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In This Issue...

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CONTENTS CONTINUED INSIDE

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions costs: one year - printed, $95 and electronic, $90; six-month - printed, $75 and electronic, $70. Single copies of most issues are available at $5 per copy.

POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

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

Governor - Appointments, executive orders, and proclamations

Attorney General - summaries of requests for opinions, opinions, and open records decisions

Secretary of State - opinions based on the election laws

Texas Ethics Commission - summaries of requests for opinions and opinions

Emergency Sections - sections adopted by state agencies on an emergency basis

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the ***Texas Register*** six months after proposal publication date

Adopted Sections - sections adopted following a 30-day public comment period

Open Meetings - notices of open meetings

In Addition - miscellaneous information required to be published by statute or provided as a public service

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

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

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

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

Texas Administrative Code

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

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

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

Texas Register Art Project

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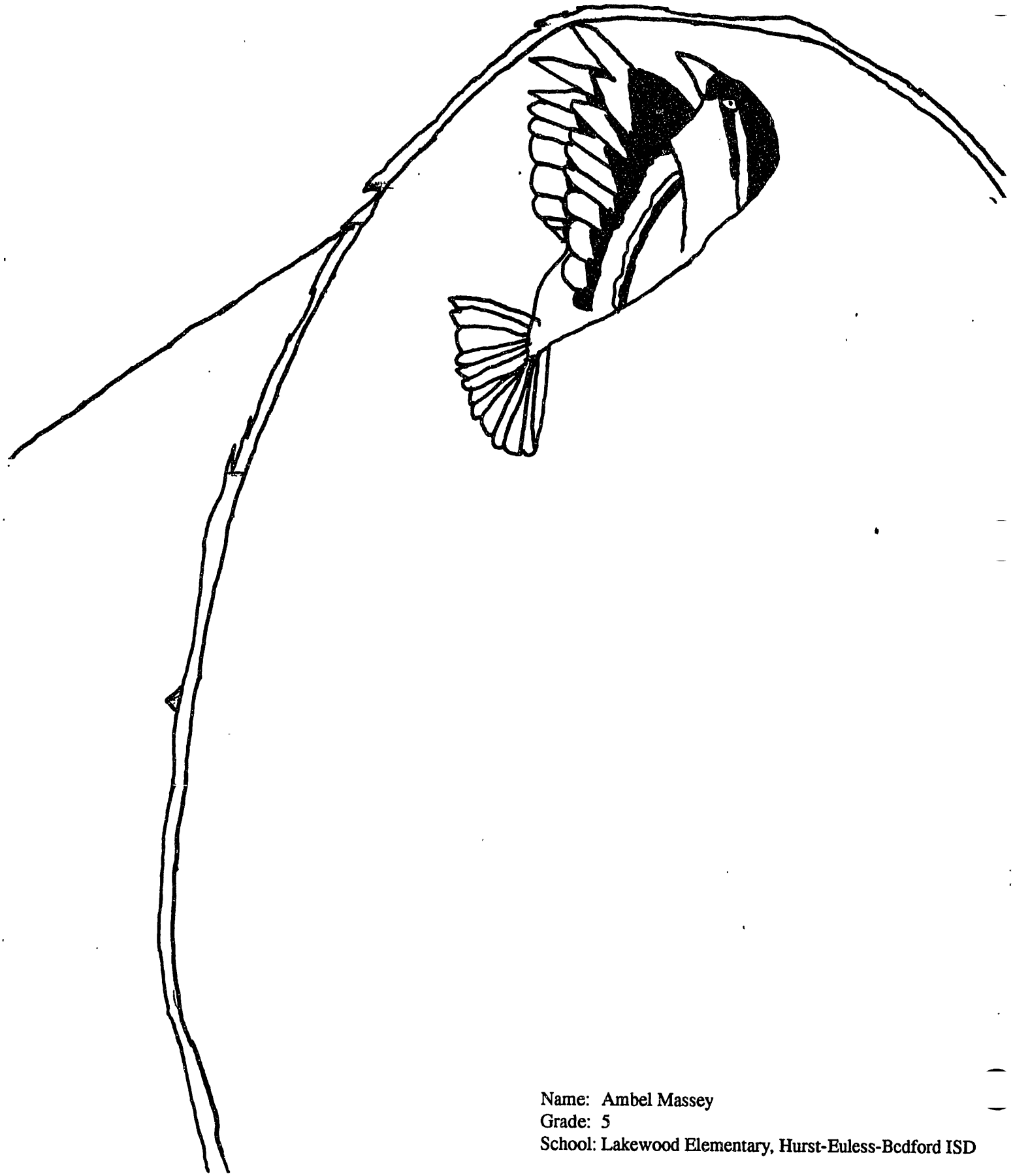
Open Meetings

In Addition Sections



Name: Ambel Massey
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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 4. AGRICULTURE
Part II. Texas Animal Health Commission
Chapter 41. Fever Ticks

• 4 TAC §41.2

The Texas Animal Health Commission proposes an amendment to §41.2, concerning quarantine line; defining and establish eradication areas.

The proposed amendment is necessary to clarify regulatory language.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 is to advise the public of tick regulations in clearer, more understandable language. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 167, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

§41.2. Quarantine line; Defining and Establishing Tick Eradication Areas.

(a) Under existing statutes, it is unlawful to move, or allow[,] or permit to move, [or to be moved,] any livestock from the [said] quarantined area except in a manner prescribed by the Texas Animal Health Commission. [, which in this instance will be] **Movement must be** on a written permit or certificate **issued by** [of] an inspector of the [said] Commission[,] or [an inspector of] the United States Department of Agriculture, Animal and Plant Health Inspection Services, Veterinary Services [issued] in accordance with law and the regulations of the [said] Commission.

(b) **The permanent** Quarantined area is as follows [areas are as follows]:

(1)-(8) (No change.)

(c) [Therefore, in accordance with the duties and powers vested in the Texas Animal Health Commission by law,] **All** [all] of **the area** [that part of the counties named in this section] lying south and west of the boundary lines set forth in this section are designated as the Systematic Tick Eradication Area.

(d) [For further designation, and in accordance with the duties and powers vested in the Texas Animal Health Commission by law,] **All** [all that part] of the area [counties named in this section] lying north and east of the boundary lines set forth in this section are designated as the Free Area; provided, however, that individual quarantines for tick eradication [in said area] heretofore or hereafter established **in this Free Area are not** [north and east of the lines described in this section shall not be] affected by **this designation** [these orders].

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 November 20, 1992.

TRD-9215663 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 479-6697

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Chapter 55. Swine

• 4 TAC §55.9

The Texas Animal Health Commission proposes an amendment to §55.9, concerning feral swine.

The proposed amendment is necessary to provide a means for a trapper to move trapped feral swine to a holding pen awaiting movement to slaughter.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, 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 is to advise the public that feral swine trappers will have one more alternative for movement of feral swine after trapping by allowing them to be moved to a holding facility before movement to slaughter. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

§55.9. Feral Swine.

(a) Definitions.

(1) Feral swine-[are]Swine that have lived any part of their lives free-roaming. Feral swine may be reclassified as domestic swine by a negative official brucellosis test and a negative official pseudorabies test conducted after at least 60 days' confinement separate and apart from any infected or free-roaming swine.

(2) Feral swine slaughter holding facility-Pen or pens approved by the Commission to hold feral swine from the time they are trapped until they are moved to slaughter. Written approval of the facility may be given after an inspection by Commission personnel that finds it meets the following criteria.

(A) There are no domestic swine within 1 1/2 miles of the proposed facility.

(B) The facility is double fenced with hog-proof fencing with two fences being at least four feet apart and no animals kept in the space between.

(C) Only feral swine being held for slaughter will be placed in the facility.

(D) Swine will be moved from the facility only to go directly to slaughter.

(E) Dealer records will be maintained to include the number of swine placed in and removed from the facility, dates they were placed or removed, ranches where they were trapped, and the slaughter facility to which they were hauled.

(F) The approval of a feral swine slaughter holding facility will continue until a request to cancel it is received from the owner or until an inspection by Commission personnel reveals a violation of these requirements.

(b) Movement. Feral swine may be:

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

(4) moved directly from the premises where they were trapped to a feral swine slaughter holding facility.

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 November 20, 1992.

TRD-9215664 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 479-6697

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Operations

• 16 TAC §309.51

The Texas Racing Commission proposes an amendment to §309.51, concerning contracts. The amendment requires a racetrack association to obtain the approval of the commission for executing a contract.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter 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 assurance that commission is informed regarding all persons participating in pari-mutuel racing. 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 on or before December 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Race Act and §6.06, which authorize the commission to adopt rules relating to the operation of racetracks.

§309.51. Contracts.

(a) An association may not execute a contract regarding the operation of the racetrack for which the association is licensed without the prior approval of the commission. This section applies only to:

(1) a contract[, other than an employment contract,] for which the amount of consideration is $50,000 or more or that is to be executive over a period of 90 days or more;

(2) a series of contracts[, other than employment contract,] between the association and the same contractor for which the total amount of consideration of the contracts is $50,000 or more or that are to be executed over a period of 90 consecutive days or more; and

(3) (No change.)

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

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

Issued in Austin, Texas, on November 9, 1992.

TRD-9215500 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 794-8461

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• 16 TAC §309.56

The Texas Racing Commission proposes an amendment to §309.56, concerning stable/kennel area visitors pass. The amendment modifies the procedure for issuing a temporary pass in the stable/kennel area.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter 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 assurance that the stable and kennel areas of pari-mutuel racetracks are secure, to protect the integrity of pari-mutuel racing. 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 on or before December 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Race Act, and §6.06, which authorize the commission to adopt rules relating to the operation of racetracks.

§309.56. Stable/Kennel Area Visitors Pass [Temporary Pass].

(a) As association may issue a **visitor's** [temporary] pass to a person to enter the stable or kennel area[,] in accordance with this section. **The association security staff shall maintain a log showing the date, name of visitor, pass number, and the person granting the pass and the person's commission license number. A person to whom a visitor's pass has been issued shall displace the pass on the persons's clothing at all times that the person is in the stable or kennel area** [The method used by an association for issuing temporary passes under this section must be approved by the commission].

(b) An association may issue a **visitor's** [temporary] pass only to a guest of:

(1) an association **officer or official** [employee];

(2) (No change.)

(3) a trainer, **assistance trainer,** or kennel owner licensed by the commission;

(4) the owner of a horse or greyhound stabled or kenneled on association grounds[, provided the guest is a member of the owner's immediate family]; or

(5) (No change.)

(c) A visitor's [temporary] pass must contain:

(1) the visitor's [person's] name[, address, and employer];

(2) the date [and time] the pass was issued; and

(3) the sequential pass number. [expiration date and time of the pass; and]

[(4) the signature of the chief of security for the association.]

(d) A visitor's [temporary] pass issued under this section is valid only for the date the pass is issued [for not more than 24 hours after the time of issuance].

(e) A visitor's [temporary] pass does not entitle the person to whom the pass is issued to participate in racing in any way other than as a patron.

(f) The licensee granting the visitor's pass is responsible for the proper conduct of the visitor and shall ensure compliance by the visitor with all commission rules.

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 November 9, 1992.

TRD-9215501 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 794-8461

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Chapter 311. Conduct and Duties of Individual Licensees

Subchapter B. Specific Licensees

Licensees for Greyhound Racing

• 16 TAC §311.171

The Texas Racing Commission proposes an amendment to §311.171, concerning kennel owners. The amendment requires a kennel owner to document the arrival and removal of greyhounds from a pari-mutuel racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter 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 assurance that pari-mutuel wagering is conducted in a manner that is of the utmost integrity and is safe and humane for the race animals. 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 on or before December 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Race Act.

§311.171. Kennel Owners.

(a)-(i) (No change.)

(j) Not later than 30 days before the first day of race meeting, a kennel owner shall submit as completed kennel roster to the racing secretary. The kennel owner shall ensure that the kennel roster is kept current throughout the race meeting as changes occur. Not later than five days after the date a greyhound is removed from the kennel roster, the kennel owner shall provide written notice to the racing judges regarding the removal and the disposition of the greyhound, including the name of the racetrack to which the greyhound was moved, the name of the greyhound adoption agency to which the greyhound was given, the name of the veterinarian who euthanized the greyhound, or any other information requested by the racing judges. Not later than five days after the last day of a race meeting, the kennel owner shall provide the written notice required by this subsection regarding each greyhound remaining on the kennel roster at the end of the race meeting.

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 November 9, 1992.

TRD-9215504 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 794-8461

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Chapter 321. Pari-mutuel Wagering

Subchapter B. Distribution of Pari-mutuel Pools.

• 16 TAC §321.119

The Texas Racing Commission proposes new §321.119, concerning odd-even. The new section authorizes a racetrack to distribute an odd-even pool according to the program number of a race animal participating in a race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter 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 assurance that pari-mutuel wagering is conducted in a manner that is of the utmost integrity. 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 on or before December 15, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §11.01, which authorize the commission to adopt rules to regulate pari-mutuel wagering.

§321.119. Odd-Even.

(a) The odd-even is not a parlay and has no connection with or relation to the win, place, and show pools shown on the totalisator board. The odd-even is a separate pool and shall be calculated as a win pool.

(b) A person purchasing an odd-even ticket shall designate "odd" or "even." An "odd" ticket represents a wager on each race animal with an odd number as listed in the official program. An "even" ticket represents a wager on each race animal with an even number as listed in the official program.

(c) If the race animal finishing first has an odd program number, the odd-even pool shall be distributed to the holders of tickets designating odd. If the race animal finishing first has an even program number, the odd-even pool shall be distributed to the holders of tickets designating even.

(d) Except as otherwise provided by this subsection, if after wagering has

begun an animal entered in an odd-even race is scratched, declared out, or prevented from racing, there will be no refund. The association, with the approval of the racing judges, may cancel the odd-even pool and refund all money wagered into that pool if there are less than three odd program number race animals or less than three even program number race animals participating in a race.

(e) Except as otherwise provided by this subsection, if a race ends in a dead heat for first place between a race animal with an odd program number and a race animal with an even program number, the program number of the third place finishing animal will determine the winners of the odd-even pool. If there is a dead heat for third place between a race animal with an odd program number and a race animal with an even program number, the program number of the fifth place finishing animal will determine the winners of the odd-even pool. If a race ends a dead heat for first place between three race animals, the type of program number of the majority of the animals involved in the dead heat will determine the winners of the odd-even pool.

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 November 9, 1992.

TRD-9215499 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 794-8461

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 161. Advisory Groups

• 19 TAC §§161.1-161.5

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

The Texas Education Agency (TEA) proposes the repeal of §§161.1-161.5, concerning advisory groups. Chapter 161 is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature.

Linda Cimusz, administrator for professional development and policy planning, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Cimusz and Criss Cloudt, director of policy planning and evaluation, have 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 a clearer, more concise statement of the rules relating to advisory groups. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register.*

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§161.1. General Provisions.

§161.2. Procedures for Appointment.

§161.3. Committees Advisory to the Commissioner of Education.

§161.4. Compensation.

§161.5. Sunset Rule.

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 November 20, 1992.

TRD-9215592 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Earliest possible date of adoption: December 28, 1992

For further information, please call: (513) 463-9701

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Chapter 165. Relationships with the United States Government and Its Agencies

State Board of Education Leadership

• 19 TAC §§165.1-165.3

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

The Texas Education Agency (TEA) proposes the repeal of §§165.1-165.3, concerning State Board of Education (SBOE) leadership. Chapter 165 is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature.

Linda Cimusz, administrator for professional development and policy planning, has determined that for the first five-year period the proposed repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Cimusz and Criss Cloudt, director of policy planning and evaluation, have 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 a clearer, more concise statement of the rules relating to relationships with the federal government and agencies. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register.*

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§165.1. Policy.

§165.2. Role of the Texas Education Agency.

§165.3. Federal/State Relations Commission.

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 November 20, 1992.

TRD-9215593 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Earliest possible date of adoption: December 28, 1992

For further information, please call: (513) 463-9701

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Chapter 173. Rules and the Rulemaking Process

Subchapter A. Rules of the Texas Education Agency

The Texas Education Agency (TEA) proposes the repeal of §§173.1-173.7 and 173.21-173.27, concerning rules and the rulemaking process. Chapter 173 is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature.

Linda Cimusz, administrator for professional development and policy, 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.

Ms. Cimusz and Criss Cloudt, director of policy planning and evaluation, have 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 a clearer, more concise statement of the rules relating to board operations. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

• 19 TAC §§173.1-173.7

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§173.1. Policy: General Description of Texas Education Agency Rules.

§173.2. Adoption, Amendment, and Repeal of Texas Education Agency Rules.

§173.3. Emergency Rule.

§173.4. Emergency Rulemaking Authority Delegated to the Commissioner of Education.

§173.5. Rulemaking Authority.

§173.6. Petition for Adoption or Amendment of a Rule.

§173.7. Systematic Review of the Texas Education Agency Rules.

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 November 20, 1992.

TRD-9215589 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Department of Education

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 463-9701

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Subchapter B. Public Comments Regarding Rules

• 19 TAC §§173.21-173.27

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§173.21. Policy.

§173.22. Requests from the Public To Be Heard on Proposed Rules.

§173.23. Response to Requests from the Public To Be Heard.

§173.24. Request for Public Hearing under the Administrative Procedure and Texas Register Act.

§173.25. Procedures for Public Hearing.

§173.26. Transcripts.

§173.27. Consideration of Public Comments.

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 November 20, 1992.

TRD-9215588 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

• 22 TAC §501.4

The Texas State Board of Public Accountancy proposes an amendment to §501.4, concerning the practice of public accountancy. The amendment deletes the section regarding temporary practice permits.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rule is simplified. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the definition of the practice of public accountancy.

§501.4. Practice of Public Accountancy.

[(a)] A certificate or registration holder may not practice public accountancy (as defined in §501.2 of this title (relating to Definitions)) unless he or she holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the calendar year for which it is issued.

[(b) A holder of a temporary permit issued by the board may practice public accountancy (as defined in §501.2 of this title (relating to Definitions)) in Texas only during the period covered by the temporary permit. The temporary permit is not valid for any date or for any period prior to the date it is issued by the board, and it expires and is no longer valid 180 days after the date it is issued.]

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 November 18, 1992.

TRD-9215546 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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Other Responsibilities and Practices

• 22 TAC §501.39

The Texas State Board of Public Accountancy proposes new §501.39, concerning frivolous complaints. The section requires that CPAs complaining against other CPAs must cooperate with the ensuing investigation.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the number of frivolous complaints shall be reduced, and that investigations will be facilitated. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to frivolous complaints.

§501.39. Frivolous Complaints. A certificate holder who, in writing to the board, accuses another certificate holder of violating the rules of the board, shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, shall be prima facie evidence of a frivolous complaint and a violation of these rules.

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 November 18, 1992.

TRD-9215547 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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Chapter 505. The Board

• 22 TAC §505.3

The Texas State Board of Public Accountancy proposes an amendment to §505.3, concerning the chairman of the board. The amendment allows the chairman of the board to sign Board Orders on behalf of the board.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rule simplifies the procedures for signing Board Orders. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the chairman of the board.

§505.3. Chairman of the Board. The chairman shall be the presiding officer of the board. When present, the chairman shall conduct all board meetings. The chairman shall appoint such committees as the board may authorize under §505.10 of this title (relating to Board Committees) and may delegate the signing of official documents. **The chairman may sign Board Orders on behalf of the board after the board has approved adoption of the Order.** The chairman shall serve as the official spokesman of the board and shall have such other responsibilities as assigned and such other authority as conferred 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 November 18, 1992.

TRD-9215549 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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Chapter 517. Temporary Practice in Texas

• 22 TAC §517.1

The Texas State Board of Public Accountancy proposes an amendment to §517.1, concerning temporary practice. The amendment restricts public accountants from other states from receiving temporary practice permits.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that temporary practice permit holders will have met high standards of professionalism. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to temporary practice in Texas.

§517.1. Temporary Practice.

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

(c) A temporary practice in this state may be conducted by:

(1) (No change.)

[(2) a public accountant of another state;]

(2)[(3)] a partnership or corporation composed entirely of certified public accountants [or public accountants] of another state; or

(3)[(4)] any accountant who holds a current certificate in good standing, degree, or current valid license in a foreign country, constituting a recognized qualification for the practice of public accountancy in such country.

[(d) A temporary permit will be valid for not more than 180 days and the board will not issue more than one permit to a person or firm during any three-year period.]

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

Issued in Austin, Texas, on November 18, 1992.

TRD-9215550 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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Chapter 519. Practice and Procedure

• 22 TAC §519.39

The Texas State Board of Public Accountancy proposes an amendment to §519.39, concerning subpoena of witnesses and for the production of documentary evidence. The amendment allows the Executive Director to issue subpoenas.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the cost for issuing subpoenas will be reduced. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to subpoena of witnesses and for the production of documentary evidence.

§519.39. Subpoena of Witnesses and for the Production of Documentary Evidence.

(a) On his own motion or on the written request of any party to a hearing pending before him, on a showing of good cause, and on deposit of sums as required by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14, the hearings officer or **Executive Director** shall issue a subpoena addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas in the Texas Rules of Civil Procedure, Rule 178, to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If a subpoena also commands the person to whom it is directed to produce books, papers, documents, or tangible things designated therein, the hearings officer or **Executive Director**, on motion made seasonably and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1)-(2) (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 November 18, 1992.

TRD-9215545 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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• 22 TAC §519.40

The Texas State Board of Public Accountancy proposes an amendment to §519.40, concerning form of subpoena. The amendment allows the Executive Director to sign subpoenas.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the cost for issuing subpoenas will be reduced. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to form of subpoena.

§519.40. Form of Subpoena. The style of the subpoena shall be "The Texas State Board of Public Accountancy." It shall state the style of the hearing, that the hearing is pending before the Texas State Board of Public Accountancy, the time and place at which the witness is required to appear, and the party at whose insistence the witness is summoned. It shall be signed by the hearings officer or **Executive Director**, but need not be under the seal of the board, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which hearing of the proceeding may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure, Rule 178.

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 November 18, 1992.

TRD-9215551 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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• 22 TAC §519.43

The Texas State Board of Public Accountancy proposes an amendment to §519.43, concerning issuance of commission to take deposition. The rule allows the Executive Director to issue commissions to take depositions.

William Treacy, 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. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the cost of issuing commissions to take depositions shall be reduced. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate

rules relating to issuance of commission to take deposition.

§519.43. Issuance of Commission to Take Deposition.

(a) On his own motion or on the written request of any party to a contested case pending before him, and on deposit of sums as required by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14(d), a hearings officer or Executive Director shall issue a commission, addressed to several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) (No change.)

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

Issued in Austin, Texas, on November 18, 1992.

TRD-9215552 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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Chapter 528. Miscellaneous

• 22 TAC §528.1

The Texas State Board of Public Accountancy proposes new §528.1, concerning nonlicensees. The rule allows enrolled agents to use the initials EA so long as the words "Enrolled Agent" immediately follow the acronym.

William Treacy, 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. Treacy, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will understand that the initials EA refer to enrolled agents. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to nonlicensees.

§528.1. Nonlicensees. A nonlicensee may publish with his or her name the abbreviation EA or E. A., so long as the title "Enrolled Agent" is spelled out immediately following its use disclosing what it represents.

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 November 18, 1992.

TRD-9215553 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 450-7066

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.51

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §7.51, concerning forms and instructions for preparing and filing of tax returns for insurers and other entities required to file tax returns with the department for the 1991 calendar year. Amendments to the section are necessary to delete an instruction on forms to be adopted by reference and identified as: Instructions for Filing and Preparing the 1991 Texas Annual Tax Return for Domestic, Foreign and Alien Carriers Transacting Life, Health and Accident Business; Instructions for Filing and Preparing the 1991 Texas Annual Tax Return for Domestic, Foreign, and Alien Carriers, Lloyds, Reciprocal Exchanges and Miscellaneous Organizations Transacting Property and Casualty Business; and Instructions for Filing and Preparing the 1991 Texas Annual Tax Return for Health Maintenance Organizations. The amendment is to the adoption by reference material. The text to §7.51 remains unchanged.

The amendments to these forms are proposed to assure that the instructions are consistent with exemptions from premium taxation provided to institutions of higher education in the Insurance Code, Articles 3.50-2 and 3.50-3 and the legislative intent of House Bill 2, enacted during the Regular Session of the 72nd Legislature of Texas. An amendment to House Bill 2 authorized the consolidation of higher education insurance under the Employee Retirement System and allowed a one-year transition period to transfer higher education insurance administration to the Employee Retirement System. The amendments to House Bill 2 did not include or address the exemptions from premium tax for institutions of higher education for the one-year transition period. The amended instructions will continue the historical exemption from premium tax for certain insurance business written for Texas institutions of higher education during the one-year transition period. Timely and accurate payment of taxes is necessary for support of regulatory functions of the department. The forms and instructions include requirements for information respecting gross premium taxes, maintenance taxes, and other taxes, and certain incidental fees and provide a form to be used in determining and reporting the amount owed. The department has filed copies of these forms and instructions with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the forms and instruction can obtain copies from Tax Administration, Texas Department of Insurance, Tower 1, Room 860, 333 Guadalupe Street, Austin.

Gary N. Johnson, director of tax administration, has determined that for the first five-year period the section is in effect there will be fiscal implications for state or local government as an administrative cost of processing 18 premium tax refunds, and there will be no effect on local employment or local economy.

Mr. Johnson 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 adoption of appropriate forms and instructions to facilitate proper tax returns by insurers and other entities required to report and pay taxes to the department. The cost of compliance for small businesses will be the administrative cost of requesting these refunds. There is no expected difference in cost of compliance between small and large businesses on the basis of cost per hour of labor. The anticipated economic cost to persons who are required to comply with the proposed section will be the administrative cost in completing the forms and following the instructions. This cost will be at least partially offset because tax returns are statutorily required in some form in any case. The cost will depend on each company's recordkeeping practices and type of operation.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed rule in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, Mail Code #113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Gary N. Johnson, Director, Tax Administration, Mail Code 108-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separetely to the Chief Clerk's Office.

