512) 450-3765

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Claims

• 40 TAC §52.501, §52.503

The amendments are adopted 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.

§52.501. Billing and Claims Payment.

(a)-(e) (No change.)

(f) The Texas Department of Human Services (DHS) may negotiate a single unit rate that combines local and long distance service delivery. The single rate must not exceed the highest ceiling. The rate should be approximately proportional to the projected number of local and long distance clients.

(g)-(i) (No change.)

(j) DHS may withhold a provider agency's vendor payments for reasons including, but not limited to, the following:

(1) (No change.)

(2) failure to comply with rules in the provider manual;

(3) failure to comply with licensure requirements; or

(4) termination of the contract (voluntary or involuntary).

(k) (No change.)

(l) DHS renegotiates rates annually with existing provider agencies based on the unit rate ceilings in effect.

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 October 5, 1992.

TRD-9213398 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: November 15, 1992

Proposal publication date: August 25, 1992

For further information, please call: (512) 450-3765

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Reviews and Audits of Provider Agency Records

• 40 TAC §52.601

The amendment is adopted 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.

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 October 5, 1992.

TRD-9213399 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: November 15, 1992

Proposal publication date: August 25, 1992

For further information, please call: (512) 450-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 25. Maintenance and Operations Division

Specific Information Logo Sign Program

• 43 TAC §§25.400-25.408

The Texas Department of Transportation (TxDOT) adopts new §§25.400-25.408. Section 25.402 and §§25.405-25.407 are adopted with changes to the proposed text as published in the June 9, 1992, issue of the *Texas Register* (17 TexReg 4160). Sections 25.400, 25.401, 25.403, 25.404, and 25.408 are adopted without changes and will not be republished.

Senate Bill 518, 72nd Legislature, 1991, amended Texas Civil Statutes, Article 4477-9a, by requiring the Texas Transportation Commission to contract with a person, firm, group, or association in the State of Texas to erect and maintain signs that give specific information of interest to the traveling public including specific brand names at appropriate locations along interstate highways in each county with a population of less than 20,000. Article 4477-9a further requires the commission to adopt rules necessary to ar' minister and enforce this signing prograr and to regulate the content, compositio placement, erection, and maintenance of specific information logo signs and supports within interstate highway right-of-way. In order to comply with the legislative intent these new sections are adopted on a permanent basis.

Section 25.400 outlines the purpose of the sign program. Section 25.401 prescribes the definitions used in this new undesignated head. Section 25.402 authorizes the department to award a contract to develop, operate, and maintain specific information logo signs and prescribes certain terms and conditions of the contract relating to marketing, a market study and construction plans, as-built plans, sign erection in the first year, annual reports, installation, department review, additional signing and sign maintenance, fees, bonding, permits, licenses and taxes, records, termination, and the sale, transfer, and assignment of the contract. Section 25.403 describes the procedures by which a contractor who desires to bid on a contract may become prequalified, including the submission of a statement of interest containing information relating to staffing, capability, project understanding and approach, scheduling, and financial condition. Section 25. 404 provides that the commission will award a contract to the lowest bidder and describes the procedure for awarding the contract. Sectio 25.405 describes the specifications for spe cific information logo signs, business logc and ramp logos relating to design, placement, and content. Section 25. 406 provides that in order to participate in the program a commercial establishment must meet specified eligibility requirements relating to motorist services, establishment location, compliance with existing law, and posting of hours of operation, requires a commercial establishment to provide minimal services and facilities to the public to be eligible to have a business logo for a specific service, and provides conditions under which a commercial establishment may display more than one primary motorist service on a sign. Section 25.407 describes how a commercial establishment applies for participation in the program, provides that establishments will be selected to participate through a random drawing, describes certain rights and responsibilities of a commercial establishment, and describes how a logo may be covered or removed. Section 25.408 describes how a contractor may appeal an adverse decision by the department, and how a commercial establishment may appeal an adverse decision by the contractor through the department's administrative hearing process under 43 TAC §§1.21-1.63.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the department conducte' a public hearing on July 1, 1992, to see comments concerning the proposed spe' information logo sign program for Texas interstate highways within those counties with a population of less than 20,000. Repre-

sentatives of Logo Signs of America, Norwood Outdoor, Inc., Suburban Advertising Company, Reynolds Outdoor, and Interstate Logos were in attendance and indicated they -re in favor of the new rules. No comments re received against the rules. Three mmenters gave oral testimony at this hearing. The department also received seven written responses by mail. The following addresses the comments received and the department's responses.

In §25.401 and §25.405(a)(2)(A), one commenter suggested that the definition of primary service be revised to include the words "alternative fuels," and the definition of a specific information logo sign be revised to include the words "ALTERNATIVE FUELS." The department cannot concur with the suggestions. The enabling legislation does not authorize the Texas Transportation Commission to add another primary motorist service or to erect additional signs for "alternative fuels" in the logo sign program.

In §25.402(a), three commenters suggested that the initial contract be greater than the stated five year term. The department does not concur with the suggestion. The initial contract will be for five years; however, the wording of §25.402 does not restrict the department from renewing this contract for additional periods as it deems necessary. The contract documents will contain wording that requires the initial contract to be five years with the option of extending the contract for a period of an additional five years.

In §25.402(a), two commenters suggested the Texas Transportation Commission expand the logo sign program to counties with populations greater than 20,000. The enabling legislation limits the Transportation Commission's authority to erect and maintain logo signs to those counties with populations of less than 20,000.

In §25.402(a), one commenter asked how the department would handle a situation where an eligible county's population increased enough to exceed 20, 000 during the term of the contract. Would the contractor be required to remove existing logo signs? Conversely, if an ineligible county's population decreased to less than the 20,000 during the term of the contract, could logo signs be erected in these counties? The department uses the latest official federal census (1990) as the basis for determining county eligibility. Since the next federal census will be in the year 2000, only those counties with less than a population of 20,000 as recorded in the latest federal census are and will remain eligible until the next census. To clarify the matter, §25. 402(a) is revised to read, "The department may award a contract to a person, firm, group, or association in the State of Texas, for an initial period not to exceed five years, to develop, operate, and maintain specific information logo signs at appropriate locations along interstate highway in each county with a population of less than 20,000 according to the latest federal census, subject to the following terms and conditions."

Section 25.402(c), as proposed and published contains language that is unclear and is inconsistent with terminology used in existing department standard specifications. In order to more clearly state what was intended while using language that is consistent with department terminology, §25. 402(c) is revised to read, "Market study and site plans. Prior to construction of a specific information logo sign at an approved location, the contractor must submit to the department a market study and site plan. Upon written approval of the site plan, the contractor may begin work at the location described."

In §25.402(d), one commenter suggested that the as-built plans be provided to the department within 90 days upon completion of the installation of specific information business logo signs. It was not the intent of the wording to require the contractor to provide as-built plans immediately after the installation of the specific information business logo signs. The department believes that 45 days is a reasonable amount of time for the contractor to provide the as-built plans. Ninety days would not provide the department with current information for these sign locations. The department partially concurs with this request. Section 25.402(d) is revised to read, "The contractor shall submit as-built plans to the department within 45 calendar days upon completion of the installation of specific information business logo signs."

In §25.402(e), one commenter suggested that the department require the contractor to erect specific information logo signs along the interstate highways, or portions of such interstate highways, in a particular order or schedule. The department does not concur with the suggestion. Since the contractor cannot receive payment from a commercial establishment until the business logo is erected, it is to the contractor's benefit to erect the logo signs as soon as possible. The department does not believe this suggested requirement would benefit the operation of the contractor or the commercial establishments. This suggestion would cause the contractor undue hardship and additional expense, and this additional expense would subsequently be charged to the commercial establishments.

In §25.402(k)(1), several commenters suggested that the 5.0% remittance to the department be paid monthly or quarterly, rather than weekly on the first Monday following receipt by the contractor. Monthly payments to the department reflect the commercial establishment's option of a monthly payment schedule for the annual rental fees. Quarterly payments would not be considered a prompt payment to the department. The department partially concurs with the request. Section 25.402(k)(1) is revised to read, "The contractor shall assess the following non-refundable fees and shall remit to the department an amount equal to 5.0% of all such fees no later than the seventh business day following the last day of the month such fees are received by the contractor."

In §25.402(k)(1), one commenter suggested an additional fee for permanent removal of the commercial establishment's business logo. The department does not concur with the suggestion. If a business logo is removed due to lack of payment of the annual rental fee by the commercial establishment, then it is reasonable to assume the commercial establishment has no intent of paying any additional fees. The department believes this fee would be difficult, if not impossible, to collect and should not be considered as an expected source of income to the contractor.

In §25.402(k)(1)(C), one commenter suggested that a clarification be made as to the covering fee. The commenter expressed concern that the present wording could imply the $100 fee is the total contractor fee for both the covering and uncovering operations. The department concurs with the suggestion. A clarification will be made to explain the department's intent, that a $100 fee is assessed for the covering of the business logo and an additional $100 fee is assessed for the uncovering of the business logo. Section 25.402(k) (1)(C) is revised to read, "A fee of $100 for covering a business logo and the ramp business logo and a fee of $100 for uncovering a business logo and the ramp business logo pursuant to §25.407 of this title (relating to Program Operation)."

In §25.402(k)(1)(D), one commenter suggested that a clarification be made as to the replacement fee. The commenter said that a commercial establishment may misunderstand this fee, thinking that the contractor will provide the replacement business logo and the labor for the replacement fee. The department does not concur with the suggestion. Section 25.407(c)(1) requires the commercial establishment to provide a business logo to the contractor; therefore, the business logo is the responsibility of the commercial establishment.

In §25.402(k)(2)(B), one commenter suggested that the word "consecutive" be added to the text to clarify the conditions under which the contractor shall reduce the annual rental fee by a prorated amount for each calendar day. The department concurs with the suggestion. Section 25.402(k)(2)(B) is revised to read, "a previously erected business or ramp business logo is obscured from view of the motorists for a period of time exceeding 10 consecutive calendar days."

In §25.402(1), one commenter suggested that the amount of the required bonds be specified. The department does not concur with the suggestion. The department will specify the bonding requirements in the proposal and contract documents.

In §25.402(o), one commenter suggested that the reasons for a cortractor's default be specified. The department does not concur with the suggestion. The department will specify reasons for default of the contractor and notification in the proposal and contract documents.

In §25.402(o)(2), several commenters suggested that the percentages and reimbursement of "fair market value" be further clarified. Several commenters also suggested that the percentages be increased to coincide with the logo sign program contracts of other states. The department concurs with the suggestion. Section 25.402(o)(2) is revised to read, "If the department terminates the contract for reasons other than default of the contractor, the contractor will be paid a percentage of the fair market value, as established by the department, for each of the specific information logo signs erected. The percentages are as fol-

lows: elapsed time since sign installation: 0-one year-90%; one-two years-75%; two-three years-50%; three-four years-25%; four years or greater-0%."

In §25.404(b)(2), one commenter suggested that the award of the contract be based on a combination of the lowest bid submitted and other factors including experience of the contractor and financial ability. The department does not concur with the suggestion. The department believes the prequalification process as stated in §25.403 will better protect the public interest and will ensure that only those contractors capable of operating the logo program will be eligible to participate.

In §25.404(b)(2), one commenter suggested that the contractor bid formula be revised to reflect a "discount" or "reduced annual rental fee" provided by the contractor to the commercial establishment as an incentive for prepayment of a multi-year contract. The commenter also suggested the contractor bid formula be revised to include a higher annual rental fee if the commercial establishment chooses to remit payment to the contractor on a monthly basis. The department does not concur with the suggestion. The department feels that the incorporation of such "discounts," "reduced annual rental fees," or different annual rental fees based on method of periodic payment by the commercial establishment would not be fair and equitable to all participants.

In §25.404(b)(3), one commenter suggested that parameters of the contractor's annual rental rates for ramp business logos are too low, that the construction cost of a ramp business logo sign is approximately 50 to 60% of the cost of the main-lane logo sign. The department established these parameters after reviewing the annual rental fees collected in other states for ramp business logo signs. The parameters were created to ensure equitable annual rental fees for ramp business logos. Note that §25.05(c)(2) allows a ramp business logo only if the commercial establishment's building or on-premise signing is not visible from the ramp, the access road, or the intersection of the crossroad with the ramp or access road. It is reasonable to assume that the majority of participating commercial establishments will not have ramp business logos. Ramp signs will be independently mounted with only one ramp business logo per sign, not a large background sign with multiple ramp business logo attached. The department does not concur with the suggestion.

Section 25.405(a)(1)(F), as proposed and published, contained an obvious typographical error. We will clarify the section in order to state what was intended. Section 25.405(a)(1)(F) is revised to read, "provide not more than eight inches vertical spacing and not more than 12 inches horizontal spacing between business logos."

In §25.405(a)(2)(D), one commenter suggested that the text be modified to clarify the meaning of "qualified" businesses. The department does not concur with the suggestion. The proposed rules reflect the qualifications of the commercial establishments as prescribed by the statute and provides a selection process. We believe that the word "qualified" as used in this section clearly refers to commercial establishments that meet the minimum requirements for the primary service and have been chosen through the election process.