The amendment is proposed under the Insurance Code, Articles 1.04, 1.10, §9, 1.35B, 4.10, 4.11, 4.11B, 4.11C, 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 20A. 22, 20A.33, and 23.08; and Texas Civil Statutes, Article 6252-13a, §4, §5, and Article 8308-2.22 and 8308-11.09. Articles 20A.22 and 20A.33 have been referenced to previously in the rules as the Texas Health Maintenance Organization Act, §22 and §33. The Insurance Code, Article 1.04(b), authorizes the State Board of Insurance to determine rules in accordance with the laws of this state for uniform application. Article 1.10, §9, requires the department to furnish to companies required to report to the department, statement blanks for the statements required. Article 1.35B imposes an assessment for support of the Office of Public Insurance Counsel. Article 4.07 specifies the charges for certain fees. Articles 4.10, 4.11, 4.11B, 4.11C, and 20A.33; and Texas Civil Statutes Articles 8308-2.22, and 8308-11.09 require payment of taxes on gross premiums by entities regulated by the department or on gross amounts of similar revenue by health maintenance organizations. Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 20A.33, and 23.08, require the payment of maintenance taxes by certain entities regulated by the department. Articles 4.10, 4.11 and 20A.22 give the board rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4 and §5, require and authorize each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

§7.51. Preparation of 1991 Tax Returns. (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 November 23, 1992.

TRD-9215639 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 463-6327

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Part II. Texas Workers' Compensation Commission

Chapter 124. Carriers: Required Notices and Mode of Payment

- **28 TAC §124.1, §124.7**

The Texas Workers' Compensation Commission proposes amendments to §124. 1 and §124.7 concerning written notice of injury and initial payment of temporary income benefits. The amendments establish: what the commission will report to the insurance carrier; when the report will be made; a presumption of receipt by the carrier; that the carrier has the burden of proof if a dispute exists over receipt; and that the carrier must monitor claims and pay benefits when it finds benefits are due rather than when an outside source provides written notice that benefits are probably due.

Janet Chamness, chief of budget, has determined that for the first five-year period the sections are in effect there are no fiscal implications for state or local government as a result of enforcing or administering this section. For carriers, the sections will require diligence and an active claims management process. Depending on the current claims management process, this may increase the overhead costs for a carrier in the form of additional staff, or more automated processes, or payment of penalties for administrative violations.

The amendments require the same activities of large carriers as they do of the smallest carriers, though the impact may be smaller on a large carrier that already has automated systems and may have more adjusters and other staff to monitor claims.

Ms. Chamness 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: a reduced burden on the employer or others to report to the carrier when the injured employee begins to accrue benefits; more timely and certain payment of benefits as and when due; more accountability for the carriers to monitor and properly process claims; and more ability for the commission to identify carrier violations and issue appropriate sanctions. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The new sections are proposed under Texas Civil Statutes, Article 8308-2. 09(a), which authorizes the commission to adopt rules necessary to administer the Act, Texas Civil Statutes, Article 8308-4.22 and 4.23 which define the accrual date for benefits, and Texas Civil Statutes, Article 8308-5.21 which requires the carrier to initiate compensation

§124.1. Written Notice of Injury Defined.

(a) Written notice of injury, as used in The Texas Workers' Compensation Act (Act), §5.21, [consist] consists of the insurance carrier's earliest receipt of:

(1) the employer's first report of injury;

(2) the notification provided by the commission under subsection (c) of this section; or

(3) any other written document, regardless of source, which fairly informs the insurance carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury, and facts showing compensability.

(b) A carrier shall date-stamp each written notice of injury upon receipt.

(c) The commission shall furnish [a dated] written notification to the insurance carrier [of any reported injury which may produce compensable lost time, impairment, or of any compensable death. Receipt of this notice by the carrier shall begin the seven day period for commencement of payment of income benefits, or filing of a notice of refusal, under Article 5.21.] **when a source other than the carrier reports:**

(1) an injury which may cause the employee eight days or more of disability or has resulted in an impairment;

(2) a death; or

(3) an occupational disease.

(d) For purposes of this title, the carrier shall be presumed to have received notice if the commission has received written notice required by the Act or commission rules to be filed with the carrier and with the commission. The carrier has the burden of proving that it did not receive or timely receive the written notice.

§124.7. Initial Payment of Temporary Income Benefit.

(a) As used in this section, the following terms have the following meanings, unless the context clearly indicates otherwise: "Accrual date" means the day an injured worker's income benefits begin to accrue. "Day of disability" means a day when the worker is unable to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Intermittent days of disability shall be cumulated to calculate the accrual date.

(b) An injured worker's accrual date is the worker's eighth day of disability.

(c) [A carrier has complied with the requirement to timely initiate temporary income benefits, as required by the Texas Workers' Compensation Act (the Act), §5.21, if the first payment of benefits is made no later than the seventh day after receiving written notice of injury stating that the employee has suffered eight days of disability.] **A carrier who has received written notice of an injury and has not disputed the claim in accordance with §124.6 of this title (relating to Notice of Refused or Disputed Claim) shall initiate income benefits no later than the seventh day after the accrual date.**

(d) Nothing in this section is intended to limit a carrier's discretion to initiate payment of temporary income benefits before the time limit established in subsection (c) of this section.

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

Issued in Austin, Texas, on November 20, 1992.

TRD-9215603 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 440-3592

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Chapter 134. Guidelines for Medical Services, Charges, and Payments

Subchapter C. Medical Fee Guidelines

• 28 TAC §134.301

The Texas Workers' Compensation Commission proposes new §134.301, concerning Dental Guidelines. This section clarifies which treatments are subject to the Workers' Compensation Act. At this time the guideline does not list specific dollar values for procedures, though such specificity will be included in future revisions after enough statewide information has been collected.

Drew Thigpen, director of administration, 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 this section.

Mr. Thigpen 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 collection of data to allow development of a fair and reasonable guideline to regulate the cost of dental care for workers' compensation patients. 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 Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The new section is proposed under Texas Civil Statutes, Article 8308-2.09(a) , which authorize the commission to adopt rules necessary to administer the Act, Texas Civil Statutes, Article 8308-8.01, which require the commission to establish by rule medical policies and fee guidelines governing the provision and payment of medical services designed to assure quality while effectively controlling costs, and Texas Civil Statutes, Article 8308-8.21, which require the commission to establish by rule guidelines relating to the use of medical services by injured employees.

§134.301. Dental Guideline. The Commission hereby adopts by reference the 1992 Dental Guideline. This Guideline describes covered services under the Texas Workers' Compensation Act. The Guideline shall be effective for dental treatment listed in the Guideline rendered on or after January 1, 1993. Copies of the Guideline may be obtained from the Publications Department of the Texas Workers' Compensation Commission, 4000 South IH-35, Southfield Building, Austin, Texas 78704-7491.

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 November 20, 1992.

TRD-9215605 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 440-3592

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Control

• 37 TAC §91.61

The Texas Youth Commission (TYC) proposes an amendment to §91.61, concerning the use of chemical agents. The amendment is additional criteria for the use of chemical agents. It requires that less severe methods to gain control be exhausted, and are ineffective, untimely, or impractical, prior to chemical use.

John Franks, director of fiscal affairs, 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. Franks 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 a more restrictive use of chemical agents on youth. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.61. Use of Chemical Agents.

(a) Policy. Texas Youth Commission (TYC) staff use agency approved chemical agents when necessary to ensure the safety and welfare of youth and staff. The Texas Youth Commission prohibits the use of chemical agents as a form of punishment.

(b) Rules.

(1) Criteria For Use.

(A) (No change.)

(B) Less severe methods to gain control have been exhausted, are ineffective, untimely, or impractical.

(C)[(B)] Use of chemical agents is authorized only in TYC facilities approved by the executive director.

(2) (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 November 18, 1992.

TRD-9215607 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 483-5244

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Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Provisions

Subchapter C. Maximum System Capacity of the Institutional Division

• 37 TAC §§152.10-152.12

The Texas Department of Criminal Justice proposes new §§152.10-152.12, concerning the maximum unit and system capacities of the Institutional Division. If the presiding court in *Ruiz v Collins* CN. H-78-987 (Southern District of Texas, Houston Division) signs the proposed Final Judgment, then final adoption of these rules will create a mechanism for determining maximum unit and system capacities in conformity with Texas Government Code, §§499.001 et seq and the Final Judgment. The Final Judgment provides as follows:

IT IS STIPULATED by the parties, pursuant to the court's order of March 6, 1990, and subject to the court's approval after appropriate proceedings pursuant to Fed. R. Civ. P. 23, as follows:

I. Purpose and Scope of Final Judgment. This Final Judgment is intended to consolidate previous stipulations, agreements and orders in this action, to meet the parties' obligations under the court's March 6, 1990, order to establish a timetable for the orderly termination of the court's jurisdiction of this case and to resolve all outstanding issues in *Gomez v. Collins*, Case Number L85-188-CA, which has been consolidated with Ruiz. Defendants hereby withdraw their Motion to Terminate Jurisdiction.

Except as otherwise stated, this Final Judgment supersedes all previous orders, plans and stipulations in this action; provided, however, nothing in this Judgment shall modify the court's orders of September 20, 1979, June 16, 1980 and April 30, 1982, relating to the protection of prisoner witnesses.

Upon the court's final approval of this Final Judgment, defendants shall be relieved of the operation of all extant orders, plans and stipulations with respect to classification, necessities and the Physically Handicapped Offender Program.

For most substantive areas, this document employs the following format:

(A) a condensed statement of the specific injunctive relief ordered henceforth, if any;

(B) the supplemental relief, if any, included in the relief set forth in paragraph A, and the reasons therefore;

(C) monitoring and reporting requirements established herein in lieu of the monitoring and reporting obligations required by the Report of Special Master Recommending Timetable for Termination of the Mastership as ordered by the court on May 24, 1988; and

(D) a timetable for relief from judgment pursuant to Fed. R. Civ. P. 60(b), and for termination of the court's jurisdiction.

In certain instances the condensed statement of the relief ordered henceforth includes both a requirement that defendants adhere to certain extant rules, policies, procedures or plans, and a provision that defendants may modify those rules, policies, procedures or plans after notice to plaintiffs and the court. In all of these instances, the proposed modification shall be deemed approved by the court thirty days following service on plaintiffs and filing with the court unless an objection to the proposed modification is filed during that 30-day period. If an objection is filed, the court shall evaluate the proposed modification in light of the fundamental purposes of the rules, policies, procedures or plans required by this Final Judgment that defendants seek to modify, and shall approve the proposed modification unless those fundamental purposes would be substantially frustrated by the proposed modification.

II. Staffing

(A) Defendants shall employ sufficient trained security and non-security staff to provide for and maintain the security, control, custody and supervision of prisoners, taking account of the security and custody levels for the prisoner population and the design of defendants' facilities.

(B) No supplemental relief is ordered.

(C) Defendants shall have no additional monitoring or reporting obligations with respect to staffing.

III. Support Services Inmates

(A) No prisoner shall be permitted to exercise authority over another prisoner, to supervise another prisoner, to convey orders or instructions from TDCJ-ID employees to another prisoner, to discipline another prisoner, to count or assist in counting other prisoners, to obtain sensitive information about other prisoners absent a state or federal court order or, except as required or permitted by the nature of the prisoner's classification status or non-support service job or program assignment, to have special privileges such as special or extra clothing, food, property, cell assignments or recreation. The purpose of the restriction on sensitive information is to prevent a prisoner from gaining power or an advantage over another prisoner as a result of obtaining information about the other prisoner. "Sensitive information" is defined in Section I.G of the Stipulated Modification of Sections II.A and II. D of Amended Decree, but this definition may be modified by the Board of Criminal Justice as appropriate and consistent with the purposes of this paragraph III.

(B) No supplemental relief is ordered.

(C) Defendants shall have no additional monitoring or reporting obligations with respect to support service inmates.

IV. Discipline.

(A) Defendants shall comply with their own rules regarding the discipline of prisoners. Defendants' current rules are the TDCJ-ID Disciplinary Rules and Procedures for Inmates, revised May, 1991. Only the Board of Criminal Justice shall have the discretion to alter these rules. All disciplinary hearings that may result in sanctions of solitary confinement or a loss of class or good time shall be tape recorded and the tape preserved and made available to the prisoner or his counsel substitute for review on request for six months after the hearing. Furthermore, defendants shall maintain in effect a staff counsel substitute program and shall ensure that prisoners assigned to solitary confinement receive the full daily rations of food and that all other prisoners receive, consistent with security requirements.

(B) No supplemental relief is ordered.

(C) Defendants shall have no additional monitoring or reporting obligations with respect to discipline.

V. Administrative Segregation

(A) Summary of Current Obligations

(1) Defendants shall comply with the Administrative Segregation Plan. Defendants shall have discretion to alter the Plan, but shall notify the court and plaintiffs' and plaintiff-intervenor's counsel no less than 30 days in advance of any proposed substantive modification and the rationale for the modification. In addition, defendants shall provide adequate shelving in each administrative segregation cell, which may consist of an empty bunk bed, and adequate lighting in each administrative segregation cell, which shall at a minimum provide 20 foot candles of light for all places in the cell in which reading is normally accomplished. Furthermore, all recreation yards at all Michael prototype units, extant or hereafter constructed, shall be at least the size of the administrative segregation recreation yards at the Michael unit, at least 20 feet high if they are enclosed (and any enclosure shall be transparent), and equipped at least for the activities for which the administrative segregation recreation yards at the Michael unit are presently equipped. With respect to all units that are not of the Michael prototype design to which administrative segregation prisoners are assigned, defendants shall not reduce the present size of the administrative segregation recreation yards or the nature and amount of equipment presently provided to prisoners in administrative segregation recreation areas. Administrative segregation recreation periods may begin as early as 7 a.m. if the sun has risen or if adequate artificial lighting is provided. Except at the Michael Unit and all units thereafter constructed, immersion heaters may be denied to all Group A security detention prisoners and all pre-hearing detention prisoners. Prisoners assigned to the Michael Unit and all units thereafter constructed, protective custody prisoners, and Group B security detention prisoners shall retain all personal property items allowed to general population prisoners unless denied on a case-by-case basis pursuant to Section II.5.a of the Administrative Segregation Plan.

(2) Each prisoner assigned to administrative segregation shall be housed in a single occupancy cell.

(B) Defendants shall have no additional monitoring or reporting obligations with respect to administrative segregation.

(C) In the absence of a pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph V A.1 on December 31, 1992.

VI. Work Health and Safety

(A) Defendants shall provide a safe and healthful environment and work conditions for all prisoners, and shall comply with the revised TDCJ-ID 1988 Occupational Health and Safety Manual. Defendants have discretion to modify the Manual but any modification must adhere to the codes and standards listed in Policy Number 01-A-1 of the Manual.

(B) No supplemental relief is ordered.

(C) Defendants shall serve on plaintiffs' counsel any report defendants receive from the Texas Department of Agriculture prior to May 1, 1992, on the storage, removal and use of pesticides in TDCJ-ID.

(D) In the absence of pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph VI A on May 1, 1992.

VII. Use of Force

(A) Defendants shall maintain and enforce written policies and procedures governing when and how force and chemical agents are permitted to be used by TDCJ-ID personnel against prisoners, reporting and internal investigation requirements when force is used or is alleged to have been used, and discipline of employees for violations of the policies and procedures. The policies and procedures shall require that only the minimum force and chemical agents reasonably believed to be necessary may be used, and shall establish reasonable policies, procedures and standards for the effective investigation of prisoners' allegations of unnecessary or excessive uses of force and discipline of employees determined to have violated the policies and procedures. Only the Texas Board of Criminal Justice shall have discretion to alter the written policies and procedures. Until December 31, 1992, defendants shall notify the court and counsel for plaintiffs no less than 30 days in advance of any proposed substantive modification of the policies and procedures and the rationale for the modification.

(B) No supplemental relief is ordered.

(C) Defendants shall have no additional monitoring or reporting obligations with respect to use of force.

VIII. Access to Courts

(A) Defendants shall maintain and enforce written policies and procedures permitting prisoners access to the courts, lawyers, and public officials and agencies and providing for investigations of allegations of retaliation for the exercise of such access. These policies and procedures shall be posted centrally in each prison and a copy shall be provided to each prisoner when the prisoner arrives in defendants' custody. Only the Texas Board of Criminal Justice shall have discretion to alter the policies and procedures.

(B) No supplemental relief is ordered.

(C) Defendants shall have no additional monitoring or reporting obligations with respect to access to courts.

IX. Maintenance of Facilities

(A) Defendants shall conduct preventive and regular maintenance of all facilities and equipment affecting prisoners. They shall ensure that all such areas are maintained in a safe and sanitary condition. Defendants shall have a written maintenance program that ensures that all deficiencies are identified, reported, and corrected in a timely manner.

(B) No supplemental relief is ordered.

(C) Defendants filed quarterly reports on compliance with the requirements relating to preventive maintenance and to repairs of minor structural deficiencies on July 1, 1992, and August 5, 1992. Those reports in the aggregate, in combination with the previously filed October 1991 report, reported on compliance at all of the units listed in Section II.A of the Stipulation Modifying Crowding Provisions of Amended Decree ("Crowding Stipulation").

(D) In the absence of a pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph IX.A on September 15, 1992.

X. Major Structural Deficiencies

(A) No later than December 31, 1992, defendants shall complete the renovations identified in the TDCJ-ID Inventory of December 1986, and the renovations required by the Stipulation of May 8, 1989 ("MSD Stipulation"), including the heating and ventilation repairs and renovations required by that stipulation, to the standards established by that stipulation.

(B) No supplemental relief is ordered.

(C) Audits and Reports

(1) Repairs and renovations accomplished pursuant to the inventory of December 1986 and the MSD Stipulation shall be audited and repaired in accordance with the letter of June 28, 1991, attached hereto as Exhibit A and incorporated herein by reference.

(2) As the heating and ventilation renovations are completed at any unit, defendants shall employ an outside contractor to balance the renovated heating and ventilation systems at that unit.

(3) The individual or entity performing the balancing of the renovated heating and ventilation system at a unit shall prepare a written report of its activities and findings immediately upon concluding those activities, a copy of which shall be submitted to plaintiffs' counsel and to experts employed by the Special Master.

(4) The experts employed by the Special Master shall review each balancing report prepared pursuant to Paragraph X.C(3). At 10 units, which shall include the Beto 2, Eastham, Ellis 1 and the Ferguson units plus six units selected by plaintiffs' counsel, the experts employed by the Special Master shall conduct whatever additional investigation they and the Special Master deem necessary to determine that the heating and ventilation renovations are in compliance with the provisions of the MSD Stipulation. This investigation may include but is not limited to hiring an independent balancing contractor. Upon completion of this review and investigation, if any, the experts employed by the Special Master shall prepare a written report of their findings.

(5) Based on the results of the audits at the ten units selected pursuant to Paragraph X.C.(4), defendants may request that the parties meet and confer in good faith to determine whether the auditing process could be limited or modified and still serve the purpose of ensuring that all completed heating and ventilation renovations comply with the requirements of the MSD Stipulation. In the event that the parties cannot reach agreement, the process established in Paragraph X.C(4) shall continue for an additional four units selected by plaintiffs' counsel.

(6) If the reports on the heating and ventilation renovation required by Paragraphs X.C(4) and (5) show substantial compliance with the MSD Stipulation at that unit, and if plaintiffs do not object in writing within 45 days of their receipt of a report, no further audits of the heating and ventilation renovations at that unit shall be conducted by the experts; provided, however, that no renovation may be deemed to be in substantial compliance with the MSD Stipulation unless the standard for ventilation established for that unit, (i. e., the required air flow expressed in cubic feet per minute) and for air temperature control are met. If the report indicates that any portion of the heating and ventilation renovations is not in substantial compliance with the MSD Stipulation, and defendants do not object in writing within 45 days of their receipt of the report, defendants shall promptly initiate and complete whatever renovations are necessary to come into compliance with the MSD Stipulation and shall submit to counsel for plaintiffs and plaintiff-intervenor and to the experts employed by the Special Master a report on the renovations initiated and completed. The Special Master's experts then shall spot check the repairs reported in defendants' report and notify counsel for the parties of their findings. If any such expert spot check report finds substantial noncompliance in connection with defendants' repairs, defendants shall file a final report in response to the expert's report, objecting to the findings in the expert's report, setting forth the remedial actions defendants intend to take in response to the findings, or a combination thereof.

(D) In the absence of a pending motion or further order to the contrary, defendants shall be relieved of any further obligations under this paragraph X 45 days following the filing of the last report required by paragraph X.C, or upon resolution by the court of any objection to the report, whichever occurs later.

XI. Programmatic and Recreational Activity

(A) Defendants shall provide substantially full-time work, educational, vocational or on-the-job training opportunities, or some combination thereof, to all general population prisoners who are medically capable of participating in these activities. In addition, each general population prisoner shall be given the opportunity to be involved in recre-

ational and other non-programmatic activity no fewer than four hours a day on each non-holiday weekday, out of his cell or dormitory sleeping area. Each prisoner shall be given an opportunity to spend at least two of those four hours in a gymnasium, an outdoor recreation yard, or in some form of in-shop hobby and crafts activity if the prisoner is enrolled in such activity; provided, however, that each such prisoner shall be given an opportunity to spend at least one of those two hours in a gymnasium or an outdoor recreation yard. The balance of the prisoner's non-programmatic time may be spent in a day room, library, law library, chapel or other recreational facility or activity; provided, however, that the prisoner must have alternatives to the day room for a substantial portion of that time. Time spent by a prisoner in a day room during population counts or awaiting access to a dining room or to commissary shall not be regarded as programmatic, non-programmatic, or recreational activity. Any medically-capable general population prisoner who is not afforded substantially full-time work, educational, vocational or on-the-job training opportunities, or some combination thereof, shall be provided additional non-programmatic and recreational opportunities commensurate with the shortfall in his opportunity for programmatic activities.

On each scheduled non-work day (Saturday, Sunday and holidays for most prisoners), each general population prisoner shall be given the opportunity to spend at least three hours in a gymnasium or an outdoor yard, or in some form of in-shop hobby and crafts activity if the prisoner is enrolled in such activity; provided, however, that each such prisoner shall be given an opportunity to spend at least two of those three hours in a gymnasium or an outdoor recreation yard. In addition, he shall be given the opportunity to spend at least four hours in a day room, library, law library, chapel or other recreational facility or activity; provided, however, that the prisoner must have alternatives to the day room for a substantial portion of that time. Time spent by a prisoner in a day room during population counts or awaiting access to a dining room or to commissary shall not be regarded as programmatic, non-programmatic or recreational activity.

Each general population prisoner who is not under cell restriction imposed as a valid disciplinary punishment shall be afforded a reasonable time for a least hourly, two-way ingress to and egress from the day room.

(B) No supplemental relief is ordered.

(C) No later than June 1, 1992, defendants shall file a comprehensive report on compliance with Paragraph XI.A.

(D) If plaintiffs file no objections to or motions based on the report required by paragraph XI.C that result in a further order to the contrary, defendants shall be relieved of the operation of paragraph XI.A forty-five days after the report is filed. If plaintiffs file objections to or a motion based on the report required by paragraph XI.C, defendants shall be relieved of the operation of paragraph XI.A upon resolution of the objections and motion.

XII. Visiting

Except as provided herein, defendants shall be relieved of the operation of all extant orders, plans and stipulations with respect to visiting upon the court's final approval of this Final Judgment; provided, however, that defendants shall continue to maintain a contact visiting program.

XIII. Crowding

(A) Acknowledgements

In entering into this Final Judgment, the parties acknowledge that they have had more than six years of experience under the Stipulation Modifying Crowding Provisions of Amended Decree ("Crowding Stipulation"); that there has been substantially more demand for prison space than the supply of space available throughout that period and before, and that this imbalance may or may not continue; that House Bill 93 may or may not have substantial impact on sentencing practices and the use of options to incarceration, including diversion programs; and that prisoners sentenced to defendants' custody have been and may or may not continue to be held in county jails. The parties further acknowledge that they have, in connection with the negotiation of this Final Judgment, assessed the capacity of each of the prison units named in paragraph XIII.B, taking into consideration the experience gained from operating under the Crowding Stipulation, the design of the units and the modifications and improvements to the units made pursuant to the Crowding Stipulation. The parties further acknowledge that the maximum system population established by paragraph XIII.B permits a level of spatial density in the prisons that exceeds the spatial density at which those prisons were originally designed to operate and, in most instances, exceeds the spatial densities of the other prison systems in the United States. Under the maximum population permitted by paragraph XIII.B, the maximum population of the prison system in existence at the time of this Final Judgment is being increased by 2, 300 prisoners.

(B) Maximum Population

(1) The maximum system population of the TDCJ-ID is the total number of prisoners who may be assigned to TDCJ-ID units. At the time of this Final Judgment, the maximum system population of existing units, including the Beto I, Beto II, Briscoe, Central, Clemens, Clements, Coffield, Daniel, Darrington, Diagnostic, Eastham, Ellis I, Ellis II, Ferguson, Gatesville, Goree, Hobby, Hightower, Hilltop, Hughes, Huntsville, Jester I, Jester II, Jester III, Lewis, Michael, Mt. View, Pack I, Pack II, Ramsey I, Ramsey II, Ramsey III, Retrieve, Roach, Wynne units, and 20 trusty camps, is 51,067; provided, that defendants must meet the terms and conditions in Exhibit B hereto prior to permitting the maximum system population of the units listed in this paragraph B.1 to reach 51,067, and all adjustments to population referred to in that exhibit are included within the maximum system population of 51,067 permitted by this paragraph. This 51,067 is 2,300 more than the maximum population permitted to these units under the applicable orders that are being superseded by this Final Judgment.

(2) Except as permitted by paragraph XIII.D.2, defendants shall not house more than a total of 38,790 prisoners on the units listed in Section II of the Crowding Stipulation (the Beto I, Beto II, Central, Clemens, Coffield, Darrington, Diagnostic, Eastham, Ellis I, Ellis II, Ferguson, Gatesville, Goree, Hilltop, Huntsville, Jester I, Jester II, Jester III, Mt. View, Pack I, Pack II, Ramsey I, Ramsey II, Ramsey III, Retrieve, Wynne units), and the trusty camps located adjacent thereto. This number is 2,136 more than the maximum population permitted on these units under the applicable orders that are being superseded by this Final Judgment. Except as permitted by paragraph XIII.D.2 or Exhibit B, defendants shall not permit the population of the following individual units to exceed:

Darrington	1610
Ferguson	2100
Wynne	2300
Beto I	3150
Clemens	894
Coffield	3150
Eastham	2153
Ellis I	1995
Ramsey II	893
Retrieve	809
Huntsville	1705

(3) Prisoners assigned to dedicated free-standing psychiatric in-patient facilities (currently the Skyview unit and, upon its completion, the Sugarland psychiatric facility), or to any dedicated free-standing psychiatric in-patient facilities hereafter constructed, and prisoners assigned to designated boot camps operated by defendants, are not included in the maximum system population, and the facilities housing such prisoners are not included in any calculation of capacity or maximum population. From a capacity standpoint, any such facility, and any trusty camp, may be operated at 100% of the population defendants have established for that facility.

(4) The maximum population of any unit, and the maximum system population, shall be reduced if any facility, including cellblocks, dormitories, or any portion thereof is, for any reason, closed or converted to any use other than the housing of prisoners. The unit and system population shall be reduced by the total number of beds in the closed facility (e.g., two times the number of two-person cells, the number of single occupancy partitioned bed spaces in dormitories). Defendants may restore unit and system maximum population lost pursuant to this paragraph by reopening the closed or converted housing after any necessary renovations.

(C) Defendants shall take reasonable steps to ameliorate the effects of crowding on each of their prison units. For each unit, they shall examine the impact of crowding on timely access to medical care and on opportunities to participate in meaningful work, education, substance abuse rehabilitation and non- programmatic activities. Further, defendants shall take reasonable steps to provide opportunities for prisoners to engage in programmatic and non-programmatic activities outside of their cells, dormitories, and day rooms.

(D) New Facilities

(1) Defendants may increase the maximum system population established by paragraph XIII.B.1 by adding facilities pursuant to the terms of this paragraph XIII.D, when the facilities are opened and occupied. Defendants shall not permit TDCJ-ID's total prisoner population to exceed the maximum system population established by paragraph XIII.B.1, as adjusted pursuant to paragraph XIII.B.4 and by the addition of the maximum population of facilities added pursuant to the terms of this paragraph XIII.D.

(2) Defendants may increase maximum system population by building new prisons modeled on the Michael, Hobby or trusty camp prototypes, as well as new types of confinement facilities, provided that any such new construction, regardless of design or architectural style, shall proceed based on architectural and engineering designs, drawings and specifications of a quality and scope similar to the designs that have been the basis of the Michael, Hobby and trusty camp prototypes, prepared under the direct supervision of and approved by a registered architect and professional engineers trained in the appropriate discipline for each aspect of the design (i.e., civil, structural, mechanical and electrical). Such newly constructed facilities shall be designed to promote sound classification and security practices and the safety, health and well-being of both prisoners and staff, and shall provide adequate living space for prisoners.

(3) Defendants shall establish the maximum unit population for any newly constructed unit, at the time its construction is commenced, taking into account the need for inter- and intra- unit flexibility for classification and prisoner movement. Defendants may adjust the maximum unit population of any unit constructed and opened after the date of entry of this Final Judgment, as permitted by state law, provided that the unit contains adequate space to provide for the matters listed in Section 499.102(a) (1)-(15) of House Bill 124 (as enacted June 16, 1991)

(4) Defendants may increase maximum system population by acquiring facilities or contracting for the operation of facilities. For any such facility, defendants shall do the following: establish a maximum unit population for such new facility at the time they acquire or contract for the operation of the facility, taking into consideration the need for inter- and intra-unit flexibility for classification and prisoner movement; insure that prisoners in dormitories with more than 8 prisoners per dormitory in a facility for prisoners who are likely to remain in defendants' custody more than 120 days, and with more than 24 prisoners per dormitory in facilities for prisoners who are expected to be released from defendants' custody within 120 days, shall be provided with single occupancy privacy partitions; and that only minimum custody male prisoners and minimum or medium custody female prisoners may be housed in dormitories with more than six prisoners; (c) insure that prisoners in cells or cell-like housing are provided with substantially similar cell space as in the Michael and Hobby unit prototypes, if the facility houses prisoners who are expected to remain in defendants' custody for more than 120 days; and insure that the facility shall contain adequate space to provide for the matters listed in Section 499.102(A) (1)-(15) of House Bill 124 (as enacted June 16, 1991), recognizing that less space may be needed for facilities where the length of stay is limited to less than 120 days

than for facilities where the length of stay may be longer than 120 days.

(5) Defendants may increase unit and system population by constructing permanent additions to or renovating portions of future units and existing units other than the Darrington, Clemens, Ramsey I, Ramsey II, Wynne, Eastham, Ellis I, Hunstville and Retrieve units. No addition or renovation that is not substantially self-contained like trusty camp shall be undertaken if its operation would impair the provision of the services, facilities and conditions to the prisoners assigned to the addition or to the unit to which the addition or renovation is added. Any addition or renovation shall be a permanent structure and construction or renovation shall proceed based on architectural and engineering designs, drawings and specifications of a quality and scope appropriate to the size of the project, prepared under the direct supervision of and approved by a registered architect and professional engineers trained in the appropriate discipline for each aspect of the design (i.e., civil, structural, mechanical and electrical) as appropriate considering scope of the designs, drawings and specifications prepared. Defendants shall not renovate for the purpose of housing prisoners any spaces constructed or used as common spaces for prisoners without first replacing the common space to be renovated.

(6) Defendants currently are operating two boot camps in trusty camp prototype facilities. If and when either or both of these boot camps are converted to regular prisoner housing, defendants may add to maximum unit and system population the 200 beds in each converted facility (or up to 214 beds pursuant to paragraph 1 of Exhibit B).

(7) In newly constructed or acquired units or portions of units, solitary, pre-hearing detention, infirmary, hospital, and transient beds other than those for incoming prisoners in the diagnostic process are not and shall not be included in maximum system population because prisoners only pass though them temporarily on their way to and from their regular housing assignments.

(8) Defendants shall not use, even on a temporary basis, any tents (except as provided in Section 9 below) or facilities not constructed or renovated for the purpose of housing of prisoners, including but not limited to runs, hallways, converted dayroom space and gymnasiums, provided that defendants shall not be precluded from using tents or other temporary facilities in the case of a natural disaster or bona fide emergency (unrelated to population pressures) for only so long as is necessary under the circumstances, or for not more than six months to house roving construction crews or prisoners temporarily displaced from their regular housing units because of housing renovation.

(9) To the extent permitted by state law, defendants may use tents or tent-like structures for particular correctional programs that they may create such as work camps, wilderness camps, forestry camps or boot camps, when such structures are practical and appropriate for the particular program, if: the Board of Criminal Justice enters a finding that utilization of such structures is cost-effective; defendants decide to operate or contract for the operation of such a particular program, define the program in writing, and establish a maximum population for the structures; and the structures are certified as fire-safe by the state Fire Marshal for up to the maximum population that defendants have established for them. Tents may not be used simply to increase the population of an existing or future unit; increasing unit population is covered by paragraph XIII.D.5 above.

(10) This Final Judgment shall not apply to any contract facility not operated by defendants, and nothing herein shall restrict the operation of any prisons that defendants may contract for, except that defendants shall contract for and enforce on any contractor the space standards and requirements set forth in paragraphs XIII. D.2, 4 and 9.

XIV. Gomez

Defendants shall implement and maintain a program to ensure that prisoners seeking to use or using the law library will have access to Spanish-English interpreters as necessary. Defendants shall implement and maintain a program to ensure that prisoners seeking to use or using the grievance process will have access to Spanish-English interpreters as necessary. Defendants shall implement and maintain a program to ensure that prisoners participating in the disciplinary system will have access to Spanish-English interpreters as necessary. In the absence of a pending motion or further order to the contrary, defendants shall be relieved of the operation of this paragraph upon the court's approval of this Final Judgment.

XV. Special Master

Absent further order of the court, the Amended Order of Reference, dated July 24, 1982, shall be vacated at the time that plaintiffs' counsel are relieved of their obligations to the class. As has been true since the closure of his Houston office, the Special Master no longer has affirmative monitoring and reporting obligations, but he or a monitor on his staff shall perform such tasks as are agreed to by the parties or following a motion by a party. In particular, the parties agree that the Special Master shall continue to participate actively in the evaluations of major structural deficiencies conducted by outside consultants (paragraph X.C. supra) and that he will assist the parties in resolving other remaining compliance issues. In order to provide the parties with that assistance, the Special Master may, upon the request of either party and following consultation with all counsel, select one or more expert consultants to provide their guidance and expertise to all parties. Any expert selected by the Special Master pursuant to this paragraph will prepare report(s) as required by the circumstances, will make himself available to counsel for either party to respond to questions about his reports or the underlying findings, and will be compensated for his time and expenses by the Special Master as part of the Special Master's usual monthly expense statements. By agreeing to the employment of expert consultants selected by the Special Master, neither plaintiffs nor defendants waive their respective positions concerning the direct retention and compensation of expert consultants by a party.

XVI. Reporting; Monitoring by Plaintiffs' Counsel

(A) The reports required of defendants by this Final Judgment shall be the only remaining reporting requirements imposed on defendants.

(B) Until December 31, 1992, defendants shall file all reports required by the Report of the Special Master Recommending Certain Reports by the Defendants Relating to TDC Units to be Constructed in the Future, as ordered by the court on June 7, 1989.

(C) In addition, defendants shall submit to plaintiffs' counsel on a timely basis, as they are prepared, the reports or documents referred to throughout this Final Judgment.

(D) Until the date of relief from the operation of this Final Page of Judgment, by its terms as to a particular matter, or until plaintiffs' counsel are relieved by the court of their obligations to the class as to a particular matter, whichever occurs earlier, plaintiffs' counsel and any experts retained by them shall have reasonable access to all facilities governed by this Final Judgment, for the purpose of viewing such facilities and interviewing prisoners on any matter applicable to that unit for which relief from judgment has not been obtained and, with the consent of defendants' counsel (which consent shall not be unreasonably withheld), shall be allowed to speak with defendants' employees in connection therewith, at reasonable times upon ten days' advance notice to defendants' counsel. Advance notice shall include an itinerary. Defendants may deny plaintiffs' counsel access to any facility on bona fide grounds of security. Defendants' counsel may accompany plaintiffs' counsel or expert on any such visit provided that plaintiffs and plaintiff-intervenor's counsel may conduct confidential interviews with prisoners. Upon request, until plaintiffs counsel are relieved by the court of their obligations to the class, defendants shall furnish to plaintiffs' and plaintiff-intervenor's counsel all documents otherwise discoverable that are relevant to matters for which relief from judgment has not been obtained.

(E) Plaintiffs' counsel will be relieved of their obligations to the class with respect to issues as to which relief from judgment has been or will be granted pursuant to the terms of this Final Judgment as of date of such relief and, except as to a matter on which a motion or objection is pending, they will be relieved of their obligation to the class on all other issues on June 1, 1993.

(F) Plaintiffs' attorneys' fees, costs and expenses shall be paid pursuant to the Judgment entered on January 10, 1983, which is incorporated herein by reference. The parties acknowledge that Judgment does not obligate defendants to pay any fees, costs or expenses for services rendered by plaintiffs' counsel on any issue or matter with respect to which they do not have an obligation to represent the class.

XVII. Defendants' Internal Monitoring and Enforcement

Defendants shall continue to employ an adequate number and type of staff, whether denominated as monitoring, auditing, administrative or other staff, at levels suffi-

cient to ensure effective monitoring of all TDCJ-ID rules, regulations, policies and practices related to each area addressed by this Final Judgment.

XVIII. Mentally Retarded Offender Program

(A) Defendants shall maintain and operate a Mentally Retarded Offender Program consistent with the terms of the Mentally Retarded Offender Plan [hereinafter "MROP"], as modified and approved pursuant to the Order of April 5, 1985.

(B) No supplemental relief is ordered.

(C) Defendants shall evaluate their compliance with the requirements of the MROP pertaining to individual habilitation plans, treatment teams, behavior modification and training in daily living skills (which include appropriate pre-release programs). A report setting forth the results of the evaluation has been submitted to plaintiffs' counsel and shall be filed with the court no later than March 9, 1992. In addition, defendants shall retain an expert consultant who shall, through a review of records as well as on site evaluation of prisoners and a review of services, assess: the appropriateness of the current placement of prisoners who carry a dual diagnosis of mental retardation and mental illness in the MROP program for males; the appropriateness and sufficiency of treatment and habilitation programs for such prisoners; and the staff resources (considering both numbers of staff and credentials, training and experience of staff) necessary to meet the treatment and habilitation needs of such prisoners. A written report of the expert consultant's assessment, conclusions and recommendations, together with defendants' response, has been submitted to plaintiff's counsel and shall be filed with the court no later than May 1, 1992.

(D) In the absence of a pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph XVIII. A. upon court approval of this Final Judgment.

XIX. Health Services

(A) Defendants shall comply with the provisions of the Consent Decree, April 20, 1981, pertaining to medical and dental care, and shall maintain a system for the delivery of medical and dental care and other health care services consistent with the provisions of the Comprehensive Medical Health Care Plan, as modified and approved, Order on Defendants' Comprehensive Health Care Plan, January 2, 1985; Order Concerning Defendants' Psychiatric Services Plan and Comprehensive Health Care Plan, January 3, 1986; Stipulation and Order-Accreditation of the Health System, May 29, 1985.

(B) No supplemental relief is ordered, provided that: defendants shall carefully monitor the timeliness of access to unit health services (including medical, dental and psychiatric services) by walk-in and written sick call procedures; such monitoring shall measure access against the guidelines set forth in the "Discussion" of Standard P-35, Standards for Health Services in Prisons, January 1987, National Commission on Correctional Health, unless the guidelines are revised, in which case the monitoring shall measure access against the revision; defendants promptly shall take corrective action on units that fail to afford access consistent with these guidelines, which corrective action may, if necessary, include reducing the number of prisoner population at units where no other steps succeed in bringing the unit into compliance with the sick call standards; provided, however, deviations from these guidelines which result from exercise of sound medical judgment shall not be deemed grounds for corrective action; because TDCJ-ID has chronically had a severe shortage of nurses, defendants promptly shall take all steps legally available to them to offer competitive terms and conditions of employment and compensation to nurses and maximize their ability to attract nurses to accept employment; and defendants shall continue developing the Health Services Patient Liaison Program, including the development of comprehensive policies and procedures for it, the assignment of sufficient staff to ensure that timely investigation of inquiries concerning the health care needs and treatment of individual prisoners and the notification to TDCJ-ID staff and prisoners of the function of the Patient Liaison Program.

(C) Defendants shall prepare the following health services reports:

(1) Defendants shall file a report on the availability of timely specialty consultations to TDCJ-ID prisoners. The report shall examine all urgent referrals for TDCJ-ID units to the University of Texas Medical Branch- Galveston, and to Palestine Memorial Hospital, made during the month of August, 1991, and shall include a review of a random sample of system-wide routine referrals for specialty consultations made in March, 1991. The report shall be filed with the court no later than March 1, 1992.

(2) Defendants shall conduct a self-audit; using the standard self-audit instrument used by TDCJ-ID in its quality assurance program, of dental services provided at the outpatient clinics at the Ramsey III, Jester III, Huntsville, Darrington, Beto I and Gatesville units. A report setting forth the results of the self-audit shall be submitted to plaintiffs' counsel no later than April 15, 1992 and shall be filed with the court no later than June 15, 1992.

(3) Defendants shall conduct an audit of medical emergencies occurring during August 1991, at ten units. The audit shall evaluate whether the emergency was promptly recognized and whether the treatment rendered was appropriate and timely. The report shall also assess the timeliness of emergency vehicle response in the audited cases. Defendants have submitted a report setting forth the results of the audit to plaintiffs' counsel and shall file the report with the court no later than April 1, 1992.

(4) By May 1, 1992 defendants shall serve and file the 1992 Annual Report required pursuant to the Termination Report.

(D) In the absence of a further order to the contrary, defendants shall be relieved of the operation of paragraphs XIX.A and B on December 31, 1992, except that defendants shall:

(1) obtain and maintain accreditation of all its unit health care and regional medical facilities with the National Commission on Correctional Health Care ("NCCHC") or a comparable and recognized accreditation organization.

(2) ensure that no prisoner is assigned to do work that is contraindicated for his or her medical condition.

(3) ensure full access to health care for all prisoners, regardless of segregation status.

(4) ensure that no nonmedical staff may countermand any medical order regarding a prisoner's treatment, work or other related circumstances.

(5) maintain health services (including medical, dental, rehabilitation and psychiatric) staffing and facilities that enable timely delivery of health care to all prisoners received into their custody, consistent with contemporary professional standards for correctional health care, and shall vigorously recruit for employment the required health services staff and take all reasonable steps to keep TDCJ-ID competitive in the recruitment of staff.

XX. Psychiatric Services

(A) In addition to complying with the provisions of Section XIX that are applicable to psychiatric and psychological services, defendants shall comply with the provisions of the Consent Decree, April 20, 1981, pertaining to psychological and psychiatric services, and shall maintain a system for the delivery of psychiatric and psychological services consistent with the provisions of the Psychiatric Services Plan, February, 1984, as approved by the Order Concerning Defendants' Psychiatric Plan and Comprehensive Health Care Plan, January 3, 1986.

(B) No supplemental relief is ordered, provided that:

(1) Defendants shall maintain a program of administrative segregation pre-admission screening and ongoing observation and evaluation sufficient to ensure that psychiatric illness is promptly recognized and diagnosed and that psychiatrically ill prisoners are not housed in administrative segregation when their diagnosis or history indicates a risk that segregation may precipitate decompensation, when they might benefit from inpatient structured care or any other inpatient care, or when the prisoner could be maintained in general population with appropriate outpatient care; provided that TDCJ-ID may occasionally have custody of an inmate who is psychiatrically ill but who cannot be effectively managed or safety housed in any environment more therapeutic and less restrictive than administrative segregation, and further that no psychiatrically ill inmate will be housed in administrative segregation unless the treating psychiatrist states in writing that housing in administrative segregation is consistent with the patient's treatment plan, and that this is the least restrictive alternative appropriate for this patient;

(2) defendants shall improve the quality of individualized treatment plans so that they are more individualized and professionally adequate and integrate the use of individualized plans and the treatment plan process in the delivery of psychiatric care; and

(3) defendants shall strengthen TDCJ-ID's psychiatric services quality assurance mech-

anisms, including the mechanism of regular peer review. Between February 15, 1992 and December 31, 1992, defendants shall involve outside auditors in audits similar to those that have been done by the Office of the Special Master and by defendants in lieu of the Office of the Special Master, of: the inpatient facilities at the Mountain View and Ellis II units; and outpatient psychiatric services at the Michael, Coffield, Mountain View, Ellis I, Darrington and Ferguson units, measuring services against the criteria and principles of the Psychiatric Services Plan.

(C) Defendants shall prepare the following psychiatric services reports:

(1) The results of the audits required by Section XX.B.3., supra, shall be reported to counsel for plaintiffs no later than thirty days following completion.

(2) Defendants shall, with the assistance of expert consultants, conduct an audit of the operation of the Clements unit psychiatric services facility, measuring services against the criteria and principles of the Psychiatric Services Plan. The audit shall be conducted at least ninety days after and within 210 days of the opening of the new program building that is to be a part of the facility. A report setting forth the findings of the audit shall be served upon counsel for plaintiffs no later than thirty days following completion, and the report shall be filed with the court sixty days from the date of service upon plaintiffs' counsel. Defendants shall consult in good faith with counsel for plaintiffs in the selection of consultants.

(3) The parties contemplate that the Sugarland Psychiatric Facility will open on or before July 1, 1993. In the event the Sugarland Psychiatric Facility does not open by such date, defendants shall file a report with the court setting forth the reasons for the delay, and stating the anticipated opening date.

(D) In the absence of a pending motion or further order to the contrary, defendants shall be relieved from the operation of Section XX.A and B. on the later of December 31, 1992, or 45 days after any report required by Subsection XX.C., above, is served upon plaintiffs' counsel or filed with the court, or upon resolution by the court of any objection to any such report, whichever is later, except that: relief specified in subsection XIX.D., above applies to psychiatric services as well as to other areas of health care; and defendants shall be enjoined for an additional period of 24 months to engage the services of one or more outside board certified psychiatrists who shall consult on a regular basis with TDCJ-ID psychiatrists respecting diagnosis, treatment plans and medication practices. Defendants semi-annually shall certify to the Court that the consultation required by Section XX.D.2. has been provided, providing the identity and credentials for the consultants and a brief description of the services rendered.

XXI. Death Row

(A) Defendants shall maintain a work and activity program for eligible death row prisoners and an activity program for death row segregation prisoners. Death row segregation prisoners shall be assigned to single occupancy cells. Defendants shall maintain an appropriate mix of single and double occupancy cells for work capable death row prisoners; provided that a death row work capable prisoner not assigned to a single cell may only be assigned to a double occupancy cell that is no less than 80 square feet.

(B) No supplemental relief is ordered.

(C) Defendants shall have no additional monitoring and reporting requirements with respect to death row.

XXII. Enforcement

This Final Judgment shall be enforceable in the United States District Court for the Southern District of Texas.

Proposed Final Judgment has been signed by: Attorneys for Plaintiffs-Donna Brobry, William Bennett Turner, Gail J. Saliterman. Attorneys for Defendants-Dan Morales, Attorney General of Texas; Will Pryor, First Assistant Attorney General; and Mary Keller, Deputy Attorney General.

The staff findings and recommendations concerning the proposed increases in capacity which are mandated by the Texas Government Code, §499.102 are as follows.

"Pursuant to the Texas Government Code, §499.101, et seq, the staff and administration of TDCJ-ID recommend that the Institutional Division be allowed to raise the maximum inmate population of the Institutional Division to 100% of the population allowed in the Final Judgment in *Ruiz v Collins*, Number H-78-987, United States District Court for the Southern District of Texas, Houston Division. The staff finds that the population may be increased without limiting the ability of the division to transfer inmates between units as necessary for classification, medical, and security purposes. The staff further finds that the Division can operate its units at the maximum populations allowed under the Final Judgment and provide for the matters listed in the Texas Government Code, §49.102.(2). A copy of the cost estimate of this increase is incorporated to the Fiscal Note following." In conformity with the requirements of law, these staff findings are made and approved by: James Lynaugh, Executive Director, Texas Department of Criminal Justice; James A. Collins, Institutional Division Director, Texas Department of Criminal Justice-Institutional Division; Wayne Scott, Deputy Director for Operations, Texas Department of Criminal Justice-Institutional Division; William C. McCray, Deputy Director for Finance, Texas Department of Criminal Justice-Institutional Division; Dr. Charles Alexander, Deputy Director for Health Services, Texas Department of Criminal Justice-Institutional Division; and Carl Jeffries, Assistant Director for Classification and Treatment-Institutional Division.

The Legislative Budget Board has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period of operation as provided by the Legislative Budget Board is stated to be as follows. The recommendation would increase the maximum capacity of specified prison units by a total of 2,650 above the levels established under the Government Code, §499.101. The proposed action would result in increased costs of operating the prison units and in reduced costs in payments to counties under the provisions of House Bill Number 93, 72nd Legislature, Second Called Session, which are mandated through fiscal year 1995. The likely fiscal impact during the first five years following implementation would be as follows.

Fiscal Year	Increase in Operating Costs	Savings in Payments to Counties	Net Savings (Cost) to the General Revenue Fund
1993	$1,831,000	$14,243,000	$12,412,000
1994	$2,747,000	$27,583,000	$24,836,000
1995	$2,747,000	$27,756,000	$25,009,000
1996	$2,747,000	0	(2,747,000)
1997	$2,747,000	0	(2,747,000)

William C. McCray, deputy director for finance and administration of the Texas Department of Criminal Justice, has determined that effect on local government for the first five-year period cannot be ascertained with certainty. While an increased number of beds at the Institutional Division should serve briefly to reduce the numbers of paper-ready felons held in county jails, the duration of any impact cannot be ascertained. The real control over bed availability is in the numbers of persons who may be released on parole, and that number is unascertainable, because it is within the sole discretion of the Texas Board of Pardons and Paroles.

The Legislative Budget Board 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 are set forward in the preceding paragraph. There will be no effect on small businesses, as they will not have to comply with the rule. There is no anticipated economic cost to persons, as no persons have any duty to comply therewith.

In conformity with the requirements of the Texas Government Code, §49. 103, these proposed rules shall be posted on all units for which staff has recommended an increases in capacity. Inmates who wish to comment on this rule shall submit their comments by filing them with the grievance officers on each unit. The normal procedures for filing grievances shall be used. This is not, however, to suggest that the comments so filed will be treated as grievances, or require individual written responses from Institutional Division staff.

Other comments should be directed to Jackee Cox, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments should be received within 30 days of the publication of this proposed rule.

The new sections are proposed under the Texas Government Code, §499.101 et seq. In conformity with that statute, these proposed rules may not be finally adopted by the board without the approval of the Governor and the Attorney General. Nor may they be finally adopted without authorization from the court in *Ruiz v Collins*. CN H-78-987 (Southern District of Texas, Houston Division).

§152.10. Purpose. Pursuant to the Texas Government Code, §499.109, the purpose of this subchapter is to permit the Texas Department of Criminal Justice-Institutional Division to increase its population at existing units to match the levels permitted under the Final Judgment in *Ruiz v. Collins*, Cause Number H-78-987, Southern District of Texas, Houston Division (Final Judgment). It is further the purpose of this subchapter to establish a mechanism for determining maximum system capacity and maximum system populations in conformity with the Texas Government Code, §499.101 et seq, and the Final Judgment.

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

Maximum system population-Total number of prisoners who may be assigned to the Institutional Division under this subchapter and the Final Judgment in *Ruiz v. Collins*, Cause Number H-78-987 (Final Judgment).

Maximum system capacity-100% of the maximum system population permissible under this subchapter and the Final Judgment.

§152.12. Methodology for Changing Maximum System Population.

(a) As renovations required under the Final Judgment in *Ruiz v. Collins*, Cause Number H-78-987 (Final Judgment) are completed at each unit, system capacity at presently existing facilities may be increased to the maximum system population of 51,067, as permitted under Section XIII.B.1 of the Final Judgment.

(b) No more than 38,790 inmates may be housed at Beto I, Beto II, Central, Clemens, Coffield, Darrington, Diagnostic, Eastham, Ellis I, Ellis II, Ferguson, Gatesville, Goree, Hilltop, Huntsville, Jester I, Jester II, Jester III, Mountain View, Pack I, Pack II, Ramsey I, Ramsey II Ramsey III, Retrieve, Wynne units, and the trusty camps located adjacent thereto. Increases, if any, to the populations of those units, may be accomplished in conformity with the requirements of Section XIII.D.5 of the Final Judgment.

(c) Prisoners assigned to dedicated free-standing psychiatric in-patient facilities (currently the Skyview unit, and upon its completion, the Sugarland psychiatric facility), or to any dedicated free-standing psychiatric in-patient facilities hereafter constructed, and prisoners assigned to designated boot camps operated by defendants, are not included in the maximum system population, and the facilities housing such prisoners are not included in any calculation of capacity or maximum population.

(d) The maximum population of any existing facility or of any facility added to capacity hereafter may be reduced by the Executive Director of the Texas Department of Criminal Justice (Executive Director) for the limited purpose of allowing single- cell flexibility or to make renovations and repairs, as permitted by Texas Government Code, §499.107(c).

(e) The maximum system capacity may be increased by building new facilities as permitted under Texas Government Code, §499.108, and the Final Judgment. Maximum system capacity may also be increased by acquiring new facilities or by contracting for the operation of facilities pursuant to the procedures set forth under Section XIII.D.4 of the Final Judgment.