In §25.405(a)(3)(H), two commenters suggested that the requirement that logo signs be placed only in areas where a 30-foot offset from the edge of the pavement be modified so that logo signs may be placed in areas where special conditions exist, such as restricted right-of-way. The 30-foot offset is the current American Association of State Highway and Transportation Officials guideline for clear zones on freeway facilities. These guidelines may be subject to change in the future; therefore, the department concurs with the suggestion. Since the department is responsible for approving all logo sign locations, the wording of §25.405(a)(3)(H) is unnecessary and will be deleted.

In §25.405(a)(4), one commenter suggested that existing signs could be relocated to accommodate logo signs, if the experse for the relocation is the responsibility of the contractor. The department concurs with the suggestion. Section 25.404(a)(4) will read, "Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate logo signs."

In §25.405(b)(2)(B), one commenter suggested that the words "ALTERNATIVE FUELS" be allowed as supplemental information on a gas business logo. The department does not concur with the suggestion. Since an alternative fuel may be one of nine possible types of fuel, it would be difficult for the motorists to determine if the particular fuel needed would be available at the commercial establishment.

In §25.406(a)(2), one commenter suggested that the definition of "directly adjacent to the interstate" be clarified. The department concurs with the suggestion. Section 25.406(a)(2) is revised to read, "be located with driveway access to the intestate access road (frontage road), ramp, or intersecting crossroad."

In §25.406(a)(4), one commenter suggested the American Disabilities Act (ADA) be added as a provision of public accommodation. The department does not concur with the suggestion. Any application of ADA is by force of federal law. It is not necessary for the department to include ADA in its regulations.

In §25.406, two commenters suggested the requirement for gas, food, and lodging businesses be changed so as not to require the commercial establishment to provide a telephone accessible to the public 24 hours a day. The department concurs with the suggestion. The department believes that the public access to a telephone is a valuable and necessary service; however, access for 24 hours a day may cause an inequitable additional expense to smaller participating commercial establishments. Therefore, §25.406(b)(1)(E), (2)(E), and (3)(C) are revised to read, "a telephone accessible to the public."

In §25.406(b)(3), one commenter suggested development of "standards established by the department with respect to the facilities which generally can qualify under your rules but which may be an embarrassment for people traveling through Texas." The commenter also suggested the additional requirement of a 24 hour front desk and that "Bed and Breakfast," or other type lodging facilities with less than 10 rooms be allowed to qualify for logo signing. The department does not concur with the suggestions. The statute prescribes the minimum requirements for the commercial establishments. It is neither the function nor within the ability of the department to rate the quality of establishments or to add to the legislature's minimal requirements.

In §25.407(b)(1), one commenter suggested that the order of relative placement of the business logos be listed. The department concurs with the suggestion. Therefore, the following sentence is added to §25.407(b)(1): "The relative placement of business logos in available space(s), in order of selection, is upper left, upper right, lower left, and lower right."

In §25.407(c)(2), one commenter suggests a clarification of the terms "agreement," "contract," and "participation agreement." The department concurs with the suggestion and all corresponding sections mentioning the participation agreement between the commercial establishment and the contractor will be revised. Section 25.407(b)(5) is revised to read, "The contractor shall notify the commercial establishment by certified mail of the award of specific information business logo sign space within 10 calendar days of the date of award. To accept the award, the commercial establishment must execute a written participation agreement with the contractor within 30 calendar days of the date of the award. The participation agreement shall be in a form as prescribed by the department and shall, at a minimum, contain all applicable provisions prescribed by this undesignated head." Section 25.402(e) is revised to read, "Sign erection in first year. In the first year of the contract between the department and contractor, the contractor shall erect specific information logo signs and business logos at a minimum of 40% of the interchanges where participation agreements have been completed between the commercial establishments...." Section 25.402(f) is revised to read, "Annual report. The contractor shall furnish an annual report to the department. The annual report will include the contractor's financial statement as provided in Section 25.402 of this title (relating to Prequalification), summary of eligible interchanges, business logos erected, and number of participation agreements competed. Other reports may also be required throughout the year as determined by the department." Section 25.407(c)(2) is revised to road, "A commercial establishment may renew its participation agreement with the contractor on an annual basis no later than July 31 of the last year of the agreement. If the commercial establishment does not renew the agreement with the contractor, the

contractor will remove the business logo at the end of the agreement, and will make the vacated space available to other commercial establishments pursuant to subsection (b) of section."

§25.407, one commenter suggested a clarification for rights of a participating commercial establishment with respect to the business logo space if the commercial establishment is sold to a new owner. A question was presented: Is the commercial establishment's business logo allowed to remain on the logo sign or should it be removed? The department has determined that a clarification is unnecessary and does not concur with the suggestion. When the commercial establishment's new owner assumes the assets and debts of the previous owner, the department believes it is the prerogative of the new owner to decide if continued participation in the logo sign program is warranted. Rights of contracting parties are governed by applicable law. Section 25. 407(e)(1)(E) allows the contractor to remove the business logo if the commercial establishment is sold, and the new commercial establishment does not continue the original primary motorist service or does not meet the minimum requirements for the primary motorist service.

In §25.407(b)(5), one commenter suggested additional wording to allow multi-year participation agreements between the contractor and the commercial establishments. The department believes additional wording is unnecessary and does not concur with the suggestion. This section does not, nor do other sections, prohibit multi-year participation agreements; however, §25.407(c) (2) requires that a renewal of a participation agreement be on an annual basis. To further clarify the matter the word "annual" is deleted from §25.407(e) (3) and is revised to read "When the business logo is removed, the participation agreement is terminated between the commercial establishment and the contractor."

The new sections are adopted under Texas Civil Statutes, Article 6666 and Article 4477-9a, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically for the adoption of rules necessary to administer and enforce the specific information logo sign program.

§25.402. Specific Information Logo Sign Program.

(a) Program. The department may award a contract to a person, firm, group, or association in the State of Texas, for an initial period not to exceed five years, to develop, operate, and maintain specific information logo signs at appropriate locations along interstate highways in each county with a population of less than 40,000 according to the latest federal census, subject to the following terms and conditions.

(b) Marketing. In marketing the specific information logo sign program, the contractor shall:

(1) develop an inventory of potential eligible commercial establishments;

(2) send letters explaining the program to potential eligible commercial establishments; and

(3) advertise the program in local papers and post notices at appropriate locations at the county seats.

(c) Market study and site plans. Prior to construction of a specific information logo sign at an approved location, the contractor must submit to the department a market study and site plan. Upon approval of the site plan, the contractor may begin work at the location described.

(d) As-built plans. The contractor shall submit as-built plans to the department within 45 calendar days upon completion of the installation of specific information business logo signs.

(e) Sign erection in first year. In the first year of the contract between the department and contractor, the contractor shall erect specific information logo signs and business logos at a minimum of 40 of the interchanges where participation agreements have been completed between the commercial establishments and the contractor. Specific information logo signs and business logos shall be erected within two years of the execution date of an agreement between the commercial establishments and the contractor pursuant to §25.407 of this title (relating to Program Operation).

(f) Annual report. The contractor shall furnish an annual report to the department. The annual report will include the contractor's financial statement as provided in §25.403 of this title (relating to Prequalification) , summary of eligible interchanges, business logos erected, and number of participation agreements completed. Other reports may also be required throughout the year as determined by the department.

(g) Installation by contractor. Installation of specific information and business logo signs may only be performed by the contractor, a subcontractor approved by the department, or, in emergency situations, by the department. In the event that the department undertakes installation or other duties of the contractor, the contractor shall immediately remit to the department the specified fee or cost of such work.

(h) Department review. Prior to installation, the design and location of business logo signs must be submitted to the department for review. The department shall inspect installation and monitor maintenance.

(i) Additional signing. If the department determines that additional regulatory, warning, or guide signing is needed at an interchange, existing or planned specific information logo signs shall be removed or relocated by the contractor as directed by the department and at the sole expense of the contractor.

(j) Sign maintenance. The specific information logo signs shall be maintained by the contractor in a manner and condition that is a distinct benefit to the safety of the public, benefit to the commercial establishments, and to the satisfaction of the department.

(k) Fees.

(1) The contractor shall assess the following non-refundable fees and shall remit to the department an amount equal to 5.0% of all such fees no later than the seventh business day following the last day of the month such fees are received by the contractor.

(A) Installation fee. A one-time fee in the amount specified in the contractor's bid proposal under §25.404 of this title (relating to Contract Award Procedures) for the installation of the commercial establishment's business logo and, if necessary, ramp business logo.

(B) Annual rental fee. An annual fee for each business logo and for each ramp business logo (for ramp signs) in the respective amounts specified in the contractor's bid proposal under §25.404 of this title (relating to Contract Award Procedures).

(C) Covering fee. A fee of $100 for covering a business logo and the ramp business logo and a fee of $100 for uncovering a business logo and the ramp business logo pursuant to §25. 407 of this title (relating to Program Operation).

(D) Replacement fee. A $100 fee for each business logo and ramp business logo replaced at the request of the commercial establishment.

(2) The contractor shall reduce the annual rental fee a prorated amount for each calendar day when:

(A) the business or ramp business logo(s) has not been erected; or

(B) a previously erected business or ramp business logo is obscured from view of the motorists for a period of time exceeding 10 consecutive calendar days.

(3) A contractor may not reduce the annual fee for the period a business logo or ramp business logo is covered at the request of the commercial establishment.

(l) Bonding. The contractor shall satisfy all requirements of Texas Civil Statutes, Article 5160, relating to bonds.

(m) Permits, licenses, and taxes. The contractor shall procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of the work. When requested, the contractor shall furnish the department with evidence of compliance with the permit, license, and tax requirements.

(n) Records. The contractor shall, consistent with generally accepted accounting principles, maintain all books, documents, paper, advertising contracts, accounting records, and other evidence pertaining to the contract with the department and shall, upon request of the department, make available such documents, records, and information for examination by the department, its designee, or the State Auditor.

(o) Termination. The department or the contractor may terminate the contract upon default of the other party.

(1) If the contractor terminates the contract or defaults prior to the conclusion date of any five-year term, ownership of the contract rights and any rights in the business logo signs constructed at the various interchanges and intersections shall immediately pass to and vest in the department on the effective date of termination, and the contractor shall not be entitled to any compensation.

(2) If the department terminates the contract for reasons other than default of the contractor, the contractor will be paid for a percentage of the fair market value, as established by the department, for each of the specific information logo signs erected. The percentages are as follows: elapsed time since sign installation: zero-one year-90%; one-two years-75%; two-three years-50%; three-four years-25%; four years or greater-0%

(p) Sale, transfer, and assignment of contract. The contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of its right, title, or interest therein, without the prior written consent of the department.

§25.405. Specifications.

(a) Specific information logo signs.

(1) Design. A specific information logo sign shall:

(A) have a blue background with a white reflective border;

(B) contain a principal legend equal in height to the directional legend;

(C) meet the applicable provisions of the Texas MUTCD;

(D) have background material which conforms with department specifications for reflective sheeting;

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details;

(F) provide not more than eight inches vertical spacing and not more than 12 inches horizontal spacing between business logos.

(2) Content. A specific information logo sign shall contain:

(A) word legends for the following services, GAS, FOOD, LODGING, or CAMPING;

(B) the exit number;

(C) no more than four business logos on one sign panel; and

(D) no more than one type of service on a sign panel, or, in an area having fewer than three qualified commercial establishments available for that service, no more than two types of services on that sign panel.

(3) Placement. Subject to approval of the department, a specific information logo sign shall be installed or placed:

(A) to conform to the following order of placement along the direction of travel: CAMPING, LODGING, FOOD, GAS;

(B) according to the following priorities where available space is limited: GAS, FOOD, LODGING, and CAMPING;

(C) to take advantage of natural terrain;

(D) to have the least impact on the scenic environment;

(E) to avoid visual conflict with other signs within the highway right-of-way;

(F) with a lateral offset equal to or greater than existing guide signs;

(G) at least 800 feet from the previous interchange and at least 800 feet from the exit direction sign at the interchange from which the services are available;

(H) without blocking motorists' visibility of existing traffic control and guide signs;

(I) in locations that are not overhead;

(J) where a motorist, after following the sign(s), can conveniently reenter the highway and continue in the original direction of travel; and

(K) at least 800 feet, but not excessively spaced, from another sign having the same legend.

(4) Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate logo signs.

(b) Business logos.

(1) Design. A business logo:

(A) may not exceed 48 inches in width or 36 inches in height;

(B) may be any color or combination of colors; and

(C) may only be fabricated, erected, and maintained in conformance with current department specifications for aluminum signs and reflective sheeting.

(2) Content. A business logo may:

(A) consist of a registered trademark or a legend message identifying the name or abbreviation of the commercial establishment;

(B) contain supplemental information, limited to the word "DIESEL"

on a gas logo or the words "24 HOURS" on a gas or a food logo, the words "DIESEL" and "24 HOURS" not to exceed 6 inches in height;

(C) contain a message, symbol, or trademark only if the message, symbol, or trademark does not resemble an official traffic control device; and

(D) contain text, symbols, or advertising only if the text, symbols, or advertising are related to the primary service of the specific information logo sign.

(c) Ramp signs.

(1) Design. A ramp sign shall:

(A) meet the applicable provisions of the Texas MUTCD;

(B) have a blue background with a white reflective border;

(C) conform with the latest department specifications for reflective sheeting for the background material of the sign; and

(D) be fabricated, erected, and maintained in conformance with the current department specifications for aluminum signs and roadside signs.

(2) Placement. Subject to approval of the department, a ramp sign may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad when a commercial establishment's building or on-premise signing is not visible from that exit ramp, access road, or intersection.

(3) Content. A ramp business logo shall:

(A) be no larger than 24 inches in width and 18 inches in height;

(B) contain directional arrows and distances; and

(C) be a duplicate of the business logo erected on a specific information logo sign.

§25.406. Commercial Establishment Eligibility.

(a) General requirements for eligibility. To be eligible to have a business logo placed on a specific information logo sign, a commercial establishment must:

(1) offer at least one primary motorist service;

(2) be located with driveway access to the interstate access road (frontage road), ramp, or intersecting crossroad;

(3) be located within three miles from an interchange on an interstate highway, or, if no other eligible service of the same kind is located within that distance, be located within 15 miles of the interchange and be issued a permit by the department;

(4) comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin; and

(5) post its hours of operation on or near the main entrance so that they are visible to the public during open and closed hours.

(b) Specific services eligibility. In addition to the general requirements for eligibility to have a business logo placed on a specific information logo sign, a commercial establishment must meet the requirements for at least one of the following primary motorist services.

(1) Gas. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "GAS," a commercial establishment must provide:

(A) vehicle services, including fuel, oil, and water;

(B) tire repair, if the establishment is not a self-service station;

(C) restroom facilities and drinking water;

(D) continuous operation for at least 12 hours per day, seven days a week; and

(E) a telephone accessible to the public.

(2) Food. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "FOOD," a commercial establishment must provide:

(A) a license or other evidence of compliance with public health or sanitation laws, if required by applicable other law;

(B) continuous operation at least 12 hours a day to serve three meals a day;

(C) seating capacity for at least 16 people;

(D) public restrooms; and

(E) a telephone accessible to the public.

(3) Lodging. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "LODGING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating facilities providing lodging, if required by applicable other law;

(B) at least 10 rooms; and

(C) a telephone accessible to the public.

(4) Camping. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "CAMPING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating camping facilities, if required by applicable other law;

(B) adequate parking accommodations; and

(C) modern sanitary facilities and drinking water.

(c) Multiple services eligibility. If a commercial establishment offers more than one primary motorist service, it will be eligible to display a business logo for each of those services on the appropriate specific information logo sign, provided that:

(1) minimum criteria for the service as described in §25.405 of this title (relating to Specifications) are met;

(2) the additional business logo(s) would not prevent participation by another eligible commercial establishment whose sole service would be displaced; and

(3) a business logo space is available.

§25.407. Program Operation.

(a) Commercial establishment application.

(1) Applications for commercial establishments desiring to participate in the specific information logo sign program are available upon request from the Texas Department of Transportation, Division of Maintenance and Operations, 125 East 11th Street, Austin, Texas 78701-2483.

(2) A commercial establishment desiring to participate in the specific information logo sign program must submit an application to the contractor and verify that all requirements are met. Applications must be submitted to the location as stated on the application form. The contractor will verify the eligibility of each applicant.

(3) A separate application is required for each primary motorist service per interchange per direction of travel. Only one application per commercial establishment per primary motorist service per direction of travel per interchange will be accepted.

(4) Applications will be reviewed by the contractor and applicants notified in writing of being qualified or rejected. Rejected applications will be returned and deficiencies noted.

(5) Rejected applicants may resubmit their application when the noted deficiencies have been corrected.

(6) To be eligible for the selection process for the available business logo space(s), available first alternate position, or available second alternate position, a commercial establishment must have submitted a qualified application before the commercial establishment application deadline.

(7) The commercial establishment application deadline for the annual random drawing in the following calendar year is 5 p.m. of the second Tuesday in August, received at the location as stated on the application. The commercial establishment application deadline for an emergency random drawing is 14 calendar days after the business logo space(s), the first alternate position, or the second alternate position becomes available. If no qualified applications are on file or received, the contractor may postpone the commercial establishment application deadline until 14 calendar days after a qualified application is received.

(8) Qualified applications received after the commercial establishment application deadline will be placed on file and considered eligible for future annual and emergency random drawings.

(b) Commercial establishment selection.

(1) Available business logo space(s) and relative placement of business logos on the specific information logo sign, available first alternate position, and available second alternate position for each primary motorist service for each direction of travel at an interchange will be awarded by the annual or emergency random drawing of the qualified applications received before the commercial establishment application deadline. The relative placement of business logos in available space(s), in order of selection, is upper left, upper right, lower left, and lower right.

(2) The annual random drawing will be held publicly by the contractor on the second Tuesday of September in the presence of two or more department employees. Emergency random drawings will be held publicly as needed in the presence of two or more department employees. Emergency random drawings of qualified applicants will be held no earlier than 20 days nor later than 45 days after the commercial establishment application deadline. Emergency random drawings will not be held within 45 days prior to the annual random drawings.

(3) When a business logo space(s) becomes available, the first and second alternates have first right of refusal, respectively, for the available business logo space. If the first alternate accepts an available business logo space, the second alternate then becomes the first alternate with first right of refusal for any existing or future available business logo space. Any remaining available business logo space(s), available first alternate position, or available second alternate position are awarded by the annual or emergency random drawings.

(4) If the number of qualified applicants is less than or equal to the number of available business logo space(s) at the time of the commercial application deadline, the available space(s) will be awarded to the qualified applicants. The random drawing will determine only the relative placement of the business logo signs in the available space(s).

(5) The contractor shall notify the commercial establishment by certified mail of the award of specific information business logo sign space within 10 calendar days of the date of the award. To accept the award, the commercial establishment must execute a written participation agreement with the contractor within 30 calendar days of the date of the award. The participation agreement shall be in a form as prescribed by the department and shall, at a minimum, contain all applicable provisions prescribed by this undesignated head.

(c) Responsibilities and rights of commercial establishment.

(1) The commercial establishment must provide a business logo and, if necessary, ramp business logo(s) within 60 days of notification by the contractor of the contractor's intent to erect the specific information logo signs or ramp signs.

(2) A commercial establishment may renew its participation agreement with the contractor on an annual basis no later than July 31 of the last year of the contract. If the commercial establishment does not renew the agreement with the contractor, the contractor will remove the business logo at the end of the participation agreement, and will make the vacated space(s) available to other commercial establishments pursuant to subsection (b) of this section

(d) Covering of business logo. . business logo and the ramp business logo(s) of a commercial establishment may be covered by the contractor if the commercial establishment is temporarily closed for a period not exceeding 30 calendar days. Unless removed pursuant to subsection (e) of this section, the business logo and ramp business logo(s) will remain covered until the commercial establishment reopens.

(e) Removal of business logo.

(1) A business logo of a participating commercial establishment shall be removed by the contractor if the commercial establishment:

(A) ceases to exist;

(B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified on the agreement;

(C) is temporarily closed for more than 30 calendar days;

(D) does not meet the minimum requirements as stated herein, and all corrections are not made within 30 calendar days of written notification;

(E) is sold, and the new commercial establishment does not continue the original primary motorist service or does not meet the minimum requirements for the primary motorist service; or

(F) has not provided a replacement business logo sign within 60 calendar days of written notification that the business logo is missing, damaged, broken, or faded.

(2) Removal of a business logo by the contractor will include the removal of the commercial establishment's ramp business logo sign(s).

(3) When the business logo is removed, the participation agreement is terminated between the commercial establishment and the contractor. All funds paid to the contractor by the commercial establishment are forfeited. Upon removal of a business logo, the vacated space becomes available pursuant to subsection (b) of this section. A replacement commercial business is selected, as stated in the commercial establishment selection process.

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 30, 1992.

TRD-9213253 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: October 21, 1992

Proposal publication date: June 9, 1992

For further information, please call: (512) 463-8630

Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance on September 30, 1992, adopted amendments to Endorsements 593 and TE 00 39A in the Texas Automobile Rules and Rating Manual (the Manual) and the Texas Standard Provisions for Automobile Insurance Policies (the Standard Provisions).

One amendment to Endorsement 593 allows the insurer to require the policyholder to submit a sworn proof of loss and to submit to examination under oath as currently required by the Personal Auto Policy. All other amendments are editorial in nature.

The amendments are adopted to be effective for policies issued on and after 12:01 a.m., December 1, 1992. For further information or to request copies of the Board Order, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number O-0892-48-I).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 October 2, 1992.

TRD-9213363 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date:December 1, 1992

For further information, please call: (512) 463-6327

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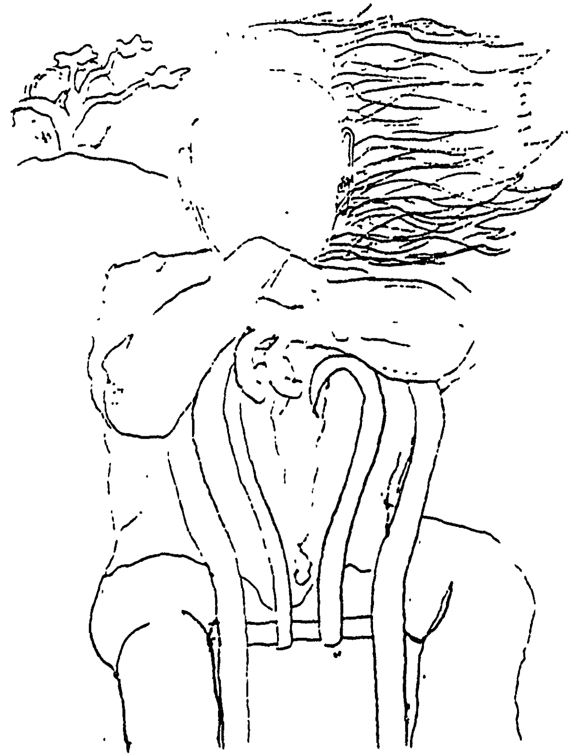

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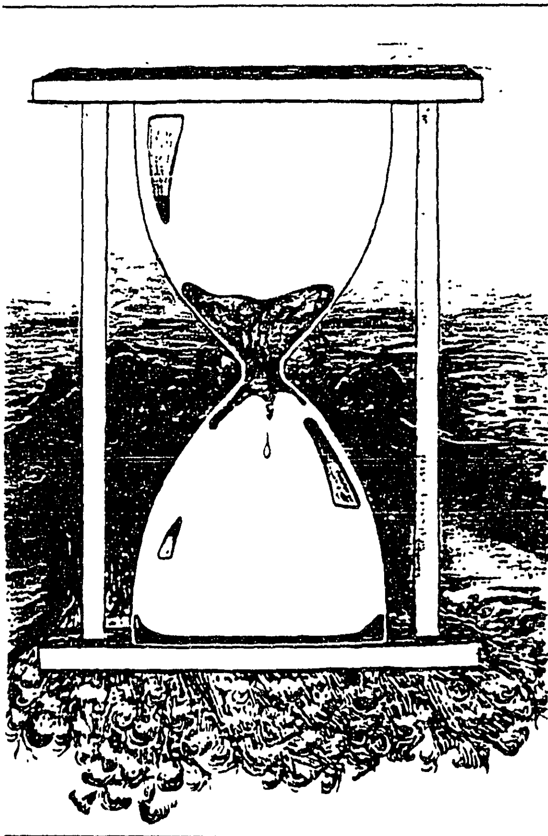

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Open Meetings

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

Thursday, December 3, 1992, 9 a.m. The Office of Hearings of the Texas Department of Agriculture will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 924A, Austin. According to the complete agenda, the administrative hearing will review: alleged violation of Texas Agriculture Code, §76.114(a) and 4 Texas Administrative Code, §7.18, by Don T. Haynes.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: October 5, 1992, 10:01 a.m.

TRD-9213425

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Texas Air Control Board

Thursday, October 15, 1992, 10 a.m. The Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the complete agenda, the board will call the meeting to order; hear public testimony; possibly consider and act on removing the agenda of the October 16, 1992, meeting the Agreed Fnforcement Order for Exxon Company, U.S. A., Travis County; and adjourn.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: October 5, 1992, 11:05 a.m.

TRD-9213429

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Texas Bond Review Board

Tuesday, October 13, 1992, 10 a.m. The Staff of the Texas Bond Review Board will meet at the Clements Building, Room 101, 300 West 15th Street, Austin. According to the agenda summary, the staff will call the meeting to order; discuss approval of the minutes; discuss proposed issues; other business; and adjourn.

Contact: Tom K. Pollard, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: October 5, 1992, 4:09 p.m.

TRD-9213446

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Texas Cancer Council

Thursday, October 29, 1992, 5:30 p.m. The Breast and Cervical Cancer Strategic Planning Steering Committee of the Texas Cancer Council will meet at the Longview Public Library, 222 West Cotton, Longview. According to the complete agenda, the committee will discuss opening remarks; testimony; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large pring, or braille, are requested to contact Gale Morrow at (512) 463-3190 or Lucy Dixon at (903) 663-2403, five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Gale Morrow, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: October 2, 1992, 3:54 p.m.