(f) The Board of Criminal Justice hereby delegates to the Executive Director all authority necessary to convert boot camps into regular inmate housing pursuant to Section XIII.D.6 of the Final Judgment. Such conversions shall have the effect of producing automatic increases in maximum system capacity. Conversely, the Executive Director may also convert regular inmate housing to boot camps, thus producing a decrease in maximum system capacity.

(g) In newly constructed or acquired units or portions of units, solitary, pre-hearing detention, infirmary, hospital, and transient beds (other than those for incoming prisoners in the diagnostic process) are not, and shall not be, included in maximum system population.

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 November 18, 1992.

TRD-9215576 Jackee Cox
General Counsel
Texas Department of Criminal Justice

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 463-9988

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Part XI. Texas Juvenile Probation Commission

Chapter 347. Title IV-E Federal Foster Care Program

- **37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9**

The Texas Juvenile Probation Commission proposes amendments to §§347.1, 347.3, 347.5, 347.7, and 347.9, concerning the Social Security Act, Title IV-E in which the federal government reimburses the Texas Department of Protective and Regulatory Services (TDPRS) for part of the foster care costs of eligible children. The Texas Juvenile Probation Commission has contracted with TDPRS to make these federal funds available to eligible children in the juvenile justice system.

Steve Bonnell, director of special projects, has determined that there will be fiscal implications 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 an estimated additional cost of $23,017 in 1992; $120,683 in 1993; $141,287 in 1994; and $161,891 in 1995-1996. The effect on local government for the first five-year period the sections are in effect will be an estimated reduction in cost of $108,840 in 1993; $666,792 in 1994; and $762, 048 in 1995-1996. There is an estimated number of cases of 150 in 1993; 350 in 1994; and 400 in 1995-1996.

Mr. Bonnell 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 comprehensive foster care services will be provided to juvenile offenders referred to juvenile probation departments. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Deborah J. Garza, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

The amendments are proposed under the Texas Human Resources Code, §§141. 001, 141.041, and 141.042, which provides Texas Juvenile Probation Commission with the authority to improve the effectiveness of juvenile probation services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services, and to adopt rules for these purposes.

§347.1. Introduction.

(a) The **Texas Department of Protective and Regulatory Services (TDPRS)** [Texas Department of Human Services (TDHS)] is the single state agency in Texas that administers the Social Security Act, Title IV-E (42 United States Code 670 et seq). The federal government reimburses **TDPRS** [TDHS] for part of the foster care costs of eligible children served by **TDPRS** [TDHS]. This law was enacted to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the programs for child welfare, social services, and Aid to Families with Dependent Children, and for other purposes. In addition, to be eligible for this program, **TDPRS** [TDHS] must manage the cases of eligible children in compliance with standards set in the Social Security Act, §427. These requirements ensure careful management of a child's case. They require a case plan and a case review system designed to return children to their families or some other permanent plan at the earliest possible date. They require a system to track the location of children in placement, even when they run away. It also includes protection of families' and children's rights.

(b) The Texas Juvenile Probation Commission (TJPC) has contracted with **TDPRS** [TDHS] to make these federal funds available to reimburse part of the foster care costs of eligible children in the juvenile justice system. TJPC is willing to contract with any juvenile board which meets the federal requirements for Title IV-E and the Social Security Act, §427. A juvenile board that wants to contract with TJPC to earn these funds must perform in the ways described in this chapter, and in certain rules of the **Texas Department of Protective and Regulatory Services** [Texas Department of Human Services] referred to in these rules.

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

IV-E approved facility-There are two categories of facilities. One category includes a public residential child care institution which is licensed or certified for no more than 25 children, and is not a lock-up facility, a long-term secure detention program, or a forestry camp. Another category includes any nonprofit residential facility that is licensed by **Texas Department of Protective and Regulatory Services (TDPRS)** [Texas Department of Human Services (TDHS)] as one of the following as they are defined in 40 TAC, Part I, Chapter 83 (relating to Twenty-Four Hour Care Licensing):

(A)-(K) (No change.)

§347.5. Eligibility Requirements Documented in the Initial Court Order That Removes the Child from Home or the Subsequent Court Order.

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

(c) IV-E eligibility begins the month:

(1) (No change.)

(2) all other IV-E eligibility requirements are met, as specified in the rule of the **Texas Department of Protective and Regulatory Services** [Texas Department of Human Services], 40 TAC §49. 316(3), (5), (6), (7), and (8); §49.317(1), (A), and (B), (3), and (4); §49.320(1), (3), and (4); §49.322; §49.323(1), (2), (3), and (4); §49. 329(a), (b), and (c); and §49.332.

(d) (No change.)

(e) A child is **not** eligible for IV-E reimbursement during an absence from a substitute care facility **or emergency shelter under any circumstances.** [, except an emergency shelter, if the following conditions are met:

[(1) the absence does not exceed 10 days. The child may be absent for up to 30 days if the chief juvenile probation officer, or his designee, approves the extended absence in writing;

[(2) the child plans to return to the facility;

[(3) the facility is retaining space for the child; and

[(4) the juvenile probation department is not paying someone else or another facility for the child's care.]

§347.7. Screening and Certification of IV-E Juveniles.

(a) (No change.)

(b) The juvenile probation department reviews the child's case and determines the following:

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

(3) whether the childs deprivation meets one or more of the following conditions:

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

(D) one of the child's parents is incapacitated as verified through Texas Rehabilitation Commission or **Texas Department of Protective and Regulatory Services [Texas Department of Human Services];**

(E)-(F) (No change.)

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

§347.9. Placement in IV-E Approved Facilities.

(a) If a facility is not approved by **TDPRS** [TDHS] for participation under 40 TAC §49.328, the juvenile board must ensure that the juvenile probation department notifies TJPC of the following in writing at least 30 working days before a child's date of actual placement:

(1)-(5) (No change.)

(b) The juvenile board ensures that daily rates paid to the facilities shall not exceed the **Texas Department of Protective and Regulatory Services** [Department of Human Services] standard rates for level of care.

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 November 18, 1992.

TRD-9215516 Bernard Licarione, Ph.D.
Executive Director
Texas Juvenile Probation Commission

Earliest possible date of adoption: December 28, 1992

For further information, please call: (512) 443-2001

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TITLE 40. Social Services and Assistance

Part I. Texas Department of Human Services

Chapter 12. Special Nutrition Programs

Child and Adult Care Food Program

- **40 TAC §§12.3, 12.6, 12.14, 12.15, 12.24, 12.25**

The Texas Department of Human Services (DHS) proposes amendments to §§12.3, 12.6, 12.14, 12.15, 12.24, and 12.25, concerning eligibility of contractors and facilities, agreement, meal requirements, reimbursement methodology, sanctions and penalties, and denials and terminations, in its Special Nutrition Programs chapter. The purpose of the amendments is to eliminate obsolete rules and to clarify existing rules to ensure consistency in the application of program policy.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more accurate reflection of current policy. 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 the proposal may be directed to Keith Churchill at (512) 467-5837 in DHS's Special Nutrition Program Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-288, 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 33, which provides the department with the authority to administer public and nutritional assistance programs.

§12.3. Eligibility of Contractors and Facilities.

(a)-(e) (No change.)

(f) Contractors are ineligible for the CACFP if they have permitted a member of the governing body, an agent, a consultant, or an employee of the contractor to engage in any activity related to the administration of the CACFP and any of these persons have been convicted of a fraudulent activity, including cases in which adjudication is deferred.

§12.6. Agreement.

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

(e) DHS approves applications for participation submitted by sponsoring organizations for day homes for weekdays (Monday through Friday) **and for weekends (Saturday and/or Sunday)** [only, unless the sponsoring organization, on behalf of the day home, provides DHS with justification for the participation on weekends (Saturday and/or Sunday). DHS approval must be obtained before any food service on weekends is eligible for payment].

(f) -(g) (No change.)

§12.14. Meal Requirements.

(a) (No change.)

(b) Three hours must elapse between the beginning of one meal service and the beginning of another, except that at least four hours must elapse between the service of a lunch and supper when no supplement is served between the lunch and supper. The duration of the meal service must not exceed two hours for lunch and supper and one hour for breakfast and supplements. Service of suppers must begin after 5 p.m. but not later than 7 p.m. and must end no later than 8 p.m. Infants under one year of age may be fed more fre- quently. [For meal service in day homes, three hours must elapse between the beginning of one meal service and the beginning of another. At least two hours must elapse between a meal service and a supplement. Suppers must be served after 5 p.m. and before 8 p.m. Infants under one year of age may be fed more frequently.]

(c) Contractors sponsoring day care homes may not require the use of pre-planned pre-printed menus. Day care home sponsors may not provide pre-planned pre-printed menus except as a training tool. Individual day care home providers may use pre-planned menus that they have developed for their own use provided that meal components are recorded by the day care home provider at the time of meal service.

§12.15. Reimbursement Methodology.

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

[(e) Day homes must participate at least 10 days a month to be eligible for payment and to make the sponsoring organization eligible for administrative payment.]

(e)[(f)] Day home providers may not claim Child and Adult Care Food Program (CACFP) reimbursement for meals served to another day home provider's own children at any time when both day home providers are participating in the CACFP. The "providers' own child" of one day home provider may be considered a "nonresidential child" for the purpose of claiming reimbursement for a meal service at the day home of another provider only if the criteria in paragraphs (1) and (2) are met:

(1) the children are enrolled for child care at the substitute facility; and

(2) the provider for whom substitute care is being provided does not claim reimbursement for any meals served during the period of substitute care.

§12.24. Sanctions and Penalties.

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

(d) DHS suspends payments to day home sponsoring organizations submitting repeated amended claims until the sponsoring organization demonstrates that it can produce a final claim on time each month unless the sponsoring organization can demonstrate good cause beyond its control for submitting the amended claims. DHS ensures that no future adjustments in claims are paid beyond the claiming time frames, except when justified by on-site DHS/USDA reviews or independent audits.

§12.25. Denials and Terminations.

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

(d) DHS denies applications and terminates agreements with contractors if they have permitted any individual identified in §12.3(e) [§12. 3(d)] of this title (relating to Eligibility of Contractors and Facilities) to enter the facility when children are present.

(e) DHS denies applications and terminates agreements with contractors if they have permitted any individual identified in §12.3(f) of this title (relating to Eligibility of Contractors and Facilities) to engage in any activity related to the administration of the CACFP.

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 November 23, 1992.

TRD-9215671 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: February 1, 1993

For further information, please call: (512) 450-3765

Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

Subchapter J. Medical Phase

• 40 TAC §33.140

The Texas Department of Human Services (DHS) proposes an amendment to §33.140 concerning early and periodic screening, diagnosis and treatment-comprehensive care program providers (EPSDT-CCP). The purpose for the amendment is to clarify the reimbursement methodologies for private duty nurses, occupational therapists, speech therapists, freestanding psychiatric hospitals and facilities, and freestanding rehabilitation hospitals providing EPSDT-CCP services.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that providers will have the methodology DHS uses to reimburse them for covered services under the Medicaid program and that recipients will continue to have access to services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Questions about the content of the proposal may be directed to Janet Kres at (512) 338-6465 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-294, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will have a public hearing concerning the proposal beginning at 9 a.m. on December 7, 1992, in the public hearing room of the John H. Winters Building (first floor, east tower) 701 West 51st Street, Austin.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§33.140. Early and Periodic Screening, Diagnosis, and Treatment- Comprehensive Care Program Providers (EPSDT-CCP). The following are approved EPSDT-CCP provider types and the approved Texas Medical Assistance (Medicaid) Program reimbursement methodology for each provider type.

(1)-(5) (No change.)

(6) Private duty nurses. DHS or its designee makes payment to independently practicing licensed vocational nurses and registered nurses according to the lesser of actual charge or a fee schedule established by DHS.

(7) Occupational therapists. DHS or its designee makes payment to independently practicing licensed occupational therapists according to the lesser of actual charge or a fee schedule established by DHS.

(8) Speech therapists. DHS or its designee makes payment to independently practicing licensed speech therapists according to the lesser of actual charge or a fee schedule established by DHS.

(9) Freestanding psychiatric hospitals and facilities. The freestanding psychiatric hospital or facility must be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Reimbursement for acute care inpatient psychiatric care is made according to the Tax Equity and fiscal Responsibility Act of 1982 (TEFRA) reimbursement principles without the application of TEFRA targets (reasonable cost basis). DHS or its designee reimburses freestanding psychiatric hospitals and facilities under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. DHS or its designee establishes interim payment rates.

(10) Freestanding rehabilitation hospitals. A freestanding rehabilitation hospital must be enrolled and participating in Medicare. Reimbursement for inpatient care provided in the freestanding rehabilitation hospital is made under the Texas Diagnosis Related Group (DRG) payment system, as described in §29.606 of this title (relating to Reimbursement Methodology for Inpatient Hospital 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.

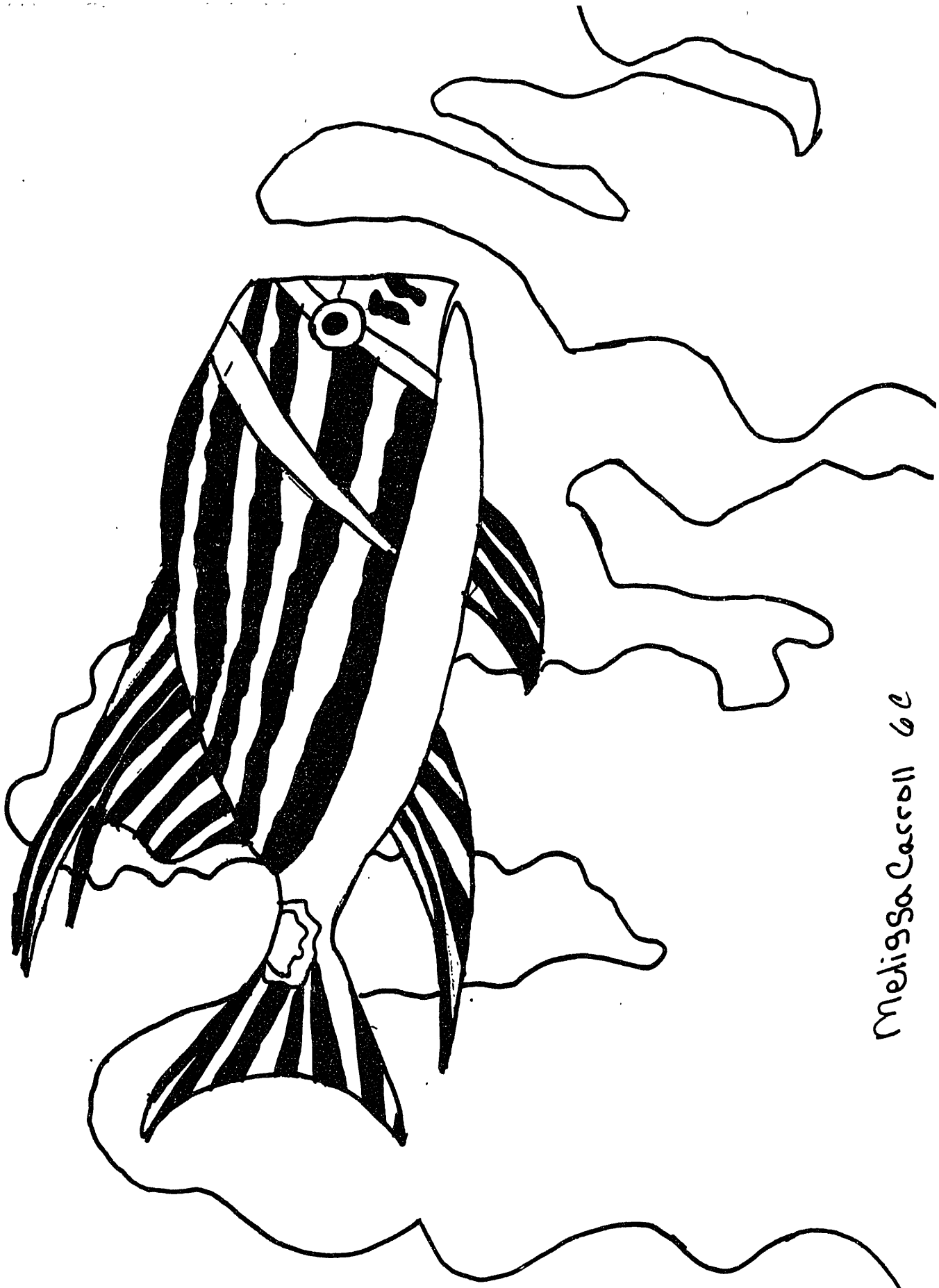
Issued in Austin, Texas, on November 23, 1992.

TRD-9215669 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: February 1, 1993

For further information, please call: (512) 450-3765

♦ ♦ ♦



Name: Melissa Carroll
Grade: 5
School: Lakewood Elementary, Hurst-Euless-Bedford ISD

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 a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 116. Control of Air Pollution by Permits For New Construction or Modification

• **31 TAC §116.1**

The Texas Air Control Board has withdrawn from consideration for permanent adoption a proposed amended §116.1 which appeared in the July 3, 1992, issue of the *Texas Register* (17 TexReg 4729). The effective date of this withdrawal is November 18, 1992.

Issued in Austin, Texas, on November 18, 1992.

TRD-9215527 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: November 18, 1992

For further information, please call: (512) 908-1451

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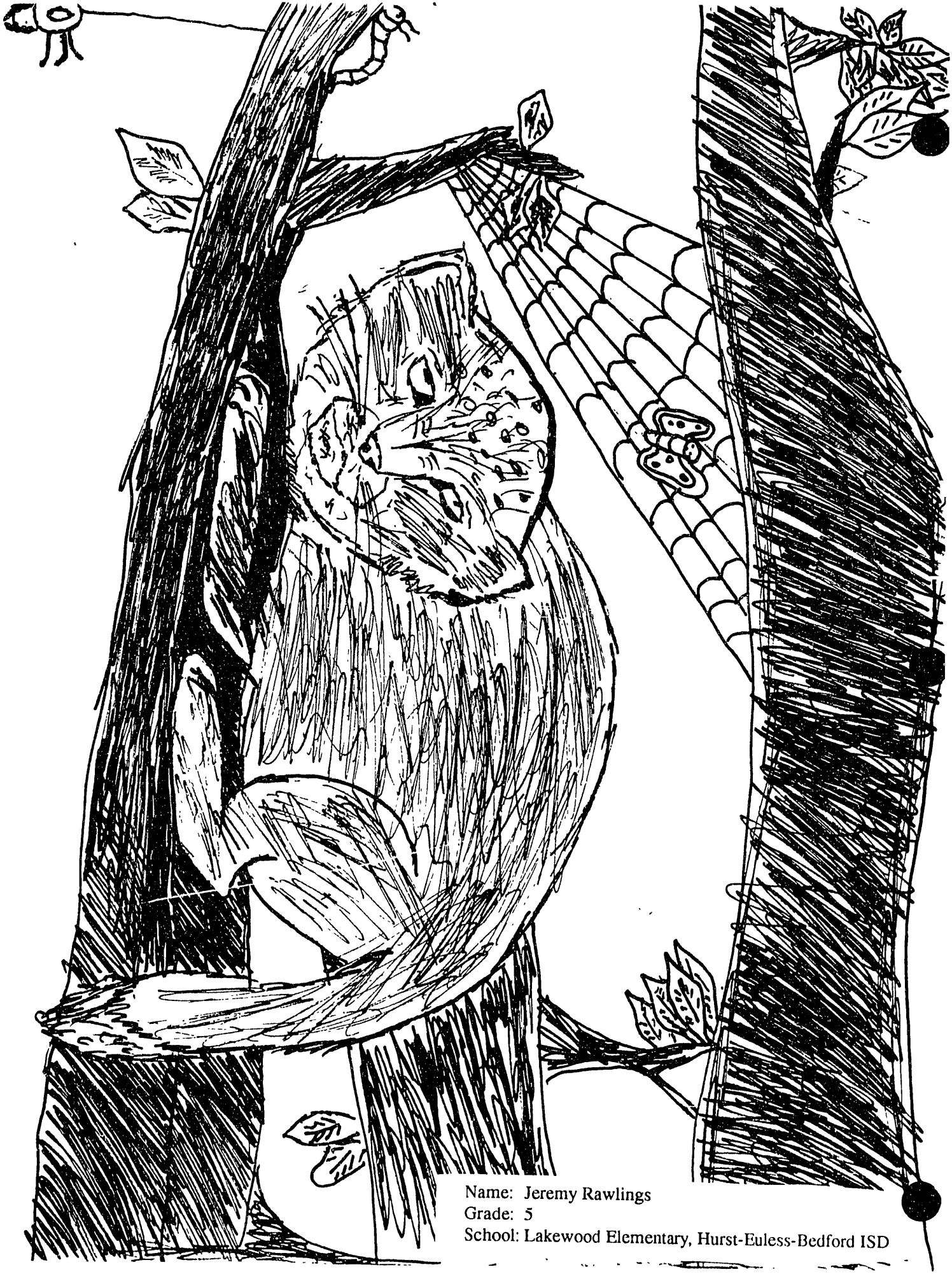

Name: Jeremy Rawlings
Grade: 5
School: Lakewood Elementary, Hurst-Euless-Bedford ISD

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 III. Office of the Attorney General

Chapter 59. Collections

• 1 TAC §59.2, §59.3

The Office of the Attorney General of Texas (OAG) adopts new §59.2 and §59.3. Section 59.2 is adopted with changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6347). Section 59.3 is adopted without changes and will not be republished.

The new sections establish guidelines relating to the process by which state agencies collect delinquent obligations owed to the agencies, and how those obligations are reported to the Attorney General.

Section 59.2 helps agencies to develop collection strategies and to foster referral of collection matters to the Attorney General where these relationships do not currently exist. Section 59.3 states requirements pertaining to the form and content of agency reports on delinquent obligations owed to the agency as well as when these reports are required.

The comments received pertaining to §59.2 were as follows.

The OAG should amend §59.2(b)(1), (8) to provide guidelines for agency determinations that accounts are uncollectible without requiring the OAG to decide whether they are acceptable.

The OAG disagrees. The factors to be considered by the agency in determining uncollectability are stated in §59.2(b)(8). OAG approval is not required for every set of guidelines adopted by agencies, but are subject to OAG review pursuant to this provision.

The OAG should amend the rule to avoid shifting the burden of collection duties and responsibilities without providing a concomitant financial mechanism for recovering costs necessitated by the shift.

The OAG disagrees. As stated in the preamble to the rule, existing collection procedures and relationships with the OAG are not supplanted. The rule establishes minimum guidelines in accordance with Texas Civil Statutes, Article 6252-5e. No collection duties and responsibilities are shifted. The rule imposes minimum guidelines to prevent inappropriate agency referrals to the OAG. The guidelines as they relate to existing procedures are in large part directory and do not necessitate any additional funding to secure compliance.

The OAG should amend or delete §59.2(b)(4) because the value of the OAG's services is arguable if the effect of filing a lien causes the debtor to pay.

The OAG disagrees that the section should be deleted. This provision merely requires agencies to assert liens that have been provided by law and provides that liens should not be released without the approval of the attorney representing the agency in the matter. In areas where ambiguous lien provisions currently exist, agencies are encouraged to work with the OAG to clarify statutory provisions and to agree on procedures to address this concern.

The OAG should amend or delete §59.2(b)(6)(B) because it does not consider practices already instituted by other state agencies.

The OAG disagrees. The preamble acknowledges that the rule is by definition general in nature and that modifications with particular agencies may be appropriate.

The OAG should amend or delete §59.2(b)(6)(C) because it requires significant legal work by agency attorneys, especially in bankruptcy and probate matters.

The OAG disagrees. The rule is directory with respect to bankruptcy and probate proceedings, except to mandate that agencies maintain records of bankruptcy filings, dismissals and discharge orders. Presumably, non-legal staff are capable of maintaining the bankruptcy information by including the appropriate notices in the agency's file pertaining to the matter. Any additional expense associated with these minimum requirements is justified by the agencies' pre-existing duty to avoid violating federal bankruptcy law. Moreover, additional expense, if any, would be offset by savings associated with closing accounts that are: uncollectible as a matter of law; or stayed from collection.

The OAG should amend the rule to provide that all collection contracts with a state agency require that any disputes arising under the contract be submitted to a court of competent jurisdiction in Texas unless any other venue is statutorily mandated, in which case the specific venue statute will apply.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(vii).

The OAG should require fidelity or performance bonds in compliance with statutory or regulatory requirements specific to the type of obligation to be collected.

The OAG agrees that agencies should comply with federal and state requirements pertaining to requiring fidelity or performance bonds for certain obligations, but believes that to include this specific provision would go beyond the purview of the general guidelines required by Texas Civil Statutes, Article 6252-5e, §2(a).

The OAG should require agencies to include a contractual provision in any contract pertaining to the collection of a delinquent obligation by outside collection firm prohibiting litigation on accounts referred without a specific authorization by the agency and the OAG.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(i), with the modification that litigation on the delinquent account is prohibited unless the collection agency obtains specific written authorization from the agency and complies with the requirements of this rule.

The OAG should require agencies to include a contractual provision in any contract with an outside collection firm pertaining to the collection of a delinquent obligation requiring the firm to place any funds collected in an interest bearing account with amounts collected plus interest, less collections costs, payable to the agency on a monthly basis or by direct deposit to the agency's account on a weekly basis with the agency billing once a month; in either case a listing of accounts and amounts collected per account should be submitted to the agency upon deposit of the funds.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(ii).

The OAG should require agencies to include a contractual provision in any contract pertaining to the collection of a delinquent obligation by an outside collection firm that the agency may recall any account without charge.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(iv).

The OAG should require agencies to include a contractual provision in any contract pertaining to the collection of a delinquent obligation by an outside collection firm that the firm may not settle or compromise the account for less than the full amount owed (including collection costs where authorized by statute or terms of the obligation) without written authority from the agency.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(v).

The OAG should require agency debt collection contracts with outside collection firms to provide that the firm is not an agent of the agency, but is an independent contractor; and providing further that the firm shall indemnify the agency for any loss incurred by its viola-

tion of state and federal debt collection statutes or by the negligence of the firm, its employees or agents.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(vi).

The OAG should require agencies to include a contractual provision in any contract pertaining to the collection of a delinquent obligation by an outside collection firm that the firm immediately refer any bankruptcy notice to the agency.

The OAG agrees. This provision is now contained in §59.2(c)(3)(C)(iii), with the further stipulation that the collection firm refer the notice within three working days of receipt.

The OAG should amend §59.2(b)(4) requiring the agency to file a lien in the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located. The commenter recommended that the phrase "or in such other county as may be required by law" be added in order to cover additional statutory lien requirements, such as the Texas Property Code, §55.001, et seq (Vernon 1984).