TRD-9213352

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Texas Department of Commerce

Wednesday, October 14, 1992, 9:30 a.m. The International Trade Commission of the Texas Department of Commerce will meet at the First City Center Building, 11th Floor Board Room, 816 Congress Avenue, Austin. According to the agenda summary, the commission will call the meeting to order; discuss approval of minutes; business development report; discuss report to legislature; discuss committee structure; foreign trade zone update; lunch (includes discussion on North American Free Trade Agreement with Texas/Mexico Authority); and adjourn. NOTICE-Persons with disabilities who plan to attend this meeting and who may need auxillary aids or services are requested to contact Adriana Jimenez at (512) 320-9673 at least two days before this meeting so that appropriate arrangements can be made. Also contact Adriana Jimnenez at (512) 320-9673 if you need assistance in having English translated into Spanish.

Contact: Deborah Kastrin, 410 East Fifth Street, Fourth Floor, Austin, Texas 78701, (512) 320-9640.

Filed: October 6, 1992, 9:29 a.m.

TRD-9213468

Wednesday, October 14, 1992, 11 a.m. The Texas/Mexico Authority of the Texas Department of Commerce will meet at the First City Centre, 11th Floor Board Room, 816 Congress Avenue, Austin. According to the agenda summary, the authority will call the meeting to order; discuss approval of minutes; lunch (includes discussion of North American Free Trade Agreement with the International Trade Commission); Texas Marketplace; Texas/Mexico border environmental priorities; bi-state agree-

ments and commission; legislation update; and adjourn. NOTICE-Persons with disabilities who plan to attend this meeting and who may need auxillary aids or services are requested to contact Adriana Jimenez at (512) 320-9673 at least two days before this meeting so that appropriate arrangements can be made. Also contact Adriana Jimenez at (512) 320-9673 if you need assistance in having English translated into Spanish.

Contact: Deborah Kastrin, 410 East Fifth Street, Fourth Floor, Austin, Texas 78701, (512) 320-9640.

Filed: October 6, 1992, 9:29 a.m.

TRD-9213469

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Texas Department of Criminal Justice

Tuesday, October 13, 1992, 9 a.m. The Board of Pardons and Paroles, Executive Committee of the Texas Department of Criminal Justice will meet and attend a presentation at the New Vision Treatment Facility, Main Administration Building, Visitation Room, 701 South IH 35, Kyle. According to the complete agenda, the board will discuss the Chemical Dependency Treatment Program.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5408.

Filed: October 2, 1992, 2:05 p.m.

TRD-9213342

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Interagency Council on Early Childhood Intervention

Wednesday, October 7, 1992, 9 a.m. The Interagency Council on Early Childhood Intervention met at Room M-652, 1100 West 49th Street, Austin. According to the emergency revised complete agenda, the council heard public comments; discussed approval of minutes of previous meeting; discussed and acted on: public hearings and federal applications; funding alternative for entitlement/approval of preliminary plan to study alternatives; planned to review and revise monitoring cycle; reported and recommendations from advisory committee; medicaid efforts; legal opinions related to financial disclosure; emergency rule amendment to 25 TAC, §621.64; rule amendment to 25 TAC, §621.23, regarding eligibility of children who exhibit a typical behaviors and/or are prenatally exposed to drugs; impact of the Texas Department of Mental Health/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. The emergency meeting was necessary due to having agenda items cite proper sections for amendment in Texas Administrative Code.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673.

Filed: October 1, 1992, 3:51 p.m.

TRD-9213316

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Texas Education Agency

Thursday, October 15, 1992, 10 a.m. The Driver Training School Advisory Commission (DTSAC) of the Texas Education Agency will meet at Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss approval of the minutes of the May 21, 1992, meeting; possibly act and report on position paper on proposed rule changes, similarity between private and public driver training schools, and a six hour driving safety course; possibly act on prohibition of driving safety courses from being held in establishments that serve alcoholic beverages; possibly act on NTSI letter; discuss director's report; state board of education rules; DTSAC membership; and program approval process.

Contact: Dee Bednar, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-3454.

Filed: October 5, 1992, 9:26 a.m.

TRD-9213389

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Texas Employment Commission

Tuesday, October 13, 1992, 8:30 a.m. The Texas Employment Commission will meet at Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals listed on commission Docket 41; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 5, 1992, 4:04 p.m.

TRD-9213445

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Texas Department of Human Services

Thursday, October 15, 1992, 1 p.m. The Sanctions and Penalties Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st, 2nd Floor, West Tower, Classroom 2, Austin. According to the complete agenda, the committee will discuss opening comments: deputy commissioner's comments; approval of minutes; staff presentation of public comments to proposed rules; have open discussion; set next meeting; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: October 5, 1992, 3:53 p.m.

TRD-9213444

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Texas Department of Insurance

Tuesday, October 13, 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 George Thomas Brabham, Austin, for a resident insurance adjuster's license. Docket Number 11572.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: October 5, 1992, 2:25 p.m.

TRD-9213441

Wednesday, October 14, 1992, 9 a.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 whether disciplinary action should be taken against Frank W. Pittman who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II Insurance Agent's license. Docket Number 11563.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: October 5, 1992, 2:24 p.m.

TRD-9213440

Wednesday, October 14, 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 complete agenda, the board will hold a public hearing under Docket Number 1943 to receive public comment and take possible action on a proposed statistical program and statistical plan for the collection of private passenger automobile insurance statistical data and market information; including, consideration of appointment of a working

group to consider technical issues involved in the collection of the insurer information required by the board.

Contact: Angelina Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 5, 1992, 4:14 p.m.

TRD-9213449

Wednesday, October 14, 1929, 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; solvency; litigation; commissioner's orders; budget; consider two petitions filed by James Mallett; consider a petition filed on behalf on the Texas Automobile Insurance Service Office proposing amendments to the Texas Automobile Rule and Rating Manual; consider a filing by the Fidelity and deposit Companies for approval of a premium rate for the STAMP Surety Bond; consider hearings officers' proposal for decision in Docket Number 1859 concerning the application of Eva Jauregui for review of the action of the Texas Catastrophe Property Insurance Association.

Contact: Angelina Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 5, 1992, 4:14 p.m.

TRD-9213450

Thursday, October 15, 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; solvency; litigation; budget; commissioner's orders; Workers' Compensation deductible endorsements by Texas Builders Insurance Company and Liberty Mutual Insurance Group; consider proposed amendment to 28 TAC §5.3301 concerning new form #723 for property rating inspections; consider proposed amendments to 28 TAC §5.401 concerning no prior insurance; consider filings by Firemans' Fund Insurance Company, et al, Truck Insurance Exchange, CUMIS Insurance Society, Inc., CNA Insurance Companies, United States Fidelity and Guaranty Group, American International Insurance Company, Fireman's Fund Group of Companies; briefing by Texas Workers' Compensation Insurance Facility concerning results of applying rate differential factor of the Tabular Surcharge Plan approved by the board on April 23, 1992.

Contact: Angelina Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 5, 1992, 4:15 p.m.

TRD-9213451

Thursday, October 15, 1992, 9 a.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 whether disciplinary action should be taken against Kim L. Murphy who holds a Group V, Local Recording Agent's license. Docket Number 11564.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: October 5, 1992, 2:24 p.m.

TRD-9213439

Friday, October 16, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider a petition filed by the staff of the Texas Department of Insurance proposing amendments to Rule IX entitled "Employee Leasing Arrangements, of the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employers' Liability Insurance and Employee Leasing Forms El-1 and EL-1A.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A Austin, Texas 78701, (512) 463-6527.

Filed: October 2, 1992, 3:49 p.m.

TRD-9213350

Wednesday, November 4, 1992, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1939 to consider rate filing outside statutory limitation filed by Texas Pacific Indemnity Corporation pursuant to Article 5.101, §3(f), which requests a reate of 45% above the benchmark rate on all coverages, classifications, and territories for private passenger auto for substandard business; under Docket Number 1938 to consider a rate filing outside statutory limitation filed by Northwest Pacific Indemnity Corporation pursuant to Article 5.101, §3(f), which requests a rate of 100% above the benchmark rate on all coverages, classifications, and territories for private passenger auto for substandard business.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A Austin, Texas 78701, (512) 463-6527.

Filed: October 2, 1992, 3:50 p.m.

TRD-9213351

Thursday, November 5, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number R-1940 concerning possible adoption of proposed amendments to 28 TAC 7.1010 concerning rates of assessment and charges to cover the expenses of examining insurance companies.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A Austin, Texas 78701, (512) 463-6527.

Filed: October 2, 1992, 3:49 p.m.

TRD-9213349

Tuesday, November 17, 1992, 9 a.m. (Rescheduled from Tuesday, October 15, 1992). 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 hearing under Docket Number R-1926 to consider final action on proposed new 28 TAC §7.401, concerning the regulation of risk-based capital and surplus requirements for life insurance companies, fraternal benefit societies, mutual life insurance companies and stipulated premium companies. The proposed rule was published in the July 28, 1992 issue of the *Texas Register* (17 TexReg 5262). The comment period expired on August 28, 1992.

Contact: Angelina Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 5, 1992, 4:16 p.m.

TRD-9213453

Tuesday, November 17, 1992, 1:30 p.m. (Rescheduled from Tuesday, October 15, 1992). 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 tot he underwriting, financial, and investment risks of a property/casualty insurer.

Contact: Angelina Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 5, 1992, 4:16 p.m.

TRD-9213452

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Lamar University System, Board of Regents

Monday, October 5, 1992, 2 p.m. The Policy Manual Review Subcommittee of the Lamar University System, Board of Regents met at the John Gray Institute-Map Room, 855 Florida, Beaumont. According to the complete agenda, the subcommittee discussed Item 579: heard and considered revisions; and considered approval of a recommendation to the board revisions to the Lamar University System policy manual.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 2, 1992, 8:39 a.m.

TRD-9213328

Thursday, October 8, 1992, 9 a.m. The Committees of the Lamar University System, Board of Regents met at the John Gray Institute-Map Room, 855 Florida, Beaumont. According to the agenda summary, the committee discussed the committee of the whole; building and grounds committee; academic affairs committee; athletic committee; finance and audit committee; policy manual review subcommittee; personnel committee; and met in executive session-held under provisions of Vernon's Civil Statutes, Article 6252-17, §2, Paragraph 3, e, legal; f, real estate; and g, personnel.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 2, 1992, 2:24 p.m.

TRD-9213343

Thursday, October 8, 1992, 1:30 p.m. The Board of the Lamar University System, Board of Regents met at the John Gray Institute-Map Room, 855 Florida, Beaumont. According to the agenda summary, the board called the meeting to order-invocation; heard chairman's and chancellor's comments; considered recommendations of committee of the whole, building and grounds committee, academic affairs committee, athletic committee, finance and audit committee, policy manual review subcommittee, and personnel committee; heard regents' comments and suggestions; and adjourned.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 5, 1992, 8:44 a.m.

TRD-9213383

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Texas State Library and Archives Commission

Thursday, October 15, 1992, 2 p.m. The Records Management and Preservation Advisory Committee of the Texas State Library and Archives Commission will meet at the Texas State Library Records Center, 4400 Shoal Creek Boulevard, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the September meeting; discuss rules establishing standards and procedures for electronic records of state agencies and local governments; and other business.

Contact: James G. Templeton, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2299.

Filed: October 6, 1992, 9:13 a.m.

TRD-9213460

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Texas Department of Licensing and Regulation

Monday, October 12, 1992, 9 a.m. The Inspections/Investigations; Personnel Employment Service of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will conduct an administrative hearing to assess an administrative penalty, deny, revoke, or suspend the license of Roger De La Garza doing business as Professional Employment Agency, pursuant to V.T.C.S., Articles 9100 and 5221a-7.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 1, 1992, 4:26 p.m.

TRD-9213320

Tuesday, October 13, 1992, 10 a.m. The Inspections/Investigations; Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will conduct an administrative hearing to consider a disputed claim by Myrtle M. McCroskey of one Champion manufactured home, Serial Number 797181215; V.T.C.S., Articles 5221f and 9100.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 1, 1992, 4:26 p.m.

TRD-9213321

Wednesday, October 14, 1992, 10 a.m. The Policies and Standards Division of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the division will consider the final adoption of proposed amendments to Chapter 80, Tow Trucks.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: October 2, 1992, 1:20 p.m.

TRD-9213337

Thursday, October 15, 1992, 10 a.m. The Policies and Standards Division of the Texas Department of Licensing and Regulation will meet at the Arlington City Council Chamber, 1st Floor, 101 West Abrams, Arlington. According to the complete agenda, the division will consider the final adoption of proposed amendments to Chapter 80, Tow Trucks.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: October 2, 1992, 1:20 p.m.

TRD-9213336

Friday, October 16, 1992, 10 a.m. The Policies and Standards Division of the Texas Department of Licensing and Regulation will meet at the Harris County Court Administration Building, 101 Preston, 9th Floor, Houston. According to the complete agenda, the division will consider the final adoption of proposed amendments to Chapter 80, Tow Trucks.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: October 2, 1992, 1:21 p.m.

TRD-9213338

Tuesday, October 20, 1992, 9 a.m. The Inspections/Investigations; Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider a disputed claim by John Turbeville of one Monterey manufactured home, Serial Number 12011873, pursuant to V.T.C.S., Articles 5221f and 9100.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 1, 1992, 4:26 p.m.

TRD-9213319

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Texas Board of Licensure for Nursing Home Administrators

Saturday, November 14, 1992, 10 a.m. (Rescheduled from October 9, 1992). The Finance Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, #310, Austin. According to the complete agenda, the committee will call the meeting to order; discuss LAR; budget hearings; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: October 5, 1992, 11:49 a.m.

TRD-9213433

Saturday, November 14, 1992, 10 a.m. (Rescheduled from October 9, 1992). The Policy Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, #310, Austin. According to the complete agenda, the committee will call the meeting to order; discuss application rules; discuss board policy on public comment; discuss advisory committee report; $10 continuing education fee; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: October 5, 1992, 11:50 a.m.

TRD-9213434

Saturday, November 14, 1992, 10 a.m. (Rescheduled from October 9, 1992). The Education Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, #310, Austin. According to the complete agenda, the committee will call the meeting to order; discuss advisory committee report; hear report on the confirmation for starting the NAB; presentation of information regarding university proposals to design, revise and construct the state standards exam; discuss $10 fee for continuing education; discuss increase in continuing education requirements to 40 hours; discuss waivers; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: October 5, 1992, 11:50 a.m.

TRD-9213435

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Texas Optometry Board

Tuesday, October 13, 1992, 2:30 p.m. The Technical Advisory Committee on Drug Formulary of the Texas Optometry Board will meet at the Texas Optometry Board Office, Suite 214, Austin. According to the complete agenda, the five-member technical advisory committee established by Article 4552, §1.03(e) and (f), VACS, will hold its annual meeting as provided by Rule 280.4(a) to determine additions, deletions, or changes to the list of pharmaceutical agents to be used by therapeutic optometrists and make recommendations to the Texas Optometry Board for consideration.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: October 5, 1992, 3:24 p.m.

TRD-9213443

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Texas State Board of Pharmacy

Thursday, October 15, 1992, 10 a.m. The Texas State Board of Pharmacy will meet at the Clements Building, 300 West 15th, 4th Floor, Room 408, Austin. According to the complete agenda, the office of administrative hearings will conduct a hearing in the matter of Freddy J. Cooper v. TSBP; request for reinstatement of license to practice pharmacy.

Contact: Carol Fisher, 8505 Cross Park Drive, #110, Austin, Texas 78754-4594, (512) 832-0661.

Filed: October 1, 1992, 3:49 p.m.

TRD-9213313

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Texas Department of Protective and Regulatory Services

Friday-Saturday, October 9-10, 1992, 6 p.m. and 8:30 a.m. The Texas Board of the Texas Department of Protective and Regulatory will meet at 701 West 51st, 1st Floor, East Tower, Board Room, Austin. According to the complete agenda, the board will hold a work session on strategic planning and LAR planning. Following the work session, the board will take action as necessary on the following agenda items: Fiscal Year 1993 budget adjustments, strategic plan, LAR for Fiscal Year 1994-1995, screening committee for executive director position, and automation; will meet in closed executive session to evaluate and consider the duties of personnel in exempt positions, to consider Protective and Regulatory Service and support staff reassignments and transfers, and filling the position of executive director; and reconvene in open session to take action, if necessary, resulting from discussion in executive session.

Contact: Sherry Wilkins, P.O. Box 149303, Mail Code, W-639, Austin, Texas 78714-9030, (512) 450-4890.

Filed: October 1, 1992, 4:04 p.m.

TRD-9213318

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Public Utility Commission of Texas

Tuesday, October 13, 1992, 9 a.m.(CHR) The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the commission will consider the Appeal of Examiner's Order Number 34 in Docket Number 10894-application of Gulf States Utilities Company to reconcile fuel costs, establish new fixed fuel factors, and recover its under-recovered fuel expense.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 1, 1992, 3:11 p.m.

TRD-9213311

Tuesday, October 13, 1992, 9:05 a.m. The Administrative of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the administrative will discuss reports; discuss and act on budget and fiscal matters; approval of proposed comments to the United States Department of Energy in response to the DOE's "Request for Comments Concerning State Policies Affecting Natural Gas Consumption"; adjourn for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and adjourn.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 5, 1992, 3:09 p.m.

TRD-9213442

Monday, October 19, 1992, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11485-petition of American Tele-Access, Inc. asking that all local exchange carriers provide it with an abbreviated N11 dialing code.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 1, 1992, 3:10 p.m.

TRD-9213309

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 11487-inquiry of the general counsel into the marketing and business practices of Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 2, 1992, 3:14 p.m.

TRD-9213345

Monday, November 16, 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 9640-complaint of Metropolitan Fiber Systems, Inc. against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 2, 1992, 3:13 p.m.

TRD-9213344

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Texas Council on Vocational Education

Tuesday, October 13, 1992, 10 a.m. The Texas Council on Vocational Education will hold an emergency meeting (via conference call) at 1616 Guadalupe Street, Room 501, Austin. According to the agenda summary, the council will call the meeting to order; meet in executive session to discuss filling the position of executive director of the council; actions, if any, from the executive session will be reported. A speaker phone will be available for those who would like to attend the open session of the meeting. The emergency status is necessary as the meeting was lost in interagency mail.

Contact: Lynda S. Rife, P.O. Box 1886, Austin, Texas 78767, (512) 463-5490.

Filed: October 6, 1992, 9:12 a.m.

TRD-9213459

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Texas Department of Transportation

Tuesday, October 20, 1992, 8 a.m. The Texas Transportation Commission of the Texas Department of Transportation will meet at the Texas A&M University Campus, Memorial Student Center, Room 206, College Station. According to the agenda summary, the commission will consider approval of Operation Plan for Information Resources; and final adoption of the 1993-1995 Statewide Transportation Improvement Program.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: October 6, 1992, 9:33 a.m.

TRD-9213471

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University of Texas System

Friday, October 9, 1992, 10 a.m. The Board of Regents and Standing Committees of the University of Texas System will meet at Room 1.212, Conference Center, U.T. Dallas, 2601 North Floyd Road, Richardson. According to the agenda summary, the board will consider amendments to RRR; Chancellor's Docket (submitted by System Administration); U.T. Austin-Brackenridge Matching Programs; Bond Matters; Student Constitutions; degree programs; U.T. Permian Basin-fees; appointments to endowed academic positions; academic agreements; buildings and grounds matters including approval for projects; final plans; and award of contracts; investment matters; acceptance of gifts, bequests and estates, establishment of endowed positions and funds; and potential litigation as detailed on the complete agenda.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: October 2, 1992, 1:13 p.m.

TRD-9213335

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Texas Veterans Commission

Thursday, October 29, 1992, 10 a.m. The Texas Veterans Commission will meet at the E.O. Thompson Building, 6th Floor, 10th and Colorado Street, Austin. According to the complete agenda, the commission will consider reports of commission; elect officers for the coming year; discuss uniform service regions for the State; discuss veterans preference in State employment; report on the status of the State Veterans Home Study; and make decisions regarding administrative matters pertaining to veterans' counseling and assistance.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

Filed: October 5, 1992, 10 a.m.

TRD-9213423

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Texas Water Commission

Wednesday, October 14, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the uncontested agenda: hazardous waste permit; underground injection permit; contracts; budget; and examiner's memorandum and order; in addition, the commission will consider items previously posted for open meeting and such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: October 2, 1992, 4:22 p.m.

TRD-9213354

Wednesday, October 14, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the contested agenda: enforcement action; adoption of rules; meet in executive session; in addition, the commission will consider items previously posted for open meeting and such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: October 2, 1992, 4:22 p.m.

TRD-9213355

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Regional Meetings

Meetings Filed October 1, 1992

The Bosque, Erath, Hill, Johnson, and Somervell County Education District 21 met at the Glen Rose Middle School Cafeteria, 812 College Street, Glen Rose, October 5, 1992, at 7:30 p.m. Information may be obtained from Jo Wilson, 726 North Clinton, Stephenville, Texas 76401, (817) 968-7990. TRD-9213312.

The Bosque, Erath, Hill, Johnson, and Somervell County Education District 21 met at the Glen Rose Middle School Cafeteria, 812 College Street, Glen Rose, October 5, 1992, at 8 p.m. Information may be obtained from Jo Wilson, 726 North Clinton, Stephenville, Texas 76401, (817) 968-7990. TRD-9213307

The County Education District Number 20 Board of Trustees met at the Dumas High School Library, Third and Kline, Dumas, October 8, 1992, at 7 p. m. Information may be obtained from Dwain Walker, 7200 I-40 West, Amarillo, Texas 79106-2598, (806) 354-4252. TRD-9213314.

The Dawson County Central Appraisal District Board of Directors met at 920 North Dallas Avenue, Lamesa, October 7, 1992, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9213304.

The Hays County Appraisal District Board of Directors met at 632 "A" East Hopkins, Municipal Building, San Marcos, October 8, 1992, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9213317.

The Hockley County Appraisal District Appraisal Review Board met at 1103-C Houston Street, Levelland, October 6, 1992, at 7 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9213301.

The North Central Texas Council of Governments for the Local Government Investment Fund for Texas will meet at 400 East Las Colinas Boulevard, 9th Floor, Irving, October 16, 1992, at noon. Information may be obtained from Charles Cason, III, P.O. Drawer COG, Arlington, Texas 76005, (817) 640-3300, extension 110. TRD-9213315.

The San Patricio County Appraisal District Board of Directors met at 1146 East Market, Sinton, October 8, 1992, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9213302.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Ft. Worth, October 20-22, 1992, at 8:30 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Ft. Worth, Texas 76118, (817) 284-8884. TRD-9213305.

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Meetings Filed October 2, 1992

The Aqua Water Supply Corporation met at 305 Eskew, Aqua Office, Bastrop, October 5, 1992, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Box P, Bastrop, Texas 78602, (512) 321-3943. TRD-9213333.

The Bell-Milam-Falls Water Supply Corporation Board of Directors met at the WSC Office, FM 485, Cameron, October 6, 1992, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9213327.

The Dallas Area Rapid Transit Budget and Finance Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, October 6, 1992, at 11 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (512) 658-6237. TRD-9213359.

The Dallas Area Rapid Transit Rail Planning and Development Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, October 6, 1992, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (512) 658-6237. TRD-9213358.

The Dallas Area Rapid Transit Committee-of-the-Whole, met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, October 6, 1992, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (512) 658-6237. TRD-9213357.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, October 6, 1992, at 11:30 a.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9213353.

The Gonzales County Appraisal District Board of Directors met at the 928 St. Paul Street, Gonzales, October 8, 1992, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9213356.

The Grand Parkway Association met at 5757 Woodway, Suite 140 East Wing, Houston, October 7, 1992, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9213331.

The Hunt County Appraisal District Board of Directors met at the Hunt County Appraisal District Board Room, 4801 King Street, Greenville, October 8, 1992, at 6:30 p.m. Information may be obtained from Shirley Smith, 4815-B King Street, Greenville, Texas 75401, (903) 454-3510. TRD-9213381.

The Kendall Appraisal District Kendall Appraisal Review Board will meet at 121 South Main Street, Kendall Appraisal Office, Boerne, October 28, 1992, at 9 a.m. Information may be obtained from J.P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9213330.

The Lower Rio Grande Valley Tech Prep/Associate Degree Consortium Steering Committee met at the Short Course Center, Texas State Technical College, Harlingen, October 8, 1992, at 2:30 p.m. Information may be obtained from Pat Bubb, Tech Prep Project, TSTC-Harlingen, Harlingen, Texas 78550-3697, (512) 425-0729. TRD-9213346.

The Manville Water Supply Corporation Board of Directors met at the Manville Water Supply Corporation Office, Spur 277, Coupland, October 8, 1992, at 7 p.m. Information may be obtained from LaVerne Rohlack, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9213329.

The Mills County Appraisal District met at the Mills County Courthouse-Jury Room, Goldthwaite, October 5, 1992, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9213332.

Meetings Filed October 5, 1992

The Appraisal District of Jones County Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, October 15, 1992, at 8:30 a.m. Information may be obtained from John Steele, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9213410.

The Bosque Central Appraisal District Appraisal Review Board will meet at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, October 9, 1992, at 9 a.m. Information may be obtained from Billye L. McGehee, P.O. Box 393, Meridian, Texas 76665, (817) 435-2304. TRD-9213432.

The Creedmoor Maha Water Supply Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, October 7, 1992, at 7:30 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991. TRD-9213384.

The Deep East Texas Private Industry Council, Inc. Planning Committee and Educational Advisory Subcommittee will meet at Room 102, City Hall, Lufkin, October 13, 1992, at 1 p.m. Information may be obtained from Charlene Meadows, P.O.

Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9213416.

The Deep East Texas Private Industry Council, Inc. will meet at Room 102, City Hall, Lufkin, October 13, 1992, at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9213415.

The Elm Creek Supply Corporation Board will meet at the Willow Grove Baptist Church, Moody, October 12, 1992, at 7 a.m. Information may be obtained from Paulette Richardson, Route 1, Box 538, Moody, Texas 76557. TRD-9213419.

The Erath County Appraisal District Board of Directors will meet at the Board Room, 1390 Harbin Drive, Stephenville, October 15, 1992, at 7 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9213413.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, October 13, 1992, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9213454.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at the Lavaca County Central Appraisal District, 113 North Main, Hallettsville, October 14, 1992, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9213420.