The OAG agrees. The phrase is now contained in §59.2(b)(4).

Comments on the proposed rules were received by the Office of Railroad Commission of Texas, and the University of Texas System.

The new sections are adopted under Texas Civil Statutes, Article 6252-5e, §2, which provide the Office of the Attorney General with the authority to adopt uniform guidelines relating to the process by which state agencies collect delinquent obligations owed to the agencies, and to adopt specific reporting procedures for agencies to report uncollected debt to the OAG.

§59.2. Collection Process: Uniform Guidelines and Referral of Delinquent Collections.

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

(1) Attorney General-The Office of the Attorney General of Texas, acting through the Collections Division of the agency.

(2) Debtor-Any person or entity liable or potentially liable for an obligation owed to a state agency or against whom a claim or demand for payment has been made.

(3) Delinquent-Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Make demand-To deliver or cause to be delivered by United States Mail, first class, a writing setting forth the nature and amount of the obligation owed to the agency. A writing making demand is a "demand letter".

(5) Obligation-A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(6) Security-Any right to have property owned by an entity with an obligation to a state agency sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the State of Texas and/or the agency against another entity and/or that entity's property, such as a bond, letter of credit, or other collateral that has been pledged to the agency to secure an obligation.

(7) State agency-Any agency, board, commission, institution, or other unit of state government.

(b) Uniform guidelines for state agencies in collecting delinquent obligations.

(1) A state agency shall adopt procedures to establish and determine the liability of each person responsible for the obligation, whether that liability can be established by statutory or common law. Agency records shall contain and reflect the identity of all persons liable on the obligation or any part thereof. All agency collection procedures shall apply to every debtor, subject to reasonable tolerances established by the agency. (See paragraph 8 of this subsection).

(2) A state agency shall adopt procedures to ensure that agency records reflect the correct physical address of the debtor's place of business, and, where applicable, the debtor's residence. Where a fiduciary or trust relationship exists between the agency (or the state) as principal and the debtor as trustee, an accurate physical address shall be maintained. A post office box address should not be used. Agency records may reflect a post office box where it is impractical to obtain a physical address, or where the post office box address is in addition to a correct physical address maintained on the agency's books and records.

(3) All demand letters should be mailed in an envelope bearing the notation "address correction requested" in conformity with 39 Code of Federal Regulations §265(d). If an address correction is provided by the United States Postal Service, the demand letter should be re-sent to that address prior to the referral procedures described herein. Demand should be made upon every debtor prior to referral of the account to the Attorney General. The final demand letter should include a notation, where practical, that a copy is being sent to the Attorney General.

(4) Where state law gives the agency the right to record a lien securing the obligation, the agency shall cause to be filed a lien in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. After referral, any lien securing the indebtedness may not be released, except on full payment of the obligation, without the approval of the attorney representing the agency in the matter.

(5) Where practicable, agencies shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his assets, and other information pertinent to collection of the delinquent account.

(6) Prior to referral of the obligation to the Attorney General, the agency shall:

(A) verify the debtor's address and telephone number;

(B) transmit no more than two demand letters to the debtor at the debtor's verified address. The first demand letter should be sent no later than 30 days after the obligation becomes delinquent. The second demand letter should be sent no sooner than 30 days, but not more than 60 days, after the first demand letter. Where agency procedures, statutory mandates, or the requirements of this section indicate that a lawsuit on the account may be filed by the Attorney General, the demand letters shall so indicate;

(C) verify that the obligation is not uncollectible. Agencies shall adopt procedures to ensure that referred obligations are not uncollectible. By way of example, the following illustrations apply.

(i) Bankruptcy. Agencies should prepare and timely file a proof of claim in the bankruptcy case of each debtor, subject to reasonable tolerances adopted by the agency. Copies of all such proofs of claims filed should be sent to the Attorney General absent the granting of a variance. Agencies shall maintain records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable the agency to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. Agencies may seek the assistance of the Attorney General in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.

(ii) Limitations. If the obligation is subject to an applicable limita-

tions provision that would prevent collection as a matter of law, the obligation should not be referred unless circumstances indicate that limitations has been tolled or is otherwise inapplicable.

(iii) Corporations. If a corporation has been dissolved, is in liquidation under Chapter 7 of the United States Bankruptcy Code, has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its Certificate of Authority revoked, the obligation should not be referred unless circumstances indicate that the account is nonetheless collectible.

(iv) Out-of-state debtors. If the debtor is an individual and is located out-of-state, or outside the United States, the matter should not be referred unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of agency funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(v) Deceased debtors. If the debtor is deceased, agencies should file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation should be classified as uncollectible and not be referred. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations should include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

(vi) Indicia of inability to pay. Where circumstances demonstrate a permanent inability of a debtor to pay or make payments toward the obligation, the obligations should not be referred.

(7) Not later the 30th day after the date a state agency determines that normal agency collection procedures for an obligation owed to the agency have failed, the agency shall report the uncollected and delinquent obligation to the Attorney General for further collection efforts as hereinafter provided.

(8) Agencies shall adopt reasonable tolerances, subject to review by the Attorney General, below which an obligation shall not be referred. Factors to be considered in establishing tolerances include the size of the debt; the existence of any security; the likelihood of collection through passive means such as the filing of a lien where applicable; expense to the agency and to the Attorney General in attempting to collect the obligation; and the availability of resources both within the agency and within the Office of the Attorney General to devote to the collection of the obligation.

(9) An agency should utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by the Texas Government Code, §403.055 to ensure that no treasury warrants are issued to debtors until the debt is paid.

(c) Referral to attorneys.

(1) Suit on the obligation by in-house attorneys.

(A) Agencies seeking to use in-house attorneys to collect delinquent obligations through court proceedings must submit a written request to the Attorney General. Upon the written approval of the Attorney General, a state agency may bring suit upon a delinquent obligation through an attorney serving as a full-time employee of the agency. Where circumstances make it impractical to secure Attorney General approval for every delinquent obligation upon which a lawsuit is to be filed, a state agency may apply to the Attorney General for an authorization to bring suit on particular types of obligations through attorneys employed full-time by the agency. Such authorization, if given, must be renewed at the beginning of each fiscal year. A state agency shall comply with reporting requirements that the Attorney General may adopt pursuant to Texas Civil Statutes, Article 6252-5e.

(B) After an obligation is referred to agency attorneys employed as in-house counsel, the obligation shall be reduced to judgment against all entities legally responsible for the obligation where: the lawsuit and judgment will make collection of the obligation more likely; and the expenditure of agency resources in recovering judgment on the obligation is justified.

(C) Where authorized by law, the agency shall plead for and recover attorney's fees, investigative costs, and court costs in addition to the obligation.

(D) Every judgment taken on a delinquent obligation should be abstracted and recorded by the agency in every county where the debtor: owns real property; operates an active business; is likely to inherit real property; owns any mineral interest; or has maintained a residence for more than one year.

(2) Referral to the Attorney General.

(A) Agencies are encouraged to explore the exchange of accounts with the Attorney General by computer tape or other electronic data transfer and to discuss any variances as may be appropriate. The agency and the Attorney General may agree upon an exchange of certain minimum account information necessary for collection efforts by the Attorney General.

(B) Agencies may refer individual accounts to the Attorney General after the procedures set forth in subsection (a)(6)-(8) of this section. Individual accounts referred to the Attorney General should include by the following:

(i) copies of all correspondence between the agency and the debtor;

(ii) a log sheet (see subsection (a)(5) of this section) documenting all attempted contacts with the debtor and the result of such attempts;

(iii) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;

(iv) any information pertaining to the debtor's residence and his assets; and

(v) copies of any permit application, security, or instrument giving rise to the obligation.

(C) Delinquent accounts upon which a bond or other security is held shall be referred to the Attorney General no later than 60 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws shall be referred immediately, since collection of the security may obviate the need to file a claim or to appear in the bankruptcy case.

(D) The Attorney General may decide that a particular obligation or class of obligations may be assigned after referral to the appropriate division within the Office of the Attorney General.

(3) Referral to collection firms or private attorneys.

(A) Prior approval of attorney general. No agency may contract with, retain, or employ any person other than a full time employee of the agency to collect a delinquent obligation without prior written approval of the Attorney General. Any existing arrangements must receive the written approval of the Attorney General to be renewed or extended in any fashion.

(i) Approval of contract with private firm or attorney. Prior to contracting with, retaining, or employing a person other than a full-time employee of the agency to collect a delinquent obligation, an

agency must submit a proposal to the Attorney General requesting the Attorney General to collect the obligation(s). Any agency contracting with any person other than a full-time employee of the agency for the collection of a delinquent obligation must submit the proposed contract to the Attorney General for written approval. The proposal must disclose any fee that the agency proposes to pay the private collection firm or attorney. The Attorney General may elect to undertake representation of the agency on the same or similar terms as contained in the proposed contract. If the Attorney General declines or is unable to perform the services requested, the Attorney General may approve the contract. If the Attorney General decides that the agency has not complied with this subsection, the Attorney General may:

(I) decline to approve the contract; or

(II) require the agency to submit or resubmit a proposal to the Attorney General for collection of the obligation in accordance with this subsection.

(ii) If the Attorney General fails to act as set forth in subsection (a) of this section within 60 days of receipt of the proposed contract or receipt of additional information requested, the Attorney General is deemed to have approved the contract in accordance with this rule.

(B) Requirements of proposed contracts with private persons presented for Attorney General approval. All contracts for collection of delinquent obligations must contain or be supported by a proposal containing the following:

(i) a description of the obligations to be collected sufficient to enable the Attorney General to determine what measures are necessary to attempt to collect the obligation(s);

(ii) explicit terms of the basis of any fee or payment for the collection of the obligation(s);

(iii) a description of the individual accounts to be collected in the following respects:

(I) the total number of delinquent accounts;

(II) the dollar range;

(III) the total dollar amount;

(IV) a summary of the collection efforts previously made by the agency; and

(V) the legal basis of the delinquent obligations to be collected.

(C) Suggested requirements of proposed contracts with private persons presented for Attorney General approval. All contracts for collection of delinquent obligations should contain provisions stating the following:

(i) that litigation on the delinquent account is prohibited unless the private person obtains specific written authorization from the agency and complies with the requirements of this rule;

(ii) that the person is required to place any funds collected in an interest bearing account with amounts collected, plus interest, less collections costs, payable to the agency on a monthly basis or by direct deposit to the agency's account on a weekly basis with the agency billing once a month; in either case a listing of the accounts and amounts collected per account should be submitted to the agency upon deposit of the funds;

(iii) that the person refer any bankruptcy notice to the agency within three working days of receipt;

(iv) that the agency may recall any account without charge;

(v) that the person may not settle or compromise the account for less than the full amount owed (including collection costs where authorized by statute of terms of the obligation) without written authority from the agency;

(vi) that the person is not an agent of the agency but is an independent contractor; and providing further that the person will indemnify the agency for any loss incurred by his violation of state and federal debt collection statutes or by the negligence of the person, his employees or agents;

(vii) that any dispute arising under the contract be submitted to a court of competent jurisdiction in Texas, unless any other venue is statutorily mandated, in which case the specific venue statute will apply.

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 November 20, 1992.

TRD-9215621 Jerry Benedict
Assistant Attorney General of Texas
Office of the Attorney General

Effective date: December 11, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 463-2009

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TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 31. Anthrax

• 4 TAC §31.1

The Texas Animal Health Commission adopts the repeal of §31.1, concerning anthrax, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6405).

This rule was repealed to allow a new rule to be adopted which sets forth diagnosis, quarantine, and disposal procedures for animals and premises affected with anthrax.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215642 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §§31.1-31.3

The Texas Animal Health Commission (TAHC) adopts new §§31.1-31.3, concerning anthrax, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6405).

These rules are necessary to protect an owner's livestock from the disease anthrax.

Veterinarians must follow specific procedures for submitting specimens from animals suspected to have anthrax; animals and premises are quarantined for anthrax when laboratory confirmation of the disease has been made. TAHC informs the owner of caretaker of the procedures that must be followed to treat, vaccinate, or dispose of infected or exposed animals and premises. Quarantines are released by TAHC after the herd has been vaccinated with an approved product, and after proper disposal of carcasses; when an animal has been diagnosed with anthrax it must be disposed of by burning it until it is thoroughly consumed with fire.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215641 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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Chapter 32. Hearing and Appeal Procedures

• 4 TAC §§32.1-32.8

The Texas Animal Health Commission adopts the repeal of §§32.1-32.8, concerning hearing and appeal procedures, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6521).

These sections were repealed in order to remove old and outdated language and to reorganize and renumber the rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215644 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §§32.1-32.6

The Texas Animal Health Commission adopts new §§32.1-32.6, concerning hearing and appeal procedures, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6521).

In order to better serve the public, these rules are necessary to provide guidelines for a person to appeal an adverse decision or order rendered by the Executive Director and Commission.

A person who appeals an adverse decision or order of the commission will have a hearing before a hearing officer pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13f. Provisions have been made and are clearly set forth for continuances and postponements; subpoenas, depositions and witnesses; decisions and orders, and transcripts of hearings.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215643 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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Chapter 34. Veterinary Biologics

• 4 TAC §34.1, §34.2

The Texas Animal Health Commission adopts the repeal of §34.1 and §34. 2, concerning veterinary biologics, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6405).

These sections were repealed in order to remove old and outdated language and to reorganize and renumber new rules. The new rules provide for definitions. Veterinary biologic companies who desire to market any veterinary biological product in the state, both restricted and nonrestricted must first obtain written approval from the executive director of the agency.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215646 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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The Texas Animal Health Commission adopts new §34.1 and §34.2, concerning veterinary biologics, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6406).

These rules are necessary as the commission must determine the effectiveness of veterinary biologics and whether or not they would be beneficial to the livestock producers in this state. Frequent and numerous requests are received from biological firms requesting permission to market their products in this state.

Definitions of terms, words, and phrases are defined for the benefit of the reader. Veterinary biologic companies who desire permission to market any veterinary biological product in this state, both restricted and nonrestricted, are required to secure written approval from the executive director of this agency. Restricted veterinary biologics may be purchased, administered, or used pursuant to specific criteria.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215645 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.4

The Texas Animal Health Commission adopts an amendment to §35.4, concerning entry and change of ownership of cattle, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6522).

The amendment is necessary to require all cattle entering the state from a foreign country which does not have a comparable brucellosis status for cattle, be vaccinated and tested for brucellosis.

All sexually intact female cattle entering Texas from a foreign country must be placed under hold order and vaccinated after arrival, unless they were vaccinated prior to entry, or they are entering the state for slaughter, or quarantined feedlot purposes. Additionally, all sexually intact female cattle, whether vaccinated or not, and bulls will be held under quarantine for a retest for brucellosis in 60 to 180 days after arrival unless they are entering the state for slaughter or feeding in a quarantined feedlot, or are from a country with a comparable brucellosis status. The releasing test for female cattle can be done no sooner than 30 days after the animal had its first calf. An entry permit, issued by the commission, is required for entry of all cattle from a foreign country; steers and spayed heifers from Mexico must be identified with an "M" brand; spayed heifers must be identified with a spayed brand also.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215647 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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Chapter 41. Fever Ticks

• 4 TAC §41.2

The Texas Animal Health Commission adopts an amendment to §41.2, concerning quarantine line; defining and establishing tick eradication areas, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6407).

The amendment is necessary to expand the quarantine line in Webb County to include the Tasita Pasture of the Las Minas Ranch.

The quarantine line in Webb County has been expanded to include additional land in order to better protect livestock and premises from possible spread of fever ticks.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 167, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215648 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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Chapter 43. Tuberculosis

Subchapter A. Cattle

• 4 TAC §43.2

The Texas Animal Health Commission adopts an amendment to §43.2, concerning interstate movement requirements, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6407).

The amendment is necessary to require a tuberculosis test on all cattle entering this state from a foreign country and without a tuberculosis status comparable to Texas.

A tuberculosis test is required for all sexually intact cattle 60 to 180 days following entry into Texas from a foreign country that does not have a recognized Tuberculosis status comparable to Texas. Cattle entering Texas destined to slaughter or to a quarantined feedlot are exempt.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215649 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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Chapter 47. Requirements and Standards for Approved Personnel

• 4 TAC §§47.1-47.6

The Texas Animal Health Commission adopts the repeal of §§47.1-47.6, concerning requirements and standards for approved personnel, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6408).

These rules were repealed to allow new rules to be adopted which set forth general requirements and standards for personnel who work in the Texas Bovine Brucellosis Program.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215651 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call. (512) 479-6697

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The Texas Animal Health Commission adopts new §§47.1-47.6, concerning requirements and standards for approved personnel. Section 47.2 is adopted with changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6408). Sections 47.1, 47 3-47.6 are adopted without changes and will not be republished. A formatting change was made in §47.2(c) by changing subsection (c)(1) and (2) to subsection (d)

These rules are necessary to set general requirements and standards for personnel who work in the Texas Bovine Brucellosis Program; to set requirements for brucellosis testing; brucellosis calfhood vaccination; suspension or revocation of approved personnel status and the manner in which approved status can be restored.

Procedures are clearly detailed on: standards of personnel working in the Texas Bovine Brucellosis Program pertaining to collecting and submission of blood samples and performing the card test and vaccination of cattle; approved personnel must strictly follow procedures for use of brucellosis vaccine and make sure each vaccinated heifer is identified by tattoo and official vaccination eartag and that the vaccination information is recorded on the health certificate for each animal. Approved personnel may be suspended, or have their status revoked when it has been determination that specific violations of regulations has occurred; restoration of approved personnel status can be made if the applicant meets all prerequisites for initial approval.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

§47.2. General Requirements. This regulation sets the standards for personnel who perform work in the Texas Bovine Brucellosis Program pursuant to the Texas Agriculture Code, §163.064. Personnel may perform bovine brucellosis work in Texas as follows.

(1) Collecting and submitting blood samples. Only approved personnel may collect and submit blood samples. Approved personnel and employees of approved veterinarians may apply official eartags and backtags and record individual identification on the test record.

(2) Performing the card test. Only approved personnel who hold valid card test permits may conduct the card test.

(3) Vaccinating. Only approved personnel may calfhood vaccinate eligible heifers for brucellosis. Approved personnel and employees of approved veterinarians may affix vaccination eartags and record vaccinations on the vaccination certificate. Only Texas Animal Health Commission (TAHC) veterinarians and inspectors and USDA Veterinary Medical Officers and Animal Health Technicians may adult vaccinate cattle for brucellosis.

(4) An approved veterinarian's technician or other employee must work under the direct supervision of an approved veterinarian while performing brucellosis work as permitted herein. The approved veterinarian is responsible for assuring that approved veterinarian's technicians and other employees working under his/her supervision comply with all TAHC regulations.

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 November 20, 1992.

TRD-9215650 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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Chapter 53. Livestock Markets

• 4 TAC §53.1

The Texas Animal Health Commission adopts the repeal of §53.1, concerning livestock markets, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6411).

This rule was repealed to allow the adoption of a new rule which provides the livestock industry and public with information concerning requirements for operating livestock markets; criteria for releasing animals at the market; quarantine of livestock showing evidence of infection of exposure to infectious, contagious, or communicable disease, and identification of cattle, sows, and boars.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215653 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-4497

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Chapter 53. Market Regulation

• 4 TAC §§53.1-53.5

The Texas Animal Health Commission (TAHC) adopts new §§53.1-53.5, concerning market regulation, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6411).

These rules are necessary to provide the livestock industry and public with information concerning requirements for operating livestock markets.

A livestock market must furnish facilities which should include, but not be limited to, at least one cattle chute; a clean and disinfected sales area, scales, and alleyways; workspace for the TAHC representative and suitable laboratory space if a laboratory is not located in close proximity; and arrange for the services of a veterinarian approved by TAHC and accredited by USDA to perform brucellosis work. All livestock consigned from the market must be inspected, examined, and tested before they are released; all livestock which show evidence of infection with, or exposure to brucellosis, or any other infectious, contagious or communicable disease and feral swine must be placed in quarantined pens; consignments of sows and boars over six months of age and cattle that are tested must be properly identified; proper records of all transactions must be kept for two years on all cattle and swine consigned for sale through a market.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215652 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call. (512) 479-6697

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Chapter 57. Poultry

General

• 4 TAC §57.10

The Texas Animal Health Commission adopts an amendment to §57.10, concerning poultry, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6523).

The amendment is necessary to remove the reference to Arkansas Infectious Bronchitis area as it is no longer required. The poultry industry has requested use of *Mycoplasma gallisepticum* vaccine in chickens and turkeys to prevent a chronic respiratory disease.

Since Arkansas Infectious Bronchitis vaccine can now be used state-wide without restriction there is no longer a need for a designated area where the vaccine can be used. *Mycoplasma gallisepticum* vaccine can be used in flocks where a confirmed diagnosis of the disease has been made by an approved laboratory. A written permit from the commission is required for use of the vaccine. The disease causes chronic respiratory disease of chickens and infectious sinusitis in turkeys.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with authority to adopt rules and sets forth the duties of this Commission to control disease.

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 November 20, 1992.

TRD-9215654 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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Chapter 59. General Practice and Procedures

• 4 TAC §59.1

The Texas Animal Health Commission adopts an amendment to §59.1, concerning definitions, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6412).

There is no new language in this amendment. The only change made to the rule is in punctuation of the definitions.

There are no changes to the text, only punctuation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215655 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §59.2

The Texas Animal Health Commission adopts an amendment to §59.2, concerning definitions, without changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6412).

The amendment is necessary to clarify the intent of the rule.

The rule was amended for clarification purposes only. The executive director, because of individual hardship to a herd owner, may vary or waive any provision of commission rules, provided the waiver is not in conflict with sound epidemiologic principles. Individual hardship means unforeseen circumstances that affect the owner's operation and are beyond the owner's control.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215656 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 18, 1992

Proposal publication date: September 18, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §59.3

The Texas Animal Health Commission adopts the repeal of §59.3, concerning designation of commission vice chairman, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6524).

The rule was repealed to allow the adoption of a new rule which has been reorganized.

No comments were received regarding adopting of the repeal.

The repeal is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215658 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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The Texas Animal Health Commission adopts new §59.3, concerning designation of commission vice chair and ad hoc chair, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6524).

The rule is necessary to designate a Commission Vice Chair and ad hoc chair.

The vice chair acts for the chair when the chair is absent or unavailable; an ad hoc chair may act in the event neither the chair nor the vice chair are available to act. The vice chair and ad hoc chair both have the same powers and authority as those of the chair.

No comments were received regarding adoption of the new section.

The new section is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215657 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §§59.4

The Texas Animal Health Commission adopts the repeal of §59.4, concerning cooperation with the Texas Department of Public Safety, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6524).

The rule was repealed. A new rule which has been reorganized has been proposed to replace it.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215660 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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The Texas Animal Health Commission adopts new §59.4, concerning cooperation with the Texas Department of Public Safety, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6524).

This rule is necessary to provide information to the Texas Department of Public Safety regarding health papers for animals and enforcement of entry requirements.

This agency cooperates with the Texas Department of Public Safety (TDPS) regarding movement of livestock by providing information concerning health papers and permits required for entry of livestocks into Texas; this agency investigates possible entry violations reported to it by the TDPS.

No comments were received regarding adoption of the new section.

The new section is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 November 20, 1992.

TRD-9215659 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 18, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 479-6697

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter A. Organization of the Commission

• 16 TAC §303.4

The Texas Racing Commission adopts an amendment to §303.4, concerning meetings, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6351).

The amendment is adopted to ensure that the commission operates efficiently and effectively.

The amendment establishes the procedure for placing an item on the agenda for commission meetings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and Texas Civil Statutes, Article 6252-13a, §4, which authorizes the commission to adopt rules of practice for all formal and informal procedures.

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 November 9, 1992.

TRD-9215506 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Subchapter B. Powers and Duties of the Commission

• 16 TAC §303.43

The Texas Racing Commission adopts new §303.43, concerning allocation of live race dates for Class 1 racetracks, with changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6351).

The new section is adopted to ensure that the economic benefits from pari-mutuel racing are maximized.

The new section provides that the commission will not grant overlapping race dates for Class 1 racetracks for the same breed of a horse. The changes from the proposed text authorize 17 weeks of quarter horse racing except as otherwise agreed to by the appropriate breed registries, sets a minimum number of race days per week, and authorizes a racetrack to "return" undesired race weeks to the commission for allocation to another racetrack.

On November 4, 1992, at the request of over 50 individuals, a public hearing was held regarding the proposed section. Seven people provided testimony, each of whom represented a racetrack regulated by the commission or an organization involved in the pari-mutuel racing industry in Texas. In addition, several people testified to the commission at its regular meeting on November 9, 1992. Written comments on the proposed section were received from one individual and from the Texas Thoroughbred Breeders Association (TTBA), and Texas Quarter Horse Association (TQHA), Bandera Downs, and Retama Park Association.

Retama, TTBA, and the individual commenter, as well as five of the seven individuals testifying on November 4 were in favor of the section generally. The individual filing written comments suggested, as well as TQHA, that the section be revised to provide for 17 weeks of quarter horse racing. The commission agrees with this comment and the section was revised accordingly. Bandera Downs suggested that the section be revised to ensure Class 2 racetracks would receive some of the optimum dates in the racing year, e.g. March through Labor Day. The commission disagrees with the comment in that the purpose of the section is to address race dates for Class 1 racetracks and a guarantee of particular race dates for particular racetracks is inappropriate in this section. TQHA also suggested in their written comments that the commission wait to adopt this section. The commission disagrees with the comment in that part of the purpose of the section is to assist the Class 1 racetracks which have been licensed but not yet built to obtain financing for the racetrack construction as quickly as possible. Delaying final adoption of the section will not serve that purpose.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §8.01, which authorizes the commission to allocate race dates to horse racetracks.

§303.43. Allocation of Live Race Dates for Class 1 Racetracks.

(a) The commission may not grant overlapping live race dates for the same breed of horse at Class 1 racetracks unless the overlapping is agreed to in writing by the affected Class 1 racetracks.

(b) For any year in which there are less than three Class 1 racetracks in Texas holding final non-appealable licenses, the commission shall allocate to each such racetrack at least 17 consecutive weeks of live thoroughbred racing, at least 17 consecutive weeks of live quarter horse racing, unless otherwise agreed to by the appropriate breed registry. Each week of live racing shall consist of a minimum of four consecutive race days. If a Class 1 racetrack informs the commission in writing that it does not desire the full number of weeks of racing for either breed, the commission may allocate the extra weeks to another racetrack.

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 November 9, 1992.

TRD-9215505 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Chapter 309. Operation of Racetracks

Subchapter B. Horse Racetracks

Facilities for Horses

• 16 TAC §309.149

The Texas Racing Commission adopts an amendment to §309.149, concerning pre-race holding area, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6351).

The amendment is adopted to ensure that pari-mutuel racing is safe for the participants and is of utmost integrity.

The amendment deletes the requirement that the pre-race holding area at a racetrack be located adjacent to the paddock.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; under §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 November 9, 1992.

TRD-9215511 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: Septemoer 15, 1992

For further information, please call: (512) 794-8461

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• 16 TAC §309.151

The Texas Racing Commission adopts an amendment to §309.151, concerning test barn, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6352).

The amendment is adopted to ensure that pari-mutuel racing is safe for the participants and is of utmost integrity.

The amendment deletes the requirement that the test barn be located adjacent to the paddock.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; under §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 November 9, 1992.

TRD-9215502 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Facilities for Employees

• 16 TAC §309.181

The Texas Racing Commission adopts an amendment to §309.181, concerning commission veterinarian's office, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6352).

The amendment is adopted to ensure that pari-mutuel racing is safe for the participants and is of utmost integrity.

The amendment deletes the requirement that the commission veterinarian office be located adjacent to the paddock.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; under §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

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 November 9, 1992.

TRD-9215510 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Chapter 313. Officials and Rules of Horse Racing

Subchapter A. Officials

Duties of Stewards

• 16 TAC §313.21

The Texas Racing Commission adopts an amendment to §313.21, concerning eligibility for appointment, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6352).

The amendment is adopted to ensure that the officials supervising pari-mutuel racing are highly qualified.

The amendment clarifies the vision requirements to serve as a steward.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; under §3.07, which authorizes the commission to adopt rules relating to the examination of stewards.

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 November 9, 1992.

TRD-9215503 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Chapter 319. Veterinary Practices and Drug Testing

Subchapter A. General Provisions

- **16 TAC §319.14**

The Texas Racing Commission adopts an amendment to §319.14, concerning possession of controlled substances, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6352).

The amendment is adopted to ensure that the commission's rules are consistent with the appropriate statutes.

The amendment changes the statutory citation to the Texas Controlled Substances Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of a race.

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 November 9, 1992.

TRD-9215509 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Chapter 321. Pari-mutuel Wagering

Subchapter B. Distribution of Pari-mutuel Pools

- **16 TAC §321.117**

The Texas Racing Commission adopts an amendment to §321.117, concerning tri-superfecta, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6353).

The amendment is adopted to ensure that pari-mutuel wagering is conducted in a manner that is of the utmost integrity and is profitable for the state.

The amendment authorizes racetracks to offer a tri-superfecta wager on two nonconsecutive races.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering.

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 November 9, 1992.

TRD-9215508 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 10, 1992

Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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Subchapter C. Simulcast Wagering

Simulcasting at Horse Racetracks

- **16 TAC §321.235**

The Texas Racing Commission adopts an amendment to §321.235, concerning priority of signals, without changes to the proposed text as published in the September 15, 1992, issue of the *Texas Register* (17 TexReg 6353).

The amendment is adopted to ensure that high-quality wagering opportunities are available throughout the state at all times.

The amendment authorizes a Class 1 or 2 racetrack to receive a simulcast signal from any Class 1 racetrack in Texas that is conducting live races.

Written comments were received regarding the proposal from Bandera Downs and the Texas Horsemen's Benevolent and Protective Association Committee at Bandera Downs. The commenters suggest that the proposal will permit a Class 1 racetrack in the same market area as Bandera Downs to conduct wagering on simulcast races at the same time that Bandera Downs is conducting live racing. According to the commenters, such a situation would negatively affect the attendance and wagering at Bandera Downs and cause economic hardship to Bandera Downs and the horsemen who participate in live racing at the racetrack. The commission disagrees with the comments in that the authority to conduct wagering on simulcast races is subject to commission approval of the simulcasting contract and the agreement of the statewide horsemen's organization. This should provide adequate safeguards for all markets in the state.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorizes the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §11.011, which authorizes the commission to adopt rules relating to wagering on simulcast races.

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 November 9, 1992.

TRD-9215507 Paula Cochran Carter
General Counsel
Texas Racing Commission

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Proposal publication date: September 15, 1992

For further information, please call: (512) 794-8461

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter A. Operations

- **19 TAC §61.21**

The Texas Education Agency (TEA) adopts an amendment to §61.21, concerning year-round schools, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6528).

The amendment is necessary to implement changes introduced in Senate Bill 351 and House Bill 2885. This legislation changed the number of days required for student attendance, the number of in-service/preparation days, and established a certain number of hours of required in-service training.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §§21.008-21. 010, which authorize the State Board of Education to promulgate rules under which a school district may operate its school year-round.

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 November 20, 1992.

TRD-9215587 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Effective date: December 11, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 463-9701

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Chapter 69. Proprietary Schools and Veterans Education

Subchapter A. General Provisions

• 19 TAC §69.3

The Texas Education Agency (TEA) adopts the repeal of §69.3, concerning the memorandum of understanding for regulation of proprietary schools, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6529).

Chapter 69 formerly included rules governing proprietary schools and veterans education. Those rules are currently located in Chapter 175. Due to an administrative error, §69.3 duplicates exactly the language of §175.3. The repeal corrects this problem.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, Chapter 32, which authorizes the State Board Of Education to promulgate rules necessary for carrying out the provisions of the Texas Proprietary School 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 November 20, 1992.

TRD-9215586 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Effective date: December 11, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 463-9701

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Chapter 141. Teacher Certification

Subchapter B. Certificate Issuance Procedures

• 19 TAC §141.26

The Texas Education Agency (TEA) adopts an amendment to §141.26, concerning the schedule of fees for certification services, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6847). §The section is necessary to fund enhanced certification services. The amendments increase the fees charged for certification services performed by the central education agency and regional education service centers.

An individual commented against the proposed fee increase for paraprofessional certificates and questioned the need to retain certification requirements for paraprofessionals. The agency disagrees with the comments because paraprofessional organizations have voiced support for certification. Enhanced certification services necessitate the fee increase.

The amendment is adopted under the Texas Education Code, §13.032(h), which authorizes the State Board of Education to fix and require payment of a fee as a condition to the issuance of a teaching certificate.

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 November 20, 1992.

TRD-9215585 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Effective date: December 11, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512) 463-9701

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• 19 TAC §141.27

The Texas Education Agency (TEA) adopts an amendment to §141.27, concerning teacher certification, with changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6530).

The section is necessary to increase the number of certified professional educators available to public schools. The amendments provide more flexibility for Texas certified, degreed teachers seeking additional areas of certification by eliminating the admission prerequisite of previous teaching experience for required internships.

The changes in subsection (f) remove the requirement that experience in lieu of an internship must be earned on a permit. They also authorize previous classroom teaching to waive the internship requirement, provided the experience was creditable for salary increment purposes and earned at the grade level and in the subject or assignment area sought.

The changes in subsection (g) require a teacher seeking certification based on previous experience to be recommended by an employing superintendent.

No public comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.0321, which authorizes the State Board of Education to promulgate rules prescribing qualifications for a certified teacher to gain additional certification to teach at a grade level or in a subject area not covered by the teacher's certificate.

§141.27. Issuance of Certificates Based on Examination.

(a) -(e) (No change.)

(f) The internship.

(1) The intern shall be provided time within the instructional day to observe the supervising teacher and other experienced teachers in the subject or at the level for which certification is sought.

(2) The intern, regardless of career ladder assignment level, must receive two appraisals.

(3) Internship shall begin no later than October 1 and extend through the last day of instruction.

(4) A teacher who has completed a year of classroom teaching experience, creditable for salary increment purposes as defined in Chapter 121 of this title (relating to Public School Finance-Personnel), in the subject or assignment area and at the grade level of the certificate sought is exempt from the internship requirement.

(g) Recommendation for additional certification.

(1) To be eligible for certification in a subject area or at a level for which an internship is required, the intern must receive appraisals from two appraisers, verification of successful completion of the internship, and a recommendation from the employing superintendent.

(2) To be eligible for certification based on creditable experience in lieu of an internship, the teacher must have verification of the experience, evidence of a valid classroom teaching certificate at the time the experience was earned, and recommendation from the employing superintendent.

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 November 20, 1992.

TRD-9215584 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Effective date: December 11, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 463-9701

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Chapter 176. Driver Training Schools

Subchapter B. Minimum Standards for Operation of Texas Driver Training Schools

- **19 TAC §176.33**

The Texas Education Agency (TEA) adopts amendments to §176.33, concerning driver training schools, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6531).

The amendments are necessary to maintain the level of staffing required to provide minimum supervisory assistance to driver training schools. The amendments increase the fee for the uniform certificate of completion purchased by schools offering driving safety courses.

The Driver Training School Advisory Commission commented in favor of the amendments.

The amendments are proposed under the Texas Civil Statutes, Article 4413(29c), §4 and §13, which authorize the commissioner of education, with approval of the State Board of Education, to increase certain fees related to driver training schools, including the fee for the uniform certificate of completion purchased by schools offering driving safety courses.

§176.33. Application Fees and Other Charges.

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

(d) License, application, and registration fees shall be collected by the commissioner and deposited with the state treasurer in accordance with the following schedule:

(1)-(15) (No change.)

(16) fee for certificate of course completion is $1.10.

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 November 20, 1992.

TRD-9215583 Criss Cloudt
Director of Policy Planning and Evaluation
Texas Education Agency

Effective date: December 11, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Other Responsibilities and Practices

- **22 TAC §501.47**

The Texas State Board of Public Accountancy adopts an amendment to §501. 47, concerning firm names, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6533).

The amendment is necessary in order to ensure that the names of CPA firms do not imply that firms are experts or specialists in certain fields, and to prevent firm names from implying expertise related to certain geographical areas

The amendment will restrict the firm names that are permitted to register with the board.

An individual commented that he was of the opinion that a "truthful description regarding geographical area or type of services offered would not only not be misleading to the public, but would be descriptive to the public."

The board disagrees with the comment because it believes that a geographical description in the firm name could mislead the public into believing that the firm has an expertise peculiar to the area. The board also believes that descriptive words indicating type of service imply an expertise or speciality in the area when they are included in the firm name. The board does not recognize specialties; therefore, the implication is misleading.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to firm names.

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 November 18, 1992.

TRD-9215548 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: December 10, 1992

Proposal publication date: September 22, 1992

For further information, please call: (512) 450-7066

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 120. Employers

- **28 TAC §120.2**

The Texas Workers' Compensation Commission adopts amendments to §120.2 concerning employers' report of injury, with changes to the proposed text as published in the May 26, 1992 issue of the *Texas Register* (17 TexReg 3821). The change involved addition of a definition of "knowledge" which ties employer reporting to a time-certain event.

The amendment establishes the same reporting requirements for all employers, whether they have purchased workers' compensation insurance or not and it is necessary to assure that occupational diseases are reported at the earliest time possible.

Comments opposed to the amendment of §120.2 were received from Shell Oil Company; Southwestern Bell Telephone; Baylor University Medical Center; and Exxon Company, U.S.A.

Opposed to the requirement that employers report occupational diseases, "of which they have knowledge," because it exceeds the statutory authority of the Commission and would violate the patient-physician confidentiality doctrine.

The commission disagrees The Act requires employer reporting in two different places. First, §5.05 which requires reporting of occupational diseases reported by the employee. Additionally, §7.03(b) requires employers to report occupational diseases based on their knowledge of the disease. This requirement in §7.03(b) applies to employers, whether covered or not, based on the schedule in §7.01. The commission does have the statutory authority to require employers to report occupational diseases of which they have knowledge and the requirement to report to the commission an occupational disease which the employer has knowledge of through its doctor does not exceed the commission's statutory authority or violate the confidential relationship between the physician and patient.

The rule doesn't deal with the circumstance of an employer who employs a doctor who examines employees following any exposure or incident when the doctor advises the employee to ignore the incident.

The commission agrees. The rule is clarified to address the employer's responsibility when a doctor employed by the employer diagnoses an occupational disease.

The rule does not clarify the requirements for filing reports when the disease is not claimed to be related to the work.

The commission disagrees. The rule requires employers to report occupational diseases. Diseases and other conditions arising outside the work and without connection to the work are not reported by the employer. However, if

the employer is aware, through medical report or through some other means, that the employee has a disease which arose from the work, whether the employee claims a relationship or not, the employer must report.

Opposed to the proposed amendment since it poses a potential breach of the medical confidentiality between employer's physicians and the employees whom they examine. It is conceivable that a company physician could diagnose an occupational disease that an employee would not wish to disclose to a public agency or to others. For example, many individuals would not want to disclose having AIDS, hepatitis, tuberculosis, or stress-related illness all of which potentially could be occupational diseases compensable under Texas Workers' Compensation law. Once a disease is reported under §120.2, the employee's privacy cannot be guaranteed.

The commission disagrees. If the employee suffers from a disease as a result of exposure to occupational hazards, the employee is entitled to benefits subject to the Texas Workers' Compensation Act. Those benefits cannot be guaranteed without reporting the disease. Failing to report such an occupational disease is a significant disservice to the employee.

The new section is proposed under Texas Civil Statutes, Article 8308-2.09(a) , which authorizes the commission to adopt rules necessary to administer the Act, Texas Civil Statutes, Article 8308-2.11(f), which allows the executive director to establish the form, manner, and procedure for transmission of information to the commission, and Texas Civil Statutes, Article 8308-7.03(b), which requires the commission to promulgate rules and prescribe the form and manner of employer reports.

§120.2. Employer's Report of Injury.

(a) The employer shall file a written report for each death, each occupational disease of which the employer has knowledge, and each injury that results in more than one day's absence from work for the injured employee. As used in this section, "knowledge" means receipt of written or verbal information regarding diagnosis of an occupational disease, or the diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

(b) The report shall be filed as the Employer's First Report of Injury Form TWCC 1 prescribed by the commission.

(c) The report shall be filed with the commission and the carrier, with a copy sent to the employee's mailing address, not later than the eighth day after the receipt of notice of occupational disease, or the employee's first day of absence from work due to injury or death. For purposes of this section, a report is filed when personally delivered, or postmarked.

(d) If a report has not been received by the commission or the carrier, the employer has the burden of proving that the report was filed within the required time frame. The employer has the burden of proving that good cause exists if the employer failed to file the report.

(e) An employer who fails to file the report without good cause may be assessed an administrative penalty not to exceed $500. An employer who fails to file the report without good cause waives the right to reimbursement of voluntary benefits even if no administrative penalty is assessed.

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 November 20, 1992.

TRD-9215604 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: January 1, 1993

Proposal publication date: May 26, 1992

For further information, please call: (512) 440-3592

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• 28 TAC §120.3

The Texas Workers' Compensation Commission adopts new §120.3 concerning employers' supplemental report of injury, with changes to the proposed text as published in the May 26, 1992, issue of the *Texas Register* (17 TexReg 3822).

The changes were: in subsection (a) where a time frame for application was inserted, moving that provision from former subsection (b)(2); in subsection (b) where the requirements that had been in (b)(2) and (c)(2) were incorporated and modified to require the employer to supply the report to the injured worker at the same time the report is provided to the carrier; in subsections (b)(1) and (2) which were deleted; in subsection (c) where the requirements that were in (b)(1) and (c)(1) are combined and the employer required to provide notice to the injured employee; addition of a new subsection (d) establishing a burden of proof requirement.

This new section establishes supplemental reporting requirements for employers, sets the conditions under which those reports are required, and identifies where those supplemental reports must be filed.

Comments recommending changes to §120.3 were received from: Texas Association of Business; TUElectric; Levi Strauss & Co.; Brown & Root, Inc.; and the Alliance of American Insurers. Those comments and the commission responses are as follows:

Personal time off which causes a fluctuation in earnings should be reported along with the reason for the time being taken.

The commission disagrees. The rule should require reporting only fluctuations related to the injury.

Subsection (d) is burdensome for employers with rotating shifts that pay shift differential. It should be simplified to require filing the TWCC-6 only when post-injury weekly earnings deviate 10% or more from pre-injury weekly earnings.

The commission disagrees. The carrier must adjust benefits for every deviation resulting from the injury, not just those of a specific magnitude.

The reference to layoff should be in subsection (b).

The commission disagrees. Recommended changes to subsection (b) will remove the requirement to provide a reason for the fluctuation.

The rule, as written, doesn't establish whether earnings refers to take-home pay. If so, it will require employers to report all fluctuations caused by changes in tax deductions, insurance premiums, union dues, child support and other deductions from net pay.

This rule assumes that all post-injury fluctuations are due to the injury but there are a number of fluctuations based on personal reasons.

The commission agrees. If take-home pay is the basis of comparison there will be a great many fluctuations that need to be reported. However, the rule is clarified to reflect that only fluctuations resulting from the injury should be reported.

Subsection (b)(3) requires filing after a termination or resignation regardless of any connection between the action and the injury. Also, it is not clear whether this applies to all workers or just those entitled to income benefits at the time of the termination or resignation. The rule should be modified.

The commission agrees. The rule is clarified to incorporate a connection to the injury and specify which workers are covered.

Subsections (c) and (e) as presently written appear to prohibit use of telephonic transmission (Fax) to file the report. Rule should be changed to allow this form of filing.

The commission disagrees. Identifying a violation of the rule and prosecuting a penalty is expedited by conventional delivery services, so telephonic transmission will not be included as an option at this time.

The Commission should establish a reasonable period during which resignations and terminations must be reported and include it in this rule.

The commission agrees. The rule will require this report only during the employee's temporary income benefit period.

The rule needs to be changed to provide for reporting the injured employee's return to work.

The commission agrees The rule is revised to reflect return to work in subsection (c)(1).

This rule implies a requirement to report intermittent or subsequent periods of disability but it needs to be clearly spelled out in the rule.

The commission agrees. Subsection (c)(2), is clarified to address this concern.

The reporting time required by §129.4(c) (10 days) is in conflict with the time required in (c)(2) of this rule and should be resolved.

The commission agrees. Subsection (b) dealing with adjustments to temporary income benefits correctly reflects a reporting requirement "within 10 days".

The rule should be consistent in identifying where the report must be sent.

The commission agrees. The rule will be changed to require reporting to the carrier and to the injured employee.

The new section is adopted under Texas Civil Statutes, Article 8308, §2. 09(a) which authorizes the commission to adopt rules necessary to administer the Act, Texas Civil Statutes, Article 8308, §5.05(c) which allows the commission to promulgate rules regarding subsequent reports by the employer, and Texas Civil Statutes, Article 8308, §2.11(f) which allows the executive director to establish the form, manner, and procedure for transmission of information to the commission.

§120.3. Employer's Supplemental Report of Injury.

(a) As used in this section, the term "employer" means the employer for whom the employee was working when injured and the filing requirements apply during the time the employee is entitled to temporary income benefits.

(b) As provided in §129.4 of this title (relating to Adjustment of Temporary Income Benefit Amount), the employer shall file form TWCC-6, Supplemental Report of Injury, with the employer's carrier and the injured employee within 10 days after the end of each pay period in which the injured employee has a change in earnings as a result of the injury or within 10 days after the employee resigns or is terminated.

(c) For injuries requiring a form TWCC-1 to be filed, the employer shall file form TWCC-6, Supplemental Report of Injury, with the employer's carrier and the injured employee by first class mail or personal delivery within three days after:

(1) the injured employee returns to work; or

(2) the injured employee, after returning to work, experiences an additional day(s) of disability as a result of the injury.

(d) If a report required by this section has not been received by the carrier, the employer has the burden of proving that the report was filed within the required time frame. The employer has the burden of proving that good cause exists if the employer failed to file the report.

(e) Failure to comply with the requirements of this section, without good cause, is a Class D administrative violation, subject to a penalty not to exceed $500.

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 November 20, 1992.

TRD-9215602 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: January 1, 1993

Proposal publication date: May 26, 1992

For further information, please call: (512) 440-3592

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Subchapter D. Operation Game Thief Fund

• 31 TAC §55.112

The Operation Game Thief Committee adopts an amendment to §55.112, concerning the Operation Game Thief Fund, without changes to the proposed text as published in the August 11, 1992, issue of the *Texas Register* (17 TexReg 5617). The rule was adopted on an emergency basis November 4, 1992. The amendment authorizes the Operation Game Thief Committee more authority in implementing rules and establishing procedures for the payment of rewards and maintaining records in the Operation Game Thief Program.

The section is adopted to comply with the provisions of House Bill 1195 which was passed by the 70th Legislature.

The Committee adopted on a permanent basis the amendment to the Operation Game Thief Regulations that is consistent with the Legislature's intent and purpose of the Operation Game Thief Program. The amendment will maximize the funds available for rewards to eligible applicants thereby increasing the protection of wildlife and fisheries resources.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Parks and Wildlife Code, Chapter 12, Subchapter C, which provides the Operation Game Thief Committee with the authority to adopt rules for the implementation of the Operation Game Thief 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 November 19, 1992.

TRD-9215554 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date: December 10, 1992

Proposal publication date: August 11, 1992

For further information, please call: (512) 389-4433

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Part III. Texas Air Control Board

Chapter 114. Control of Air Pollution from Motor Vehicles

• 31 TAC §114.21

The Texas Air Control Board (TACB) adopts new §114.21, with changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4067). The new §114.21, concerning Employer Trip Reduction (ETR) Program, provides guidelines for individual employers in the Houston/Galveston area to comply with the requirements of an ETR program as established by the 1990 Federal Clean Air Act (FCAA) Amendments. The new section specifies guidelines and rules that govern the implementation, operation, and evaluation of the ETR program for all employers of 100 or more employees in the Houston/Galveston severe ozone nonattainment area. In addition, the TACB adopts a revision to the State Implementation Plan (SIP) which contains ETR program design, implementation, evaluation, and compliance details.

Public hearings were held in Houston on June 30, 1992. Testimony was received from 42 commenters during the comment period which ended at 4 p.m., July 8, 1992.

Exxon Company, U.S.A. (Exxon); Mitchell Energy & Development Corporation (Mitchell Energy); the City of Missouri City; Conoco, Inc. (Conoco); Lonestar Chapter of the Sierra Club (Sierra Club); United States Environmental Protection Agency (EPA); Greater Houston Partnership (GHP); Occidental Chemical Corporation (Occidental Chemical); Enfuels Corporation (Enfuels); Shell Oil Company (Shell); Texas Retailers Association; Greater Fort Bend Economic Development Council (GFBEDC); Coastal States Management Corporation (Coastal States); and McDonnell Douglas expressed general support for the development of a cost-effective, flexible ETR program and other mobile source control programs to reduce vehicle emissions and satisfy FCAA requirements. Sonat Exploration, Retail Grocers Association of Houston (Retail Grocers), and Lubrizol Corporation (Lubrizol) expressed general opposition to the proposed program. The follow-

ing commenters suggested changes to the proposal: Houston-Galveston Area Council (H-GAC); Houston Light & Power (HL&P); Valero Refining Company (Valero); Enron Corporation, Enjet, Inc.; Continental Airlines (Continental); Rohm and Haas Texas, Inc. Anheuser-Busch, Inc. (AnheuserBusch); Chevron Corporation (Chevron); Rice University; Everitt and Company; Amoco Oil Company (Amoco); S & B Engineers and Constructors, Ltd. (S & B Engineers); Hewlett-Packard Company (Hewlett-Packard); Westchase Business Council; Sonat Exploration; West Houston Association (WHA); Raymond R. Betz Interests, Inc. (Betz Interests); Harris County Pollution Control Department (HCPCD); Katy Independent School District (Katy ISD); and Camco International, Inc. (Camco). The more general comments are addressed initially, followed by the comments on specific issues. Several commenters requested clarification regarding the types of vehicles to be included in the ETR program and the determination of the number of vehicles to use in the computation of the average passenger occupancy (APO) for an employer. HL&P requested that the vehicle definition be altered to read "a highway vehicle powered by an internal combustion engine which fires diesel or gasoline with fewer than nine seating positions for adult passengers." EPA suggested that the TACB define the term "vehicle." H-GAC contended that the definition of APO should read "... divided by the number of vehicles in which those employees report to work between 6 and 10 a.m." to clarify that vehicles of employees arriving outside the relevant period are not considered in the calculation. Valero commented that the formula for counting the number of vehicles in which employees report to work is not clear in cases where multiple employers are using common vehicles. The commenter recommended a formula which allocates to the employers a fraction of the one vehicle. Also, Valero questioned the accounting of an employee who uses transit regularly, but uses a single occupancy vehicle (SOV) to reach the transit stop. H-GAC suggested that motorcycles be counted as vehicles.

In developing direction for employers regarding determination of the APO, the staff realizes the need to clarify that the formula for calculating APO only refers to employees and vehicles arriving at the site between the hours of 6 a.m. and 10 a.m., Monday through Friday. A method of accounting for employees arriving at work in rideshare vehicles will be addressed on the forms provided by the TACB. Employees who use transit regularly, but use a SOV to reach the transit stop may need to report the proportion of the total distance of their trip to work during which they drive an SOV and the proportion in which they ride-share. While this information may not directly impact the APO calculation, it will be necessary to determine air quality benefits.

Vehicles included in the ETR program are defined as motor vehicles, including motorcycles, that are used for commuting during the peak morning period. However, in order to clarify how rideshare vehicles, alternative fuel vehicles, compressed workweeks, or other incentives are counted in the calculation of APO, the staff has added a new definition titled "vehicle equivalent (VE)." VE is the calculated fraction of a motor vehicle used by each employee in a commuting trip for purposes of estimating the benefits of trip reduction measures. For example, an SOV would be counted as 1.0 VE per employee; a carpool with four passengers would be counted as 0.25 VE per employee; and an employee using transit service would be counted as zero VE. The impact of compressed workweeks, alternative fuel conversions, telecommuting, or other transportation control measures will be calculated in VEs in accordance with procedures and formulas provided by the TACB.

While the proposal included EPA's draft definition of a vehicle, it appears more appropriate to use a VE of zero for a bus or a van carrying more than eight employees, rather than to define a vehicle based on the number of seating positions. Under EPA's draft guidance, a van with 15 seats, regardless of the number of actual occupants, could be counted incorrectly as a zero vehicle for purposes of assessing APO. By defining vehicle equivalents, the special definition for vehicles can be deleted from the SIP and §114.21.

While not in response to a comment, special vehicles used by disabled persons to commute to work will be assigned a VE of zero for purposes of calculating VE.

There were numerous comments regarding adjustments for alternative/clean fuel vehicles. H-GAC and HL&P suggested that the definition of vehicles, SOV, and alternative means of commuting consistently address the use of alternative fuel vehicles. HL&P requested that a specific reference to alternative fuel vehicles be added to the SIP. Conoco suggested the following language be added to the SIP: "The employer will be allowed credits for vehicles using clean fuels in the calculation of the vehicles used by employees for the commute to work. The employer will be allowed to accept a standard credit amount established by the TACB or petition for an alternative credit amount based on current emissions data." Enron and Enjet expressed similar positions.