The Red River Authority of Texas Board of Directors will meet at the Wichita Falls Activity Center, Room 215, 607 10th Street, Wichita Falls, October 21, 1992, at 9:30 a.m. Information may be obtained from Ronald J. Glenn, 900 Eighth Street, Suite 520, Wichita Falls, Texas 76301-6894, (817) 723-8697. TRD-9213437.

The Tarrant Appraisal District Board of Directors will meet at 2315 Gravel Road, Fort Worth, October 9, 1992, at 9 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TR
9213436.

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Meetings Filed October 6, 1992

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors will meet at the Natalia District Office, Highway 132, Natalia, October 12, 1992, at 8 a.m. Information may be obtained from John H. Ward, III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9213457.

The Sulphur River Basin Authority Board of Directors will meet at the Mt. Pleasant Chamber of Commerce Building, 1604 North Jefferson Street, Mt. Pleasant, October 13, 1992, at 11 a.m. Information may be obtained from William Morriss, P.O. Box 240, Texarkana, Texas 75504, (903) 793-5511. TRD-9213456.

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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.

Texas Commission on Alcohol and Drug Abuse

Notice of Request for Proposals

The Texas Commission on Alcohol and Drug Abuse, under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, gives notice of an In-Prison Therapeutic Community Treatment Request for Proposals (ITC RFP) . The program is to be conducted under the Government Code, Chapter 501, Subchapter C, §501.0931. The RFP provides an avenue for applicants to request funds to provide all aspects of therapeutic community programming to inmates who have a history of drug or alcohol abuse and need drug or alcohol treatment. The commission is soliciting applications for a nine-month treatment program, with a capacity of 432 chemical dependency treatment beds for adult male inmates in fiscal year 1993. The ITC facility will be the Clements Unit located in Amarillo.

To request a copy of the RFP, call the Funding Processes Department at (512) 867-8752 or Tex-An 243-8752, or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Department, 720 Brazos Street, Suite 403, Austin, Texas 78701.

The closing date for receipt of applications by the commission is 5 p.m. on November 6, 1992. Approved programs will be funded for the period March 1, 1993-August 31, 1993.

The maximum amount of funds that will be available annually is $1,419,120. These funds are authorized by the General Appropriations Act through an interagency contract with the Texas Department of Criminal Justice.

Eligible applicants are public, private nonprofit, and for-profit entities which have experience in the development and implementation of therapeutic community treatment programs in a correctional or incarcerate setting.

Technical assistance will only be offered through a workshop. The workshop will be held on October 19, 1992, for all potential applicants. The workshop will be devoted to discussion of RFP requirements and technical assistance with application preparation.

It is TCADA's intent that all applicants receive the same information and assistance. Therefore, the workshop will be the single opportunity for applicants to ask questions, and all questions asked and answered will be in the presence of all attending. There will be no other opportunities for applicants to receive assistance regarding this RFP.

Workshop date, time, and location is: October 19, 1992, 9 a.m. to 5 p.m., Amarillo, Northwest Texas Hospital, The Pavilion, 7201 Evans. A tour of the Clements Unit is planned in conjunction with the workshop.

Individuals needing auxiliary aids or services should notify Lynn Brunn-Shank at (512) 867-8113 at least two working days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Issued in Austin, Texas, on October 2, 1992.

TRD-9213386 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: October 5, 1992

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Texas Education Agency

Request for Applications #701-92-052

RFA #701-92-052. This request for applications is filed in accordance with 45 Code of Federal Regulations, Chapter XXV, National and Community Service Act.

Description. The Texas Education Agency (TEA) requests applications for the implementation, operation, or expansion of school-based, community-based, or adult volunteer or partnership service programs that involve school age youth as resources in addressing and finding solutions to critical human issues within their communities (RFA #701-92-052). A minimum of 11 grants will be awarded for the development and integration of community service-learning activities throughout the curriculum. Partnerships will be formed to promote the overall infusion of service-learning within the school, home and community environments. With assistance from staff at the Texas Education Agency, the grantee will also be responsible for implementing an evaluation of all activities involved.

Eligible Applicants. Eligible applicants include any local education agency working in partnership with one or more public or private nonprofit organizations (or private for-profit businesses; for adult volunteer or partnership programs only) or a public or private nonprofit organization working in partnership with one or more local education agencies. Education service centers may apply as fiscal/management agents of a cooperative of school districts in partnership with on or more public or private nonprofit organizations. Priority will be given to projects that: integrate community service into the academic curriculum, include service-learning as a requirement for graduation, offer community service-learning as an elective, or have community service-learning as a government or civics course component.

Dates of Project. The project starting date will be on or about December 1, 1992. The project ending date will be no later than September 30, 1993.

Project Amount. The maximum funding for this project for 1992-1993 is $916,242, with allocations of $670,421 for school-based, $167,605 for community-based and $78,216 for adult volunteer and partnership service-

learning programs. If funds are available for this purpose, for second and third year funding, the applicant will be strongly encouraged to submit a continuation application. The project is 90% federally funded from National and Community Service funds. The remaining 10% will be shared by the local applicants (increasing to 20% and 30% respectively during the second and third years) from non-federal sources.

Selection Criteria. Applicants will be approved based upon the ability of the applicant to provide youth with structured opportunities to engage in meaningful community service-learning experiences. In addition, funds will be made available to adult and volunteer partnership programs that seek ways to improve the education of students in greatest need of assistance and that involve older Americans or parents as adult volunteers.

Requesting the Application. A copy of the complete Request for Application (RFA-#701-92-052) may be obtained only by calling or writing 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 number in your request.

Further Information. For clarifying information about this request, contact Sharon Cooper, Program Manager, Division of Elementary, Middle and High School Education, Texas Education Agency, (512) 463-9633.

Deadline for Receipt of Application. The deadline for submitting an application is 5 p.m., Friday, November 6, 1992.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213390 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: October 5, 1992

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Texas Department of Health

Emergency Impoundment Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Amber Well Completion Rental, Inc., doing business as BPI Brazos Perforators and Bexar Perforators, (licensee-L03267) of Austin to surrender to the bureau for impoundment in place all radioactive material in its possession. The order was issued because the licensee had abandoned its only authorized storage location, was no longer controlling that location, and was storing radioactive material at an unauthorized location.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on October 1, 1992.

TRD-9213300 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: October 1, 1992

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Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Mesquite Physicians Hospital, Mesquite, R00709; Barry A. Martin, M.D., Houston, R02581; Richard R. Garza, D.D.S., Austin, R09603; Harry E. Taylor, D.D.S., M.S., Inc., Fort Worth, R11062; Key to the Hills Equine Farm, Boerne, R11417; Chester William Ingram, M.D., Livingston, R13056; L.Q. Robinson, M.D., Nacogdoches, R13959; Alice X-Ray and Lab, Inc., Alice, R15916; David E. Melville, M.D., Benbrook, R07219; Leybold Vacuum Products, Inc., Export, Pennsylvania, R17249.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on October 1, 1992.

TRD-9213299 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: October 1, 1992

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Notice of Intent to Revoke a Radioactive Material License

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Coral Services, Inc., Abilene, L02177.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on October 1, 1992.

TRD-9213297 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: October 1, 1992

Texas Higher Education Coordinating Board

Notice of Hearing

The Community and Technical College Division of the Texas Higher Education Coordinating Board will hold a public hearing to be conducted on Friday, October 9, 1992, from 10:30 a.m. until 12 noon. This hearing will be in conjunction with the conference of the Texas Association of Post-Secondary Occupational Administrators. The location of the hearing will be at the Wyndham Austin Hotel, 4140 Governor's Row, Austin.

Issued in Austin, Texas, on September 29, 1992.

TRD-9213289 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: October 1, 1992

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Notice of Meeting

The Council for Women in Higher Education will meet on Wednesday, October 14, 1992, from 10 a.m. until 4 p.m. The location of the meeting will be at 7745 Chevy Chase Drive, Building 5, Room 5.139. For further information please contact Dr. Betty James at (512) 483-6140.

Issued in Austin, Texas, on September 29, 1992.

TRD-9213288 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: October 1, 1992

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Texas Department of Human Services

Consultant Contract Award

In accordance with Texas Civil Statues, Article 6252-11c, the Texas Department of Human Services (TDHS) announces this consultant contract award. The invitation for consultant proposals was published in the August 28, 1992, issue of the *Texas Register (15 TexReg 1767)*.

Description of Services. The consultant will perform a study for the planning and development of child care resource and referral services in Texas.

Name of Consultant. The contract for consulting has been awarded to Texas Association Of Child Care Resource and Referral Agencies, 3307 Northland, Suite 460, Austin, Texas 78731.

Due Dates of Reports. All reports are due no later than September 30, 1993.

Amount and Duration of Contract. The total amount of the contract is $60,000,00. The contract began on September 30, 1992, and ends on September 30, 1993.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213400 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: October 5, 1992

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Request For Information

The Texas Department of Human Services (TDHS) requires information on currently available DataServer technology and how this technology integrated with the current TDHS environment and future directions of TDHS could provide an Information Systems environment with end-user access from various user interface platforms to a variety of DataBase Management Systems (DBMS) residing on different platforms. TDHS is requesting information on software, hardware, architecture, standards, services, and/or strategies which might be candidate components of such an environment.

Of particular interest is an optimal data access mechanism with the following features, as currently envisioned: Works in the current environment yet is compatible with the open systems direction of TDHS with Client/Server SQL protocol: Network Architecture (Client/Server WAN), and DBMSs (existing Databases on current TDHS platforms to new Databases on new platforms). Each platform - in a hierarchy of tiers or a set of peers - may perform the role of client or server: Initiate input/output request, honor request, and pass through input/output request or requested data. Inter-platform communication is through a common application programmer interface: common protocol and format for input/output request, and common protocol and format for data transport. Must support minimal DBMS data integrity functionality: two phase commit, and complete rollback/recovery on multiple platforms

Background:

CENTRALIZED/MAINFRAME SYSTEMS

Current Environment: At the core of central site (Austin) processing are two Unisys 2200 series mainframes using System Base 3, Release 9 (SB3R9) operating under the Unisys operating system, OS-1100 (Version 41R8C). Critical database backup and a minimal disaster recovery capability are supported by a Unisys 2200/424 currently located at the Texas Water Commission (Austin).

Principal software offerings for the Unisys mainframe include COBOL, DMS 1100, RDMS, MAPPER, LINC, and UDS.

An NCR 3445 processor (486 Bus/33MHz), utilizing AT&T System 5, Release 4 UNIX as its operating system, will support the development of systems using Oracle (Level 6.0.31.0.3).

Future Directions. To meet increasing demands for CPU capacity at the mainframe level, the department will be investigating and implementing the use of data servers which can be used to offload processing tasks from the Unisys 2200 computers and thereby improve performance.

While the department's multi-million dollar investment in existing technology precludes any drastic changes within the next five years, the agency will begin migrating toward a GOSIP compliant environment as directed by the Texas Department of Information Resources (DIR). This path, combined with increased industry sensitivity to the need for open systems, will position the department to take advantage of centralized computing solutions which may be available both inside and outside of the Unisys family of products.

DISTRIBUTED SYSTEMS

Current Environment. The department's local area network environment utilizes an IEEE 802.5 topology combined with Novell SFT Netware (Version 2.15 Rev C and 3.11) as the LAN operating system. Over 7000 IBM AT compatible 80286- and 80386-based workstations, attached to more than 400 file servers across the state, provide the user interface to the LAN. Shielded twisted pair and fiber optic cabling provide the physical connectivity between servers and workstations.

Basic LAN components include a file server, queue server, and communication (comm) server. Each of these, along with the LAN workstations are fitted with a token ring adapter card which provides for connectivity with a multistation access unit (MSAU). The MSAUs are connected with inter-MSAU cables and compose a physical ring.

Two basic configurations are used by TDHS in the LAN environment: A "single ring" LAN consists of a single physical ring (one token ring adapter in the file server) with up to 50 workstations; and A "dual ring" LAN utilizes two token ring adapters in the file server and separate MAUs to create two distinct rings. This configuration is necessary to support offices requiring the attachment of more than 50 workstations.

The queue server, an 80286- or 80386-based workstation, utilizes software which was developed and perfected by in-house staff. This software allows for the translation of AREV and DOS data into a TIP-readable format and conversely, for the translation of TIP data into AREV and DOS formats. In essence, the queue server acts as an interface for the LAN file server and the comm server.

The comm server, an 80286- or 80386-based workstation running CHI Corporation's Uniscope Emulation software, permits communication between the LAN and the Unisys mainframe. The comm server ports data up to the mainframe from the queue server or down to the queue server from the mainframe by way of CHI-enabled Uniscope protocols.

Future Directions. Increasing demands for greater functionality and flexibility at the workstation level dictate that the department move rapidly toward an environment which allows for quick and easy task switching. Also in support of greater functionality, future workstation procurements will include the following: IBM AT-compatible 80386/25Mhz CPU; 2Mb RAM; 52Mb Hard Disk; 3.5" x 1.44Mb Floppy Disk Drive; 5.25" x 1.2Mb Floppy Disk Drive (provided on exception basis only); and VGA Monochrome Monitor.

NETWORK/COMMUNICATIONS

Current Environment. TDHS Wide Area Network communications are enabled using the Unisys proprietary Distributed Communications Architecture (DCA - II) with its primary transmission protocol, Uniscope. The networking backbone utilizes bit-oriented Universal Data Link Control (UDLC). DCA is modeled on the Open Systems Interconnect standard.

A Unisys SNA/NET gateway permits Uniscope workstations using IBM 3270 emulation to communicate with IBM hosts at other state agencies and for those agencies to connect with the TDHS WAN using Uniscope emulation. Also available via the SNA/NET gateway is the ability to perform distributed data processing file transfers and peer to peer communication using the LU6.2 protocol.

Communications between mainframe and LAN processors are enabled by DCP-40, Chi Gateway, and IEEE 802.5 transport hardware. Transport software includes Comm Delivery 5R1 (Telcon 8R2 paired with CMS 7R1) at the mainframe level, and the IEEE 802.5 platform at the local area network level.

Future Directions. The goal of TDHS is to reach a fully open network architecture based on GOSIP/OSI standards by Fiscal Year 1996, depending on budget constraints.

This goal will involve the installation of a router/bypass system to accommodate the presence of Uniscope based terminals which continue to require support for the short-term future. The department has already begun the investigation and testing of TCP/IP as an interim protocol at the transfer and network levels in support of this initiative. This architecture will allow migration to an X.25 based protocol that employs packet routing and switching as the primary architecture of the network.

Specific functionalities that will be enabled include: LAN-to-LAN communications without going through the mainframe; access to centralized departmental processors from remote sites through a single WAN; centralized execution and management of LAN-based network management packages; and improved network management through remote monitoring of workstations.

This goal will also involve the replacement of outmoded Uniscope terminals with LAN based workstations The network will be simplified through the elimination of Uniscope protocol support and the addition of premise-to-premise transport via an X.25, wideband, router-based architecture.

In addition, this goal will see the employment of multi-protocol routers interconnected via X.25 transport systems using X.25 packet switches. As standards develop, the network may be based not only on an X.25 architecture, but also on the emerging Frame Relay and Cell Relay standards as they are defined and incorporated into the GOSIP/OSI models.

DATA MANAGEMENT

Current Environment. The department makes use of several data management formats at the mainframe level for managing application data. These include DMS- 1100 (Level 8), MSAM/ISAM, MAPPER, RDMS, SDF and IOS.

DMS-1100 utilizes a network structure and is used by a variety of TDHS applications to support complex data structures and on-line updates. Most applications with a large volume of records use DMS-1100 for primary data storage.

MSAM/ISAM are indexed sequential data structures used in primarily older application systems. Applications using these data structures are characterized generally by batch processing with on-line inquiry support.

MAPPER is a flatfile database which is used by numerous systems and end-user applications. It supports online update and can manipulate data files as large as 1.5 gigabytes in size. All current MAPPER applications access MAPPER- controlled SDF files, but also have the capability of accessing RDMS data structures.

RDMS uses a relational structure and allows for easily understood application interfaces and relatively lower support costs. Most applications currently being engineered and those planned for the future will utilize this data management format.

SDF and IOS are sequential file structures.

Data management formats in use at the LAN/PC level and with NCR technology include Advanced Revelation and Oracle. Oracle is the department's sole Unix- based data management tool. It is a relational database which interfaces with a variety of software products available today. At present, there are no major applications using this format. At the LAN and microcomputer level AREV relational data structures are used for application files.

Future Directions. Relational database management systems will be the focus of new database development projects in MIS for the foreseeable future.

Last date to receive responses. Product materials should be received no later than November 13, 1992. Inquiries about submitted product materials and requests for on-site visits will be at the discretion of TDHS, after review by TDHS of all materials submitted related to this RFI.

Contact Person. Responses to this RFI should be submitted by mail only to Bill Levy, Texas Department of Human Services, P.O. Box 149030, Mail Code C-739, Austin, Texas 78714-9030.

Issued in Austin, Texas, on October 1, 1992.

TRD-9213306 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: October 1, 1992

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Texas Department of Insurance

Company Licensing

The following applications have been filed with the Texas Department of Insurance and are under consideration:

(1.) Application for incorporation in Texas for All-State Title Insurance Company, a domestic title insurance company. The home office is in Dallas.

(2.) Application for incorporation in Texas for Claim Specialists, Inc., a domestic third party administrator. The home office is in Houston.

(3.) Application for incorporation in Texas for First National Title Insurance Company, a domestic title insurance company. The home office is in Dallas.

(4.) Application for name change in Texas for Markel American Insurance Company, a foreign fire insurance company. The home office is in Glen Allen, Virginia. The proposed new name is Markel Rhulen Insurance Company.

(5.) Application for incorporation in Texas for National Title Insurance Company, a domestic title insurance company. The home office is in Dallas.

Issued in Austin, Texas, on October 1, 1992.

TRD-9213362 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: October 2, 1992

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Notice of Public Hearing

Notice is hereby given that the State Board of Insurance of the Texas Department of Insurance will conduct a public hearing under Docket Number 1943 beginning at 9 a.m. on October 14, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas. The purpose of the hearing will be to receive public comment and take possible action on a proposed statistical program and plan for the collection of private passenger automobile insurance statistical data and market information. The board will also consider the appointment of a working group to consider technical issues involved in the collection of the insurer information required by the board. Recommendations for representatives on the group may be submitted in writing to the board prior to the hearing or during the hearing. The board has jurisdiction over this matter pursuant to Articles 21.69, 5.01, 5.04, and 1.24.

On September 30, 1992, Mark Crawshaw, a consulting actuary to the Texas Department of Insurance presented a report to the board and requested instruction concerning the statistical program and plan data and market information collection for private passenger automobile insurance. The report, "Proposed Approach to Collecting Private Passenger Automobile Statistical Data" authored by Mark Crawshaw, PH. D., FCAS, MAAA, was discussed at the meeting.

Copies of the report are available by request in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information please contact Angie Arizpe at (512) 322-4147.

Issued in Austin, Texas, on October 5, 1992.

TRD-9213387 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: October 5, 1992

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Legislative Budget Office

Joint Budget and Strategic Plan Hearing Schedule (For the Period of October 12-16, 1992)

Agency	Date	Place
University of North Texas Texas College of Osteopathic Medicine	Oct. 12--9:00 a.m.	University of North Texas Diamond Eagle Suite Union Building Denton, Texas
Employees Retirement System and Judicial Retirement Administration	Oct. 12--10:30 a.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Texas Public Utility Commission	Oct. 12--1:30 p.m.	Room 109, John H. Reagan Building, 15th and North Congress, Austin, Texas
Texas Woman's University Midwestern State University East Texas State University East Texas State University-Texarkana Food and Fibers Commission	Oct. 12--1:30 p.m.	Texas Woman's University Administration Conference Tower (Clock Tower) 14th Floor Denton, Texas

Teacher Retirement System and Optional Retirement Program	Oct. 12--2:00 p.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Department of Insurance	Oct. 13--9:00 a.m.	Room 109, John H. Reagan Building, 15th and North Congress, Austin, Texas
The University of Texas Southwestern Medical Center at Dallas The University of Texas Health Center at Tyler The University of Texas at Tyler The University of Texas at Arlington The University of Texas at Dallas	Oct. 13--9:00 a.m.	The University of Texas Southwestern Medical Center at Dallas 5323 Harry Hines Boulevard Fred Florence Bioinformation Center Building E, 6.200 Dallas, Texas
Parks and Wildlife Department	Oct. 13--10:00 a.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Board of Examiners in the Fitting and Dispensing of Hearing Aids	Oct. 13--10:00 a.m.	Room 107, John H. Reagan Building, 15th and North Congress, Austin, Texas
Commission on Judicial Conduct	Oct. 13--1:30 p.m.	Conference Room 202, One Capitol Square Building, 15th and Lavaca, Austin, Texas
Office of Public Insurance Counsel	Oct. 13--1:30 p.m.	Room 109, John H. Reagan Building, 15th and North Congress, Austin, Texas
Treasury Department	Oct. 14--10:00 a.m.	Room 107, John H. Reagan Building, 15th and North Congress, Austin, Texas

Office of the Attorney General	Oct. 14--10:00 a.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Court of Criminal Appeals	Oct. 14--2:30 p.m.	Conference Room 202, One Capitol Square Building, 15th and Lavaca, Austin, Texas
Comptroller of Public Accounts	Oct. 15--10:00 a.m.	Room 101, John H. Reagan Building, 15th and North Congress, Austin, Texas
Courts of Appeals	Oct. 16--9:30 a.m.	Texas Law Center Room 101 1414 Colorado Street 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 October 2, 1992.

TRD-9213348 Larry Kopp
Assistant Director for Budgets
Legislative Budget Office

Filed: October 2, 1992

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Public Utility Commission of Texas

Notice of Intent To File Pursuant To Public Utility Commission Substantive Rule 23.27

Notice if 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 McAllen ISD, McAllen.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for McAllen ISD purusant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11497.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for McAllen ISD. The geographic service market for this specific service is the McAllen 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 October 1, 1992.

TRD-9213308 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 1, 1992

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Public Utility Commission Requests Comments on Local Exchange Carrier Cost Allocation Rule

The Public Utility Commission of Texas is considering adopting a rule to allocate costs of local exchange carriers. The commission solicits answers and comments from all interested persons to the following questions.

What objectives should the commission attempt to achieve in adopting an approach for determining the cost of telecommunications services? How should the commission prioritize these objectives?

Should the cost methodology determine the cost of each service offering? Should it determine the cost of each network component or function used to provide a particular service?

If the commission adopts a costing methodology that determines costs at the function- or service-level, should the commission also adopt a methodology that allocates those costs not attributable to any particular function or service across all functions or services?

If the commission adopts a methodology to allocate common costs to all functions or services, what should be the basis of the allocation? How would the allocators be developed? Is the data available for the development of your proposed allocators?

Should the commission adopt a cost allocation mechanism that is based on Part 36 and Part 69 of the FCC's rules? If so, in what respects should the methodology differ from Part 36 and Part 69?

What alternative methods for cost development or allocation best assure that local exchange companies' (LEC) common costs are recovered in a fair and equitable manner? For any method you propose, please identify sources for the data necessary to perform the necessary modelling.

Should the commission adopt a "top-down" procedure for allocating a LEC's intrastate revenue requirement to its various services? If so, should the revenue requirement to its various services? If so, should the revenue requirement be allocated to broad service categories, or should the revenue requirement be allocated to individual service offerings?

If the commission adopts a "top-down" methodology to allocate a LEC's intrastate revenue requirement to its various services, what should be the basis of the allocation? What level of detail of expenses and investment is necessary to properly allocate the LEC's revenue requirement to it services? How would the allocators be developed? Is the data available for the development of your proposed allocators?

If the commission adopts a "top-down" methodology to allocate a LEC's intrastate revenue requirement to its various services, should the methodology be used to price specific services? Should the methodology serve as a pricing "guide"? Should the methodology be used to establish service category-specific revenue requirements?

Under what circumstances should the commission apply a "top-down" methodology to allocate a LEC's intrastate revenue requirement to its various services? Should the methodology be applied only during rate cases? Should it be applied in the context of earnings monitoring?

If parties are interested in providing comments, they are welcome to do so.

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 substantive rules governing local exchange carrier cost allocation 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 9075. 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 October 1, 1992.

TRD-9213310 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 1, 1992

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Texas Department of Transportation

Public Notice of Award of Contract and Request for Statements of Interest for the Texas LOGO Sign Program

In accordance with Texas Civil Statutes, Articles 6674a et seq and 4477-9a, §4.07; and 43 TAC §§25.400-25.408, the Texas Department of Transportation is seeking statements of interest from a person, firm, group, or association in the State of Texas for the award of a contract to erect and maintain signs at appropriate locations along interstate highways in each county with a population of less than 20,000. The contractor will also market and lease spaces on the sign to commercial establishments for the purpose of giving specific information of interest to the traveling public, including specific brand names.

Prospective contractors will be required to meet the prequalification requirements as provided by 43 TAC §§25.400-25.408 (published in the June 9, 1992, issue of the *Texas Register* (17 TexReg 4160); correction of error published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4481); final adoption to be published in the October 9, 1992, issue of the *Texas Register*). These sections were adopted by the Texas Transportation Commission on September 29, 1992, and will become effective October 29, 1992.

Statements of interest will be used to determine if a person, firm, group, or association in the State of Texas is prequalified for bidding on the Texas LOGO sign program contract. Any party interested in becoming prequaified to bid on this contract will be required to submit an introductory letter and a statement of interest. Introductory letters and statements of interest may be sent by registered mail of Mark Thorp, Project Engineer, by 5 p.m., November 23, 1992. Mr. Thorp's address and telephone number may be found a the end of this notice.

Introductory letters and statements of interest will not be accepted if submitted by facsimile messages or telegrams.

Each statement of interest will be reviewed and only those parties meeting the prequalification requirements as prescribed by 43 TAC §25.403 will be issued bidding proposals and invited to a pre-bid conference.