The Sierra Club suggested that the use of clean fuel, a low emission vehicle, or a zero emission vehicle should be equivalent to one more passenger per vehicle. Continental stated that zero emission vehicles should be credited. Enfuels supported the use of alternative fuels to reduce vehicle emissions. Enfuels suggested that actual vehicle-specific test data should be used and that a validated conversion using the appropriate technology, making allowance for degradation over time, should be given greater credit than unvalidated, poor-performing types of conversions.

HL&P suggested that the §114.21, the SIP, and TACB guidance should include incentives for employers to use or to encourage their employees to use cost-effective alternative fuel vehicles, and that an alternative fuel vehicle would count as a zero vehicle for purposes of calculating the APO.

One individual commented that credits should not be allowed for vehicles with bi-fuel type systems, since exclusive use of the alternative fuel cannot be guaranteed. Shell said that an option should be included for the employer's voluntary use of alternative fuel vehicles. Rohm and Haas requested the inclusion of a credit system which rewards the use of clean fuels in fleet vehicles. Enjet argued that, without such a credit for alternative fuels, employers will receive an anti-business message. Enjet suggested that fuel use can be tracked with the modern electronic refueling pumps in order to estimate credits for use by employers. These credits may eventually be available for resale to other employers or as emission offsets.

EPA commented that the TACB has the flexibility to apply a factor for clean fuel commuting vehicles which reflect their lower emission levels if they are certified by a government authority as being substantially lower emitting in actual use than vehicles generally purchased in the area.

Anheuser-Busch, requested that credits be allowed for all alternative fuel vehicles used in conducting business.

The TACB is interested in encouraging the use of alternative fuels and clean vehicles based on measured reductions in emissions and is currently working with EPA toward this end. It appears that determination of a VE based on anticipated emission reductions would be appropriate. However, EPA has not yet released guidance explaining how the emissions reductions are to be calculated. When the EPA's guidance is issued, a more accurate determination can be made regarding appropriate VEs for alternative fuels used in the calculation of the APO for the ETR program

Since bi-fueled vehicles are able to use standard gasoline, they should receive an adjusted VE of less than 1.0 only if the vehicle operator can verify the ongoing use of the alternative fuel. The staff agrees with the commenter in acknowledging the need for a method to verify alternative fuel usage.

There will be credits for fleet vehicles in other programs required by the 1990 FCAA. Therefore, the staff recommends that VEs of less than 1.0 for alternative fuel vehicles are only appropriate if the vehicle is used by the employee for the commuter trip and reports to the worksite between 6 a.m. and 10 a.m. VEs for alternative fuel vehicles will be provided on the APO survey form showing how to calculate the number of vehicles arriving at the site using the most appropriate adjustments based on the type of alternative fuel used. Verification must be provided to show that the alternative fuel vehicle actually meets applicable TACB/EPA guidelines regarding acceptable technology and actual fuel use.

The definitions of employee and employer are so closely linked that the comments and responses for both are discussed together. Most of the comments regarding employees were to request exemptions for special circumstances, such as contract, temporary, field, part-time, or roving employees and rotating shifts.

Conoco, Chevron; GHP, Rice University; Shell, H-GAC, Exxon; Mitchell Energy; Everitt and Company; Amoco; S & B Engineers; and McDonnell Douglas questioned the inclusion of temporary and contract workers who arrive at the worksite, but are paid by another entity. Chevron commented that they do not track these individuals in any data base and, therefore, would find accurate counting and surveying unusually burdensome. Chevron requested a minimum threshold for a temporary employee of 90 days. GHP, Shell, and H-GAC requested that temporary workers be excluded if they are employed at the worksite for less than 10 out of 30 days of the month. However, Exxon indicated that at many worksites employers do not have any method of maintaining lists of individual contractors and temporary employees working 10 or more days per 30-day period. Exxon also stated that contractors and temporary employees cannot practically be included in employee counts since employers have limited control over these employees.

Conoco, Chevron, GHP, Shell, Exxon, Mitchell Energy, Valero, Continental, Enron, and McDonnell Douglas commented that contract workers should be totally excluded from the ETR program. Amoco suggested that exclusions be limited to the short-term contract work force employed for fewer than 180 days. Valero suggested, as an alternative, that the owner/employer could require compliance with this regulation in its contract with the contractor/ employer. Mitchell Energy and McDonnell Douglas stated that the definition should be limited strictly to full-time employees arriving at the site. Enron suggested that the definition include all full-time or regular part-time employees who work more than six months in a single calendar year.

Chevron contended that field workers who are paid by the site employer, but spend less than 40% of their time at the permanent worksite, should be excluded from the definition. S & B Engineers stated that the current definition is too cumbersome for a business which does not have a standard worksite. The Texas Retailers Association commented that retailers should be exempt from ETR requirements because retail store employees work nonstandard schedules organized around peak shopping times which are outside of the peak traffic times. Furthermore, retailers have numerous part-time employees who work only four hours per day. Rice University enumerated the difficulties experienced due to numerous graduate students who are part-time employees. Shell commented that rotating shift workers should be exempt or only be included on a fractional basis.

EPA stated that the TACB has the flexibility to establish a de minimis level for "temporary capacity." However, temporary or contract workers who report to a worksite over the de minimis level must be counted as employees.

Continental said that the definition of employee does not work for the airlines, which have flight crews that work a full month in 10 days or less.

The staff notes that, in such cases, if fewer than 33 employees arrive within the 6 a.m. to 10 a.m. period, the employer may qualify for the de minimis exemption from the ETR program; otherwise, the employer must participate.

The staff recognizes that various employers wish to exclude nonstandard employees such as temporary, contract, part-time, field, roving, and rotating shift workers from the definition of employee. While all employees who regularly report to the worksite should be counted in the employee definition, the staff recognizes the need for consideration of the feasibility of parttime and temporary employee participation. It should be noted, however, that all non-standard workers covered by the definition of employee who do not arrive at the worksite between the hours of 6 a.m. and 10 a.m , Monday through Friday, will not be required to take part in the employee APO survey or ETR measures and incentives.

While it may be difficult for a temporary employee to participate in an alternative to the SOV mode if employed for less than one month, temporary employees can be expected to take part in the ETR program after one month. While contract employees may not be on the direct payroll of the employer, they are under the control of the employer, are indirectly paid by the employer, and regularly arrive at the employer's worksite. Therefore, these contract employees should be included in the definition. Provisions for compliance with the ETR plan should either be implemented by the contracting employer or included as a requirement in applicable contract provisions.

The staff understands the concerns regarding the inclusion of all part-time employees. Preliminary indications from EPA suggest that 80 hours per 28-day period may be used as an exemption level for part-time employees. This equates to half-time for a normal five-day workweek. If extended to apply to a typical 30 or 31-day calendar month, an equivalent of 88 hours would be considered half-time. This criteria should be more compatible with most employer's records and, therefore, may be more appropriate than 80 hours per 28 days for part-time employees. The exemption for part-time employees working less than 88 hours per month is justified to avoid the possibility of causing a restriction in the part-time job market. Unnecessarily limiting part-time employment would make it difficult for students and other individuals to pursue their non-employment responsibilities. In addition, the staff recognizes that, due to the differences in start/end times, it is more difficult for part-time workers to participate in rideshare programs and take advantage of many other ETR incentives. However, employees who work more than 88 hours per month contribute significantly to overall vehicle emissions resulting from travel to the worksite during peak travel hours.

Many field and roving workers, such as sales or service representatives, while paid by the employer, actually work wherever their business takes them. While field workers who report to the specified worksite at least 88 hours per month should be included in the definition of employee, field workers who work directly from home and report physically to the worksite less than 88 hours per month should not be included in the employee count. Field workers or roving employees who are counted within the definition of employee, but do not report to the worksite between the hours of 6 a.m. and 10 a.m. would not be included in the employee APO survey or ETR measures and incentives. If fewer than 33 such employees report to the worksite during this period, then the employer may qualify for a de miminis exemption from the ETR program.

Rotating shift workers who report regularly to the specified worksite should be included in the definition of employee. The staff appreciates the problems associated with groups of employees who may have different commuting habits and work different shifts over a rotating schedule. The staff also recognizes that evaluation of a single shift arriving at the worksite between the hours of 6 a.m. and 10 a.m. during the survey week may not accurately reflect the typical APO of the facility. The staff suggests that the employer could additionally survey other employees as they rotate to the morning peak travel period to determine their commuting modes. The additional data may be used to calculate the resulting overall APO. Employers may find it helpful to consider the trip reduction program in their operating procedures. For example, consideration could be given to potential rideshare compatibility when assigning employees to shifts.

Therefore, the staff has changed the wording in the definition of employee regarding "10 or more days per 30-day period" to "88 or more hours per month," thus, giving employers more flexibility in identifying those employees excluded from the employee count. Also the staff has changed the definition of employee to include all people who regularly report for work at the specified worksite as defined in this section whether they are paid directly by the employer or through contract. Temporary employees who are assigned to a worksite for more than one month or part-time employees who are assigned to a worksite for more than 88 hours per month, excluding Saturdays and Sundays, are included in the initial employee count, but will only be included in APO survey or programs if they arrive during the morning peak travel period.

Rohm and Haas said that the definition of employee should include the time of arrival between the hours of 6 a.m. and 10 a.m. The time of arrival is not included in the employee definition as suggested by Rohm and Haas because all employees at a worksite must be considered in determining applicability of the requirements.

Valero objected to not counting employees who drop off children at day care as carpoolers in the ETR program, particularly when they are allowed access to high occupancy vehicle (HOV) lanes.

A child delivered to a day care facility or a child who rides with an employee to an on-site child care program is not an employee and cannot be counted toward an increase in APO, regardless of HOV lane access. Stopping en route at a day care center does not preclude the employee/parent from carpooling with other employees or participating in other ETR incentives.

The Texas Retailers Association commented that the peak travel period in Houston should be defined as between 6 a.m. and 9 a.m. They contended that, based on major radio stations' morning reports and city traffic restriction signs, the peak driving time is between 6:45 a.m. 8 a.m. Coastal States said that the peak travel period should be changed to between 7:30 a.m. and 9 a.m. HL&P questioned whether the peak travel period applies to employees traveling to work between 6 a.m. and 10 a.m. or to employees who start work at 6 a m. and thus travel to work before 6 a.m.

The intent of the peak hour specification is to reduce morning traffic congestion and the adverse effect that this congestion has on vehicle emissions. The TACB staff consulted H-GAC regarding the peak travel period the Houston area. Based on 1990 census information, H-GAC reported that peak hours for traffic in the Houston area are between 5:30 a.m. and 9.30 a.m., which is consistent with the EPA guidance for the definition for peak hours. EPA has defined the target population of commuters to be employees who regularly start work or arrive at their worksite between 6 a.m. and 10 a.m. The proposed peak travel period appears appropriate and clarifies that it is the intent of the ETR program to include those employees who regularly start work or arrive at their worksite between 6 a.m. and 10 a.m.

The proposal included an innovative approach toward the issue of Average Vehicle Occupancy (AVO) zones. In order to avoid undue restrictions on the economic growth or to prevent unnecessary competition between different portions of the metropolitan area, local officials requested that the TACB not designate separate AVO zones. However, different target APO areas were recommended in recognition of the relative availability of commuting alternatives in more densely populated or commercialized areas. Two alternative proposals for target areas were discussed at the hearing.

The H-GAC, Sierra Club, Exxon, and GHP recommended a one-zone/ two-target APO area approach: Harris County and adjacent "urbanized areas of economic importance, such as The Woodlands, Sugarland, and the South Shore Harbor," with a target APO of 1.47; and the balance of the nonattainment area/AVO zone outside of Harris County with a target APO of 1.41. The weighted average of these two target APOs would result in compliance with an areawide increase in 25% over the AVO. GHP commented that, since the real estate market is so sensitive, the one-zone/three-target area approach included in the proposal would establish and encourage an unlevel playing field, where businesses would choose to locate out of the downtown area or over the county line where the AVO is lower. GHP contended that the two-target area approach would not have the same unintended market consequences.

Hewlett-Packard, GFBEDC, Missouri City, and Mitchell Energy commented that the one-zone/three-target proposal is more equitable. Mitchell Energy stated that the two-area proposal completely fails to take into account the existing and planned transit system and would essentially create a hidden subsidy for central business district development. Missouri City said that under the two-target area plan, it would have a greater burden than the City of Houston or Harris County since Missouri City and Fort Bend County have less employment, no public transit, and contribute less to the area's pollution problem.

One individual suggested an alternative of two-target areas with the following target APOs: 1.68 for the downtown area and 1.46 for the rest of the nonattainment area. Anheuser-Busch said that the APO targets must take into account the employee's access to public transportation serving the employer's worksite.

EPA has determined that the TACB may revise zones and/or target areas presented in this proposal based on public comment. However, if target areas are different from the initial proposal, the final recommendations must demonstrate that the region can achieve a 25% increase in APO over the AVO without contradicting the approach or supporting rationale of the initial proposal.

In recognition of the recommendation of the H-GAC as the designated metropolitan planning organization representing the local constituency, the TACB staff recommended the one-zone/two-target areas option that was approved by the H-GAC Board and has revised the SIP as follows: Harris County, plus the urbanized area of economic importance, as defined by H-GAC with a target APO of 1.47; and the remainder of the counties in the Houston-Galveston nonattainment area with a target APO of 1.41.

The TACB staff believes that since the concept of VE has been introduced, it is necessary to modify the definition of AVO as follows: The AVO for the nonattainment area or zone is the baseline average number of employees per individual vehicle or VE throughout the nonattainment area or zone, which has been measured for the year of the SIP submittal. The AVO applies to all commuting trips in the nonattainment area or zone between the employees' homes and the worksites in the peak travel period between 6 a.m. and 10 a.m., Monday through Friday. All employees, including those who work for employers with fewer than 100 employees and who commute to work during the morning peak travel period, are included in the calculation. The baseline AVO equals the number of employees reporting to or arriving at the worksite between 6 a.m. and 10 a.m., Monday through Friday inclusive, and divided by the number of vehicles or VEs in which these employees report over that five-day period.

There were comments on both the definition and the determination of the Average Passenger Occupancy (APO) and on APO credits. EPA commented that the TACB needs to define or modify the following terms: APO, initial APO, projected APO, and target APO.

The staff agrees that clarification of these terms may lessen confusion and has included the following definitions: Average Passenger Occupancy (APO) applies to the average number of employees in individual vehicles or VEs reporting to or arriving at a specific employer's worksite during the morning peak travel period, Monday through Friday inclusive, during a typical workweek. The APO equals the number of employees reporting to a worksite between 6 a.m. and 10 a.m. divided by the number of vehicles or VEs in which these employees report to work (minus APO credits, if appropriate). The initial and annual surveys must be conducted during a typical workweek for the applicable business. The typical workweek should not contain a holiday or be affected by a holiday. During this week, the employer should not offer special rideshare incentives that are not offered during a typical week. The following types of APO determinations may be applicable: initial APO for an employer is established by the initial employer survey and reflects the baseline average number of employees in individual vehicles or VEs arriving or reporting to the worksite during the morning peak travel period; projected APO for the employer is calculated by dividing the number of projected employees expected in the compliance year divided by the projected VEs to be used in the commute trip in that same year; target APO is the specified APO that each employer must achieve by the compliance deadline, which is two years after the plan submittal deadline. Target APOs have been designated in the SIP for specified geographical subareas within the ozone nonattainment area, such that the weighted average of all the target APOs will achieve an overall APO of at least 25% greater than the AVO for the entire ozone nonattainment area.

The word "credit" is used by some commenters in a broad manner to include factors other than VEs which may reduce emissions that may be credited toward compliance with the APO requirements.

Conoco, Westchase Business Council, Mitchell Energy, Sonat Exploration, Amoco, WHA, Everitt and Company, Shell, Valero, Betz Interests, and Continental requested the inclusion of vehicle miles traveled (VMT) in the equation which defines APO. Sonat Exploration, Betz Interests, and WHA pointed out that a short commute will result in less emissions than a long commute with the same number of passengers; therefore, a 60-mile commute should not be treated in the same way as a one-mile commute. Mitchell Energy commented that an employer whose employees attain an average for miles traveled which is below the average for the nonattainment area should be credited with achieving all or a portion of the 25% target reduction in APO. Everitt and Company, Westchase Business Council, WHA, Betz Interests, and Mitchell Energy requested that credit be given to employers who either provide incentives for employees to live close to work or relocate to be close to their employees. Westchase Business Council, Betz Interests, and WHA requested that an account be taken of employees who drive to a park-and-ride location and, then, carpool or vanpool to work.

Rohm and Haas suggested that the definition of APO include a "de minimis miles traveled" that would exempt employees who live a short distance from the worksite. Amoco proposed the addition of new language to read: "Upon the Executive Director's approval, an ETR plan may contain a method for adjusting the employer's APO to represent actual com-

muting distances." Shell requested that the TACB develop standard survey questions that ask for each segment of a day's commute, the mode used, and the length of the segment. Shell contended that such a standardized survey would provide sufficient information for the TACB to calculate VMT reductions necessary for the demonstration of compliance with the APO target.

The amendments to the 1990 FCAA mandate that affected employers increase their APO by no less than a 25% increase above the AVO for the nonattainment area than was submitted at the time of the SIP revision. Although no specific goals for VMT are stated, the staff recognizes that emission differences between short and long trips should be considered. Cold start emissions also account for a large proportion of total vehicle emissions and may be reduced by some alternative commuting choices.

Calculations of AVO and APO, however, can not directly be adjusted to include VMT or cold starts since these calculations are based on AVO and APO as defined in the FCAA. Reporting the distance traveled to work in the annual employee survey is appropriate for determining the relationship between APO increases, VMT, and cold start reductions and the resulting emission reductions. Allowing employers to demonstrate equivalency to the target APO emission reductions based on VMT or cold start reduction may be considered at some later date. However, before allowing for these reductions, emissions data must be gathered and analyzed in the nonattainment area to determine the average emissions correlated with such factors as the area's average VMT, the number of cold starts, and the composition of the vehicles in the area's fleet.

A number of commenters requested clarification regarding the role of other incentives in APO calculations. While these measures do not directly reduce trips, they influence ridesharing. Some commenters requested credit for providing particular incentives.

The Texas Retailers Association supported the fact that the proposal does not mandate that employers implement specific measures to increase APO, but Coastal States was concerned about the employers' having choices over selecting alternative incentives to best conform to the employees' life-styles. Amoco, HL&P, and Continental commented that credit should be given in the calculation of worksite APO for the utilization of flextime, compressed workweeks, and the provision of specific incentives. HL&P requested credits for cutting its three eight-hour shifts to two 12-hour shifts working two weeks on and one week off and is concerned that the survey administered over a five-day period may not recognize the "substantial trip reduction made by the 12-hour shifts." S & B Engineers said that public transport is of little use to suburban locations. The company has been vanpooling since 1977 and requests credit for this in the ETR plan.

APO benefits should be available for employees who work flextime and compressed workweeks. The TACB staff will provide VE adjustments for commuter vehicle reductions to be used in the APO calculation of the worksite. Employers who have already provided specific incentives will be able to apply those benefits since they will already have a higher worksite APO relative to the target APO, thus requiring less additional effort to achieve the established target.

All the comments indicate that different situations exist at different worksites. The ETR program allows for these different situations by giving the employer the freedom to be creative in encouraging other ways of reducing the number of vehicles in which employees arrive at the site between the hours of 6 a.m. and 10 a.m. A survey to ascertain employee attitudes toward various transportation modes and an understanding of the site's opportunities and barriers to the use of particular incentives should be used by the employer to provide indicators of ways in which the target APO and target number of vehicle reductions can be accomplished. The staff does not intend to prejudge, credit, or differentiate between the effectiveness of different incentives. The evaluation of an incentive relates to its effectiveness in trip reduction or APO increase.

Retail Grocers are opposed to the guaranteed ride home provision.

It appears this commenter has made the assumption that a ride home must be provided for every employee every day, rather than guaranteed only in an emergency. The guaranteed ride home program was a suggestion by EPA to illustrate a possible program that could be used for emergencies to encourage employees to rideshare. It was not intended to be a requirement.

HCPCD and one individual said that there should be no banking of credits. HCPCD said that it is a mistake to believe that reduction in emissions in one year will somehow benefit air pollution conditions at a later time. HCPCD requested that the definition of APO credit be completely deleted, as this has no air pollution benefit. The commenter suggested that subsection (b) of §114.21, then, should read: "All employers with 100 employees or more at a single worksite in any county referenced in subjection (j) of this section shall implement programs, incentives, or other measures as necessary to achieve an APO at least 25% greater than the AVO established for the nonattainment area or geographic AVO zone where the worksite or worksites are located," thus deleting all reference to banking and use of APO credits.

APO credits are intended to achieve the following goals: encourage employers to exceed the minimum APO target with a corresponding increase in emissions reductions; encourage early compliance before the plan submission deadlines; provide for flexibility of emissions reduction methods; and leave open the possibility of using APO vehicle credits as part of the marketable credits program currently being investigated by the TACB.

However, the staff believes that the APO credit, as defined and shown in the equation used to determine APO, is confusing and needs to be clarified. APO credit means the excess reduction in the number of vehicles or VEs arriving at the worksite beyond the target number of vehicles or VEs (computed from the target APO) accumulated in the previous year. Therefore, APO credit for an employer is defined as the number of vehicles or VEs below that necessary to achieve the target APO.

Chevron, H-GAC, Amoco, Mitchell Energy, and Coastal States supported banking of credits. Chevron requested clarification of the life of a credit and suggested that APO credits be retained indefinitely. Mitchell Energy also requested that APO credits not be limited to a one-year period. Valero asked if credits submitted in a plan in 1993 would be available on the anniversary date of plan approval as opposed to November 15, 1996. The commenter contended that delaying credit availability would amount to a penalty for early submission.

The staff understands HCPCD's concern, but believes that employers should be encouraged to reduce trips as soon as possible. As cleaner cars become available, overall emissions per vehicle will be reduced, offsetting the emissions of the banked credit. Employers should be allowed to bank these credits for one year on the next reporting period, since a longer period could be counterproductive to sustained trip reductions and detrimental to the overall emissions reductions aims of the ETR program. Giving more than one year weakens the effectiveness of the ETR program. However, it is possible for the employer to maintain a positive balance of vehicle credits or a VE balance each year as adjustments in the annual APO calculation.

Credit availability will commence on the anniversary of the date of achievement of the target APO.

Some commenters requested an APO credit trading program because some employers may not be able to achieve the target APO, while others may exceed it. Hewlett-Packard, Conoco, GHP, Occidental Chemical, Shell, Texas Retailers Association, H-GAC, AnheuserBusch, Amoco, and Coastal States approved of trading of APO credits both within companies having multiple worksites and between companies (at a discount factor not greater than 10%) in the nonattainment area. Continental supported trading APO credits within a company and between other companies with no discounting. Shell requested that trading be allowed within a company across different APO target areas if there are separate plans for each of the sites within APO target area. Enron supported the idea of trading credits, but suggested that this idea be expanded to include other alternatives. Enron also suggested that companies should have the ability to sell credits to other companies or bank those credits for future use in the event of business upsizing, downsizing, or relocating to other parts of the city.

The TACB currently has an EPA grant to study the possibility of developing a market in emission reduction credits. This investigation includes the possibility of trading emission reductions obtained from the ETR program. The number of vehicles below the maximum allowed in order to meet the employer's target APO weighted by average VMT by the em-

ployees at that worksite could provide an appropriate emission credit to be traded. The staff is aware, however, that any system that is developed must be capable of maintaining the integrity of the overall aim of reduction in vehicle emissions. Such a system, therefore, may be an item for future rulemaking when it can be based on emission testing and when a monitoring/tracking system is available.

The staff has deleted references to discounts in relation to the definition of APO credits in both §114.21 and in the SIP, because discounts only apply to trading credit which is not being considered at this time.

S & B Engineers suggested deleting "other information as requested by the TACB or the EPA" in the proposed registration requirements.

The TACB must retain the flexibility to request reasonable additional information in order to effectively monitor, assess, and enforce the ETR program. Such information will be clearly indicated on report forms supplied by the TACB. However, including the EPA in this requirement appears neither necessary nor appropriate.

Mitchell Energy commented that the terminology and requirements of the registration provision should be amended to read "highest ranking official with direct management responsibility for the worksite" as an alternate for the chief executive officer (CEO). EPA commented that staff should clarify that it is the TACB's intent to require two names, the Employee Training Coordinator (ETC) and either the CEO or the highest ranking company official at the worksite. Mitchell Energy also requested that the rule specify whether the ETC is responsible for signing the registration.

The staff agrees with Mitchell Energy that it is unnecessary to specify the CEO as a separate alternative, because if he or she is on the site in question, then he or she is the highest ranking official. Registration does require identification of two names, the ETC and the highest ranking official with direct management responsibility at the worksite. However, the rule has been amended to clarify that registration requires only the signature of the highest ranking official with direct responsibility for the worksite, since only that person is ultimately responsible for meeting the requirements of the regulation.

While not in response to a comment, the staff has determined that registration of individual worksites may be monitored more easily by using the TACB account number, rather than the permit number.

A number of commenters requested that the information required by the TACB in the ETR plan components be limited. Hewlett-Packard, Chevron, GHP, Occidental Chemical, H-GAC, and HL&P requested that the information required from the employer by the TACB be simplified and include less detail regarding the worksite, budget, employer incentives, implementation dates, and tracking methods. Continental said that there should be a limit on other information the TACB could request. Exxon stated that information required by the TACB should be limited to the following: name of the designated and trained ETC, location and description of each affected worksite, designated AVO zone and target APO for each worksite, initial APO for each worksite, trip reduction measures and incentives to be implemented, projected APO based on targeted employee participation, timeline of implementation and interim progress reports, and description of the "progress report mechanism."

HL&P requested that specifics of employer demonstration and achievement of compliance should not be required for initial plan submittal. In the event that an employer does not attain compliance, it could then be appropriate to require the employer to elaborate on projected achievement of future compliance. Chevron commented that the calculation of person-trip and VMT reduction should only be required at the time of the employee survey.

EPA suggested that §114.21(j)(3) explicitly state "approvable" ETR plans must be submitted. However, it should be recognized that the TACB approval of these ETR plans does not prejudge the effectiveness of the employer's measures or incentives.

The intention of the staff is to minimize the information required to be submitted for plan approval and for annual compliance reporting. Employers not already in compliance by the submission deadlines must provide adequate information to enable minimum review of incentives. However, those employers who are already in compliance by the submission deadlines will be allowed to document their actual APO rather than provide more detailed plan components

The staff agrees that some of the information specified in the proposal may not be necessary. Detailed employee and site information and comprehensive analyses of all transportation measure options, as examples, may not always be needed However, the TACB must specify that enough information be obtained to satisfy the FCAA requirements for submission of a compliance plan which "shall convincingly demonstrate compliance with the requirements...(of the act)." Language in subsection (j), as proposed, specifies that "approvable" plans be submitted. However, such approval does not exempt the employer from the requirement to achieve the target APO.

Section 114.21 and the SIP have been revised to eliminate detail and to request only such information as necessary to allow for the future determination of the reduction in vehicle emissions This information will be crucial to allow the ETR program to be used as a transportation control measure that will count toward VMT offset and for the future possibility of trading emission credits. Due to eliminating detailed plan requirements, the staff has rewritten the definition of vehicle miles traveled to improve clarity and applicability.

Hewlett-Packard commented that information regarding the employee's job classification and home address should not be released to the TACB.

The proposal does not require information to be submitted that would identify particular employees or employee information. However, the employer would be expected to be able to correlate the survey information with specific employees for recordkeeping and tracking the APO.

Mitchell Energy requested that the terminology and requirements of the certification provision be amended so that the highest ranking official with direct management responsibility for the worksite should be cited as an alternative to the CEO. Mitchell Energy also requested that the rules specify whether the ETC is the person responsible for preparing the plan and signing the certification.

The staff agrees with Mitchell Energy that the wording in the SIP should be changed to require certification only by the highest ranking official with direct management responsibility for the worksite since this will include the CEO if he or she is on site. The requirement for the ETC to sign the certification of the plan has been deleted, since, ultimately only the highest ranking official has direct responsibility for compliance with §114.21.

Some employers requested clarification regarding submission of single plans for a single worksite and requested to be exempt entirely from the plan requirements.

Katy ISD requested that school buildings on the same property be considered as a single site Amoco commented that separate and distinct, but adjacent operations under the ownership of a single parent corporation should not be considered a single worksite Exxon asked whether the management at any worksite where employees of different operating companies which are owned by the same corporation may choose to either file plans for each of those companies at that worksite or may choose to file a single plan for the corporation at that worksite. Valero commented that it consists of two distinct corporate entities, affiliates of the same parent, but with separate CEOs When the companies are aggregated they are in excess of 100 employees, yet each has fewer than 100 employees separately.

EPA's interim guidelines state that several subsidiaries or units that occupy the same worksite and report to one common governing board or governing entity are to be considered as one employer. Thus, if two schools, for example, an elementary and a junior high, operate on one worksite and are accountable to the same ISD, they will be considered as one employer operating from one worksite for the purposes of this program. Similarly, multiple companies under a single corporate structure or parent company with a combined total of over 100 employees at one worksite would be required to develop and implement a single ETR program. However, multiple companies under mutual control, each with over 100 employees at one worksite, may have the option of filing combined or separate plans. Many employers may need to make changes to their operating procedures to be able to achieve their target APO. Nothing in the rule stipulates that the same incentives must be implemented at each school or company on the single site. Schools should note that this program only covers paid employees of a school, not volunteers or students.

NASA suggested that, in situations where there are multiple employers at one worksite, each employer with 100 or more employees working on a single worksite be individually responsible for compliance with the ETR plans.

The TACB staff agrees with NASA that the rule is intended to require each employer with over 100 or more employees at a single worksite to submit a plan even if the worksite is common to several employers and even if there is a contractual relationship to the employer that manages the worksite.

H-GAC suggested that the definition of worksite include any properties that would touch if intervening public or private roadways or rights-of-way were removed. Enron added that this definition should include campus-like facilities, facilities within a single complex of office buildings, and leased office space within buildings that are reasonably close to one another.

The staff believes that the proposed definition of "worksite" sufficiently communicates these concepts. However, the language regarding location in the nonattainment area is unnecessary and has been deleted.

A number of large employers, each with multiple worksites, requested the opportunity to submit one plan for all commonly owned worksites. Hewlett-Packard, Conoco, GHP, Occidental Chemical, Shell, Exxon, Chevron, Katy ISD, McDonnell Douglas, S & B Engineers, and HL&P expressed a need to be able to designate multiple facilities within one AVO zone or APO target area as a single worksite and, therefore, submit only one plan for the multiple worksites. HL&P and Continental requested that the TACB recognize the burden this proposed regulation will place on companies of their size by allowing for preparation of a single plan with minimal submission requirements.

EPA commented that it appears from the TACB regulation that an employer with multiple worksites cannot use excess APO to be applied toward compliance with the APO target at another worksite. Under EPA's draft guidance, the state has the flexibility to allow for APO trading as long as ETR plans are submitted for each worksite. HCPCD suggested that §114.21(j) be revised to allow employers with multiple worksites to demonstrate compliance with the overall APO target. They suggested that the subsection read "All affected employers within counties specified in this subsection shall be required to submit approvable ETR programs and to demonstrate compliance with the APO target." HCPCD also requested that §114.21(d) be revised to read: "This plan shall convincingly demonstrate the employer's commitment and strategies for achieving the required APO target at each affected worksite or the overall employer APO target when an employer has multiple worksites." HCPCD further requested that the definition of APO be changed to state "...applies to the average number of passengers in individual vehicles arriving at a specific employer's worksite or worksites during the morning travel period...."

The staff recognizes that these comments all address the question of the acceptability of one plan for multiple worksites. The rule has been changed to allow an employer with multiple worksites, in a single APO target area, to submit one plan for all the worksites and to add a new subsection regarding combined plans. Only employers with an official having management authority to make binding commitments for all of the worksites in question should be eligible to submit a combined plan. While such a plan may be signed by an officer who resides outside the nonattainment area, a local management contact for all the sites must be specified to facilitate effective coordination and compliance efforts.

The staff advises that if these multiple worksites are situated in more than one APO target area, then the employer must use the higher (or highest) of the APO targets for all sites. Otherwise, a combined plan could only be allowed for sites within the same APO target area In addition, since, in the APO calculation, the relationship between the number of employees and the target number of vehicles is not linear, it is not appropriate to allow a direct averaging of all worksites' APOs. The employer must anticipate the vehicle reductions needed at each site and, therefore, must submit survey information and appropriate incentives or programs at each site. Some parts of the plan, however, can be combined, such as the commitment letter, monitoring strategies reports, recordkeeping, marketing materials, and other common program elements. The employer would also have a choice regarding demonstration of compliance with the APO target. For example, each site could individually meet the target APO, or the employer could calculate a combined APO based on the total number of employees arriving at all of the sites between 6 a.m. and 10 a.m., Monday through Friday, divided by the total number of VEs in which these employees arrive at or report to all of the worksites.

The staff has made changes to the proposed §114.21 and SIP to accommodate the described combined plan. One change made is that affected employers must list certain information required in the proposed rule for each site. Other information may be aggregated for all the sites in the combined plan. The staff believes that it would be more appropriate to establish specific requirements for multiple worksites rather than to add the word "worksites" to the basic APO definition. The staff also has changed the rule to read "target APO," as requested by HCPCD, rather than "APO increase for each worksite," because target APO more clearly describes the intent of the regulation.

Relating to worksite considerations, the staff points out that where the employer has fewer than 100 employees at each of a number of separate worksites within the nonattainment zone, the employer will not be expected to aggregate the employee numbers from each site to create a total number of employees over 100, thereby bringing the employer into the ETR program.

Chevron stated that the phased submission of plans from May to November 1994 places the larger employer at a disadvantage because of the greater number of employees that have to be considered when formulating a plan. Therefore, Chevron recommended that the phased-in deadlines be dropped altogether from the regulation and that the submittal deadline for all employers be November 15, 1994.

Staggered submission dates are necessary for the administration and timely review of 2,400 anticipated plans. Larger employers have adequate time and resources to evaluate alternative measures and incentives in order to submit plans beginning in May 1994.

While GHP supported early education and planning by employers, it recommended that any references in the SIP to early submission of ETR plans prior to 1994 be omitted.

The staff agrees that employers may need until the submittal date to prepare their plans In addition, the TACB staff does not expect to have funding that would allow for administrative review of the ETR plans before May 1994. Therefore, the SIP has been changed to delete references to early submission of plans.

Mitchell Energy requested that the submission deadline for new plans for employers who increase the number of their employees to over 100 or relocate into the nonattainment area be extended from 120 days to one year One individual asked what happens when a company shrinks below 100 employees.

The staff recognizes that relocation and preparation of an ETR plan is time consuming The ETR program should neither overburden companies already undergoing change nor discourage new businesses from locating in the area. The staff, therefore, concurs that the deadline for plan submission for employers who increase the number of their employees to over 100 or relocate into the nonattainment area should be extended from 120 days to one year. Affected employers would then have two years from submittal of an approvable plan to meet the APO compliance target. Employers who fall below 100 employees must submit documentation to the TACB about their change in status.

H-GAC, Hewlett-Packard, Conoco, and Chevron stated that an employer who could demonstrate compliance should not be required to submit an updated plan.

If the annual survey documents compliance, an employer may only need to reevaluate the current ETR plan to determine if it is adequate to ensure continued compliance. If so, the employer need only submit a new commitment letter for the continuation of the plan. The staff emphasizes, however, that if, after documenting compliance, an employer falls below the target APO and fails to comply with §114.21, the employer may be subject to penalties and must submit a revised plan which again demonstrates compliance.

H-GAC recommended that exemptions and extensions be stated explicitly or not allowed at all. The commenter suggested that the TACB could grant temporary extensions of time for any provisions of this ETR program if qualifying findings, such as a "good faith effort" to meet the requirements, can be made. One individual thought that exceptions should not be allowed.

The staff agrees with H-GAC's comment that all exemptions should be stated explicitly and is also aware of the danger in allowing too many exemptions to a mandatory program The staff has made revisions to the definitions of "APO," "employee," and "peak travel time" to reduce confusion and describe all exemptions in both the rule and the SIP The only exemptions are. temporary employees who spend less than one month at the worksite, part-time employees working less than 88 hours per month; and employers with fewer than 33 employees arriving at the worksite between the hours of 6 a.m and 10 a m., Monday through Friday. Providing an extension for plan submittal and other reports is not appropriate because the FCAA clearly specifies these deadlines Enforcement discretion may be exercised by the TACB in recognition of ongoing good faith efforts to comply with ETR requirements. Appropriate wording has been added to §114 21(j)

Continental said that there should be a time limit within which the TACB must approve or disapprove plans

The staff's goal is to approve or disapprove plans within 60 days of receipt The staff will review these plans as quickly as possible and will work with each company to ensure timely approval of all plans However, approval of an ETR plan or failure to approve an ETR plan by the TACB does not absolve an employer of the responsibility or liability for complying with the applicable APO target

EPA suggested that a time limit be established for resubmission of a plan that has been disapproved by the TACB

The staff recognizes that some plan submissions may be found incomplete or unacceptable. Under such circumstances, the employer will be notified as soon as possible and may be provided a reasonable length of time to respond with supplemental information. While the provision of additional time to clarify specific case-by-case questions or concerns may be a reasonable administrative practice, inclusion of a specified period in the rule may encourage partial plan submittals and extended submission schedules Therefore, an "approvable" plan must be submitted by the established deadline in order to avoid potential violations.

H-GAC endorsed a 90-day deadline for employers to resubmit plans to the TACB after notification that their target APO was not met by November 15, 1996, or subsequent deadlines.

The TACB staff does not intend to send notification letters, because the employers already are required to report the status of the ETR plan implementation and to resubmit a revised plan, if necessary, two years after the plan submission deadline. The staff agrees that it would be reasonable to allow 60 days after the applicable compliance date for the employer to revise and resubmit a plan to achieve compliance. Appropriate language has been added to §114.21(h)(2)(B). The date of the submission of the revised plan would not change the next compliance date. The next reporting period would remain the anniversary of the original plan submission deadline. Failure to document compliance in this status report may subject the employer to penalties.

Several commenters requested for a clarification of the ETC's role and requirements. EPA requested that the role of the ETC be clearly defined In addition, there were a number of comments regarding the requirements for ETC training. Mitchell Energy asked the staff to clarify whether the ETC must sign the certification

To allow the employer the option of contractor-provided services, the staff intends for the ETC to be an individual appointed by the employer to be responsible for the preparation of the ETR plan, for marketing trip reduction measures to employees for implementation, for recording and monitoring the applicable control measures at each worksite, and for reporting requirements. The ETC will not be required to sign the ETR plan certification Language has been included within the rule and SIP to clarify this intent

Shell, Occidental Chemical, HL&P, and Katy ISD requested that a single ETC be allowed for multiple worksites rather than one ETC on each site. Valero requested modification of the requirement that employers have a dedicated staff member who acts only as an LTC

It may not be necessary in all cases for an ETC to be dedicated solely to working on the ETR program Since there will be different staffing needs for each employer depending on the number of sites, the nature of the business, and the skills of employees, an employer should have flexibility over the use of resources Some ETCs may be able to handle more than one employer's ETR plan, as well as more than one worksite Therefore, the staff wishes to clarify that a trained ETC is required to be designated for each site and has deleted language which implies that an ETC must be physically located at a particular worksite.

Coastal States opposed being required to designate an ETC Anheuser-Busch stated that worksites that meet the APO target requirements should be exempted from the requirement to have trained ETCs.

The ETC duties may not be as extensive for employers that have already met their target APO as for those which are not in compliance. However, there will continue to be survey and reporting requirements which a qualified ETC will need to satisfy.

Anheuser-Busch also stated that the TACB should provide the necessary initial training for ETCs at worksites which are below target. Rohm and Haas asked whether the ETC has to be certified, who grants certification, and how long certification lasts. H-GAC suggested that there be periodic recertification every two or three years. One individual suggested that 10 hours of retraining for ETC certification be required every two years.

While the ETC is required to attend basic training from a TACB certified training provider, the staff did not intend to imply "certification" of ETCs. "Certification" was used in the SIP in relation to certifying trainers to teach ETC courses. The information on ETR is rapidly changing, and improved information is expected to become available as other state programs are developed and evaluated. The staff does not believe that the length of time between training updates should be designated by regulation. South Coast Air Quality Management District (SCAQMD) requires their ETCs to have annual update courses. However, the TACB staff believes that it may be as appropriate for these updates to take the form of workshops, symposia, video presentations, or written materials in order to recognize on-the-job experience and to promote flexibility

Therefore, the staff has added to the rule a requirement for evidence of attendance at a basic ETC training course approved by the TACB In addition, the staff has added language in the rule to clarify "adequate training" as follows: "ETC training at a minimum, must include. a basic, comprehensive training course administered by a TACB-certified training provider, and ongoing activities recognized by the TACB as necessary to maintain expertise in ETR program administration Annual verification of participation in relevant workshops, conferences, symposia, or other activities, must be submitted to the TACB." Likewise, appropriate changes to the SIP have been made Training courses and updates will be coordinated by the TACB and be provided either by the TACB or by other organizations approved by the TACB For clarification, the staff did not specify the length and time for recertification of ETC training providers It appears more appropriate to handle this issue administratively through annual review of training provider performance

The comments regarding the annual survey for determination of the APO included requests for substitution of a random sample for the required response rate of at least 75% and requests for clarification of timing of the survey performance

Hewlett-Packard, Sierra Club, Chevron, GHP, Rice University, Shell, Rohm and Haas, Exxon, Anheuser-Busch, Coastal States, Enron, and HL&P requested authorization to use a statistically significant random sample when surveying employees to calculate the APO Hewlett-Packard, Rohm and Haas, and Anheuser-Busch said that the 75% response rate for the survey of all employees arriving at the worksite between the hours of 6 a m. and 10 a m. was too high Anheuser-Busch said that to get a 75% response, some employers will have to offer financial or material incentives. Chevron and Hewlett-Packard commented that it was erroneous to assume that non-respondents are traveling to work in SOVs. The Sierra Club and one individual commented that the 75% response rate was reasonable and should be retained. EPA said that for very large work forces, the TACB may allow a random subset of employees to be selected for surveying, as long as the response rate requirements applicable to a regular survey likewise are applied to the sample

The purpose of the employee survey is to accurately determine the APO and travel characteristics of the employees arriving at the worksite between the hours of 6 a m and 10 a.m., Monday through Friday, so that at a future date actual emission reductions resulting from the ETR program can be calculated.

Consultation with Dr. John C. Dougherty, IV, of the LBJ School of Public Affairs at the University of Texas at Austin, confirms that demonstration of a significant confidence level using a sample for the baseline survey would be difficult. In addition, the overall integrity of such sample surveys could be difficult to guarantee.

Ventura County and SCAQMD in California both report that, while they have had similar requests, they have had very little difficulty in obtaining 100% response rates even from very large employers. Both agencies report that tracking an employee's transportation mode is not much different from tracking an employee's work attendance.

The TACB staff supports the 75% minimum response rate for surveys of all employees arriving at the worksite between the hours of 6 a.m. and 10 a.m., Monday through Friday, with non-respondents being counted as SOVs. While it would be desirable to obtain 100% response rate on the employee surveys, this may not be realistic for all companies. Some minimum response rate for the survey is needed to ensure a value accounting and to avoid a falsely skewed high rate of response from rideshare participants with a corresponding failure of employees to report use of SOVs. The TACB staff believes that the 75% response rate is appropriate. If an employer can document a response rate of 90% or greater, non-respondents will not be counted as arriving SOVs. The remaining 10% will be assumed to have the same relative distribution of ridership as demonstrated in the survey.

Rice University commented that their faculty works at home during academic breaks. Therefore, the University should be permitted to include seasons which give maximum APO, such as summer work at home. EPA commented that the TACB needs to specify the requirements for conducting the employee survey. EPA stated that the phrase "conducted in accordance with TACB guidance" is ambiguous. EPA said that the TACB may want to specify such items as the content and/or the timing of the survey.

The staff agrees that more explanation of the survey is needed to avoid ambiguity. Potential confusion may be reduced by stating that employers will be required to submit the results of the annual survey and plan information on forms provided by the TACB. Direction and assistance regarding detailed implementation of the survey will be provided to employers along with the survey forms. In addition, the administration of the survey and completion of plan forms will be covered in the basic training of the ETC.

The survey should be conducted during a typical week for that employer's business. For example, a school should conduct the survey during the school year, not the summer vacation. The survey should be performed on five consecutive days, Monday through Friday inclusive, and during a week that contains no holidays and is not preceded or followed by a holiday. During the survey week, in order to maintain the validity of the survey, the employer is advised not to provide special incentives or conduct promotional activities for employees.

There were several comments regarding performance tracking including: recordkeeping, auditing, and reporting.

H-GAC requested that the TACB develop a simple standardized machine-readable format for employer surveys and that the TACB calculate the employer's APO from that data.

The TACB staff intends to provide standardized survey forms (with appropriate directions) on which each employer can obtain, calculate, and report data and plans. The TACB does not have the resources necessary to process the data obtained from each individual employee survey for the employers.

HCPCD suggested that the first sentence of §114.21(f) be modified to allow records to be maintained "at a central location within the nonattainment area or geographic AVO zone in the case of multiple worksites." The staff concurs and has made this change.

The Sierra Club and one individual argued that records should be kept for at least five years. Two years of information appears adequate to assess compliance with the ETR requirements. The employee surveys must be conducted annually and plans must be reviewed and resubmitted every two years. This timeframe is also consistent with other TACB recordkeeping requirements.

H-GAC suggested that tracking be limited to methods to assess progress toward meeting the AVO goal. Hewlett-Packard expressed concern about recordkeeping and quality assurance requirements. H-GAC, Exxon, and S & B Engineers commented that recordkeeping should be limited to the minimum necessary to demonstrate results and compliance. S & B Engineers requested that the words "...but are not limited to..." be deleted from the last sentence of §114.21(f). Chevron commented that calculation of person trips and VMT reduction should only be required at the time of the employee survey.

The staff does not plan to request unnecessary information or recordkeeping. The TACB does need to request any information necessary to administer the ETR program and to determine emission reductions. The staff points out that, while employers are required only to report to the TACB after the annual employee survey, employers would need to calculate the APO more frequently or devise another method to continuously monitor the effectiveness of their program and make adjustments if needed to reach the target APO.

McDonnell Douglas expressed concern about recordkeeping that requires accounting of budget allocations or expenditures for each measure and incentives offered to employees. The commenter asserted that this may cause the erroneous conclusion that those who spend less on an ETR program are not as committed.

The staff understands McDonnell Douglas' concern that the amount spent on a measure should not be construed as being an indicator either of the level of commitment to the program or, necessarily, the potential success of the measure. Such information, however, will be useful in determining the cost-effectiveness of ETR program measures and in determining that an appropriate level of funding is being expended on selected measures.

Hewlett-Packard objected to an "unannounced" audit process. Chevron said that the term "periodic" is vague and implies additional compliance dates which are not clarified in the rule. Chevron added that audits should be used to track those who demonstrate compliance with the target APO, thus doing away with the need for plan resubmission. One commenter indicated a need for a strong audit program, possibly four times per year.

The TACB has a responsibility to enforce the Texas Clean Air Act (TCAA) and the amendments to the FCAA. The audit is necessary to ensure the quality and integrity of plans, reports, and records. Therefore, the TACB must retain the right to visit any employer to assess adherence to the approved plan and to ensure continued compliance. The audit would be similar to current compliance inspections performed by the TACB which include about 25% unannounced visits. It is not appropriate to set a specific number of times per year or a goal for the number of inspections per year. The staff believes that audit surveys of employers is an important quality assurance tool.

Hewlett-Packard stated that milestone surveys should be conducted every two years, once the employer is in compliance, and if the employer is not yet in compliance, the survey should be annual. The GHP, however, stated that an annual employee survey for all employers was acceptable. Rohm and Haas asked whether a 75% response was required on the annual milestone survey. H-GAC commented that employers should be required only to conduct annual surveys to provide the data necessary to calculate APO for each employer, regional AVO, and the regional VMT reduction.

An annual employee survey for all employers is necessary so that employers can ascertain that they are still in compliance with the target APO. For reasons previously stated, a 75% response rate for a survey of all employees during the peak travel period will be required for the annual survey.

Several commenters expressed concerns or questions regarding the requirement to achieve the target APO of 25% over the area's AVO by the 1996 compliances dates. In relation to the compliance requirement, there was concern regarding the penalties and enforcement consequences for failure to comply.

GHP, Texas Retailers Association, Exxon, HL&P, and Valero commented that an employer should not be considered in violation of the regulation for failure to achieve the APO target as long as an approvable plan has been submitted and implemented according to the schedule. GHP pointed out that this would be consistent with EPA enforcement practices which do not impose sanctions on areas for failure to reach attainment if plans are implemented as approved. GHP recommended that employers not be penalized if they can show "good faith efforts" toward compliance and that employers not be punished if they have made significant progress toward achieving their goals. McDonnell

Douglas was concerned that the Texas ETR plan is performance-based rather than actionbased like California. They requested that the TACB consider efforts to educate the work force in assessing an employer's progress toward achieving the target APO, since this program will require changing people's behavior.

Hewlett-Packard expressed concern that the penalties may be large and excessive and disagreed with "enforceable implementation" or "enforceable dates." Chevron said that penalty fees should only be considered if an employer does not comply with requirements, such as registration with the TACB, completion of employee surveys, and plan submission. Chevron also commented that a schedule of violation and associated penalty amounts need to be detailed and included in the rule. They also expressed concern about enforceable implementation of milestone dates for the annual survey, trip reduction measures, and incentives. H-GAC suggested that an employer should be found in violation of the ETR plan and subject to administrative and civil penalties only if the employer fails to submit the required documents, falls short of achieving the initial 1996 target or annual target (after 1996), or fails to implement and carry out its ETR plan.

Continental argued that compliance with the 1.46 AVO by November 1996 is not realistic. Based on California experience, after two years, Houston would only have a 1.23 AVO. The commenter stated that Continental, along with many other Los Angeles corporations, now believes that transportation demand measures, such as the ETR plan, alone will not achieve the target APO increase. In addition, Continental commented that the "alternate transportation mode preference survey" is going to be useless for the first two years until employees are educated.

Camco contended that, although the ETR program is a reasonable solution to the ozone problem, it is not achievable, because there are no suitable alternative transportation modes in the Houston area. S & B Engineers stated that the rule, as proposed, is far too cumbersome due to the nature of S & B Engineers' engineering business.

The FCAA requires employers to have an APO higher than the AVO by 25% by 1996. The staff feels that in order to convincingly demonstrate to EPA that compliance with the target APO can be achieved, aggressive enforcement requirements are essential.

The TACB staff understands that achievement of the target APO will be difficult, will require changes in the behavior and commuting modes of employees and employers in the nonattainment areas, and will require implementation of transportation programs and other support activities in the nonattainment area. Three of the reasons why California may not have achieved higher trip reduction results were: the administrative agencies and employers were creating ETR programs and related support activities for the first time; employers understood they would not be penalized for failing to reach the target APO; and the focus of the program was on "intensive plan review" rather than performance. The staff also realizes that the 25% increase in APO is an ambitious target, but that by placing our emphasis on outreach, education, and performance rather than on the intensive plan review, greater success is possible. The staff has considered these comments and will assist in supporting employers' efforts to educate their employees and to shift to alternate transportation commuting modes.

If the TACB does not implement a program of intensive plan review or require specific incentives for all employers that have been approved by EPA, then the TACB is required to include in the regulation a program of "financial penalties large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan of its own." The staff feels that the penalties for failure to comply with TACB rules that are described in the Texas Health and Safety Code are appropriate. The Board may consider good faith efforts in determining specific penalty amounts. Such a good faith effort may include ongoing internal monitoring of plan measures and incentives and their relative effectiveness and the immediate initiation of additional measures when shortfalls are identified. Documentation of prior efforts to remedy plan deficiencies may result in reduced or deferred penalties for failure to achieve the targets.

Experience from other states indicates that extensive plan review does not encourage employers to comply. Such an approach takes an inordinate amount of time, effort, and resources focusing on the administrative process, rather than the desired outcome of reducing commuter travel and vehicle emissions.

Amoco recommended that all compliance requirements be eliminated. EPA commented on inconsistency regarding compliance deadlines and stated that, in some places, the regulations cite two years following the initial submission deadline, others cite November 1996. EPA suggested that the TACB specify that the deadline refers to two years after the initial ETR plan submission deadline.

While the TACB does not expect employers to submit ETR plans or compliance reports prior to the established deadlines, compliance with all emission reduction measures is encouraged as soon as practicable. However, violations will not be determined until after the established deadlines. The staff recognizes the need to ensure that all regulatory compliance and reporting dates are consistent throughout the regulations and associated SIP revisions.

EPA said that the TACB should reiterate in this section that employers who fail to meet the target APO are still in violation of this rule, even if they submit a revised ETR plan