For information concerning the introductory letter and statement of interest, please contact the project engineer at the address as listed following. As a part of the statement of interest, a financial statement will be required. Information concerning forms for submitting the contractor's financial prequalification statement; instructions as to filing these forms with the department; copies of plans, specifications, and 43 TAC §§25.400-25. 408; and other information may be obtained by writing to Director of Maintenance and Operations, Texas Department of Transportation, Attention: Mark Thorp, Project Engineer, 125 East 11th Street, Austin, Texas 78701-2483; or may be obtained in person at the office of Texas LOGO Sign Program, Texas Department of Transportation, Riverside Annex, 150 East Riverside Drive, Room 3.362 N, Austin, Texas 78704. Contact person: Mark Thorp, P.E., phone number: (512) 416-3153. Usual rights reserved.

Issued in Austin, Texas, on October 2, 1992.

TRD-9213371 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: October 2, 1992

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Texas Water Commission

Correction of Error

The Texas Water Commission adopted new 31 TAC §§290.38-290.49, concerning rules and regulations for public water systems. The rules appeared in the September 18, 1992, *Texas Register* (17 TexReg 6455).

Due to typographical errors by the Water Commission and proofreading errors by the *Texas Register* corrections are noted as follows.

In §290.41 (e)(1)(D) the reference to a section of the Texas Water Code is incorrect. The reference should be to the *Texas Administrative Code*. "(D) Disposal of wastes from boats or any other watercraft shall be in accordance with 31 TAC §§321.1-321.18 of this title, (Boat, Sewage, Disposal)."

In §290.44(i)(2)(B) "United State" should read "United States".

In §290.45(d)(3)(C) the *Texas Register* misprinted several words in the subparagraph. It should read as follows. "(C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;".

In §290.46(r)(2) the word "which" should read "who": "(2) on an annual basis, each certified operator who supervises more...."

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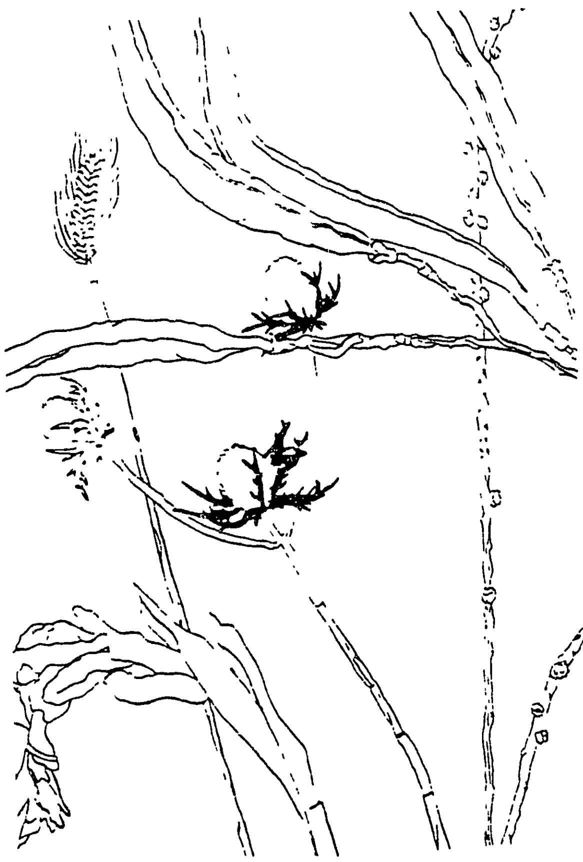

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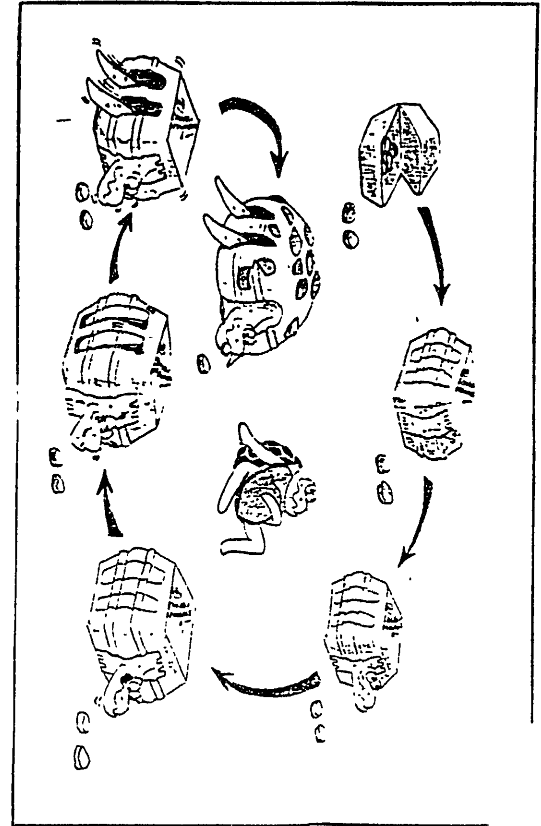

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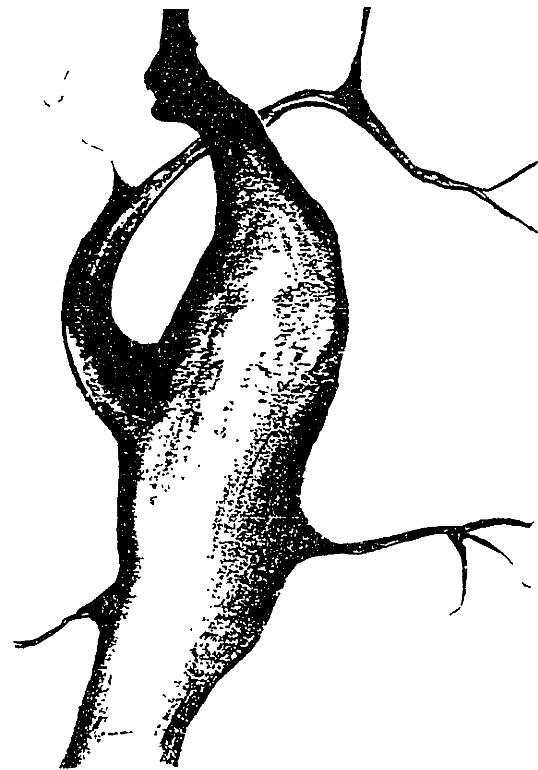

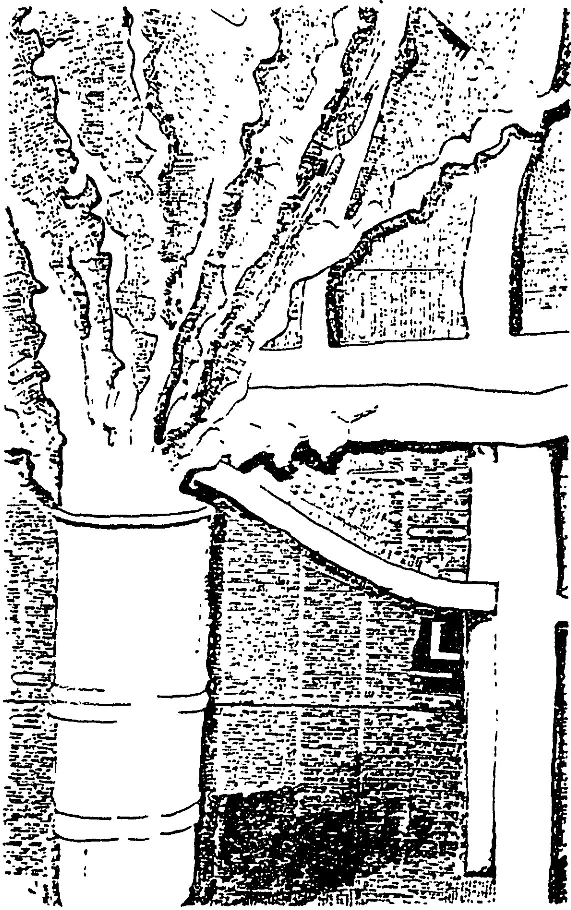

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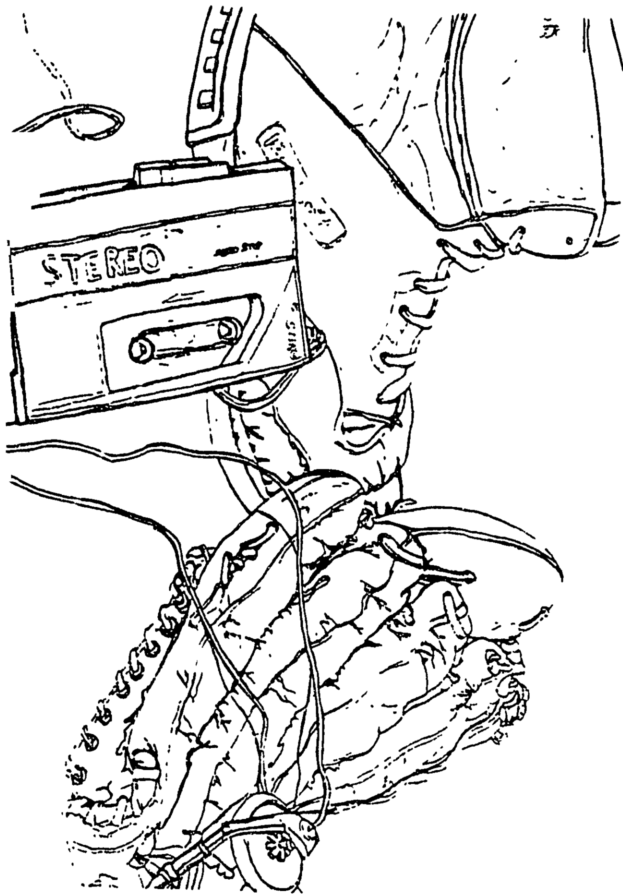

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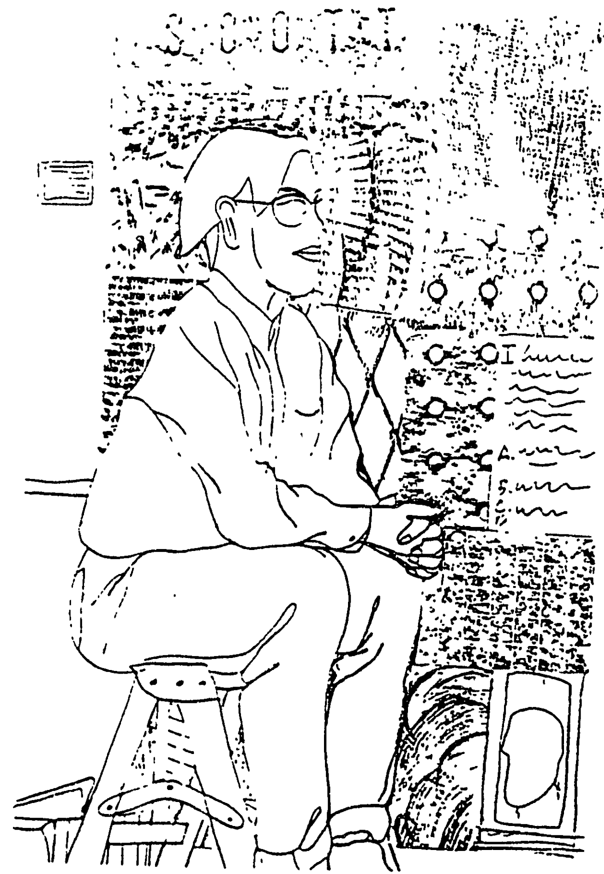

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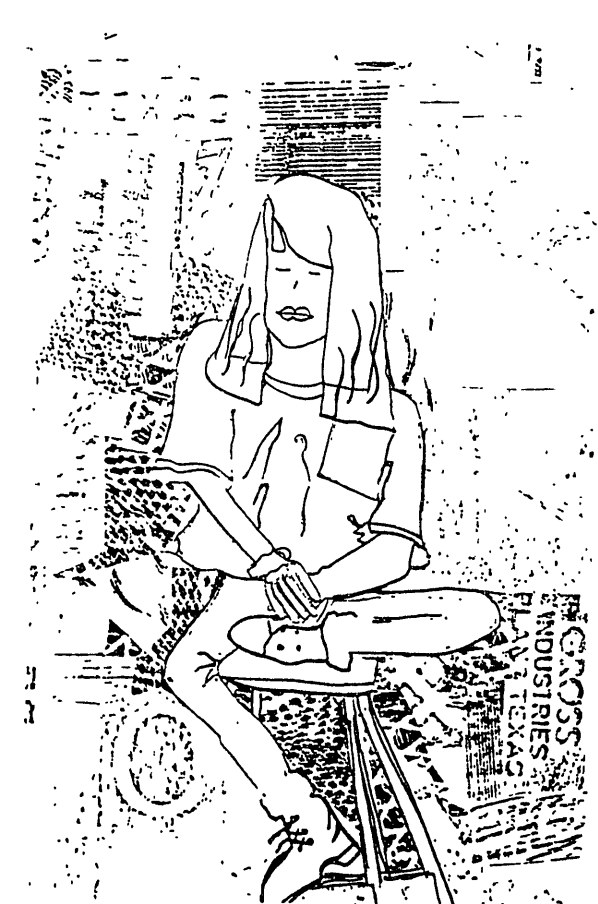

1992 Publication Schedule for the *Texas Register*

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, Novmber 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	Tuesay, 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. Fore 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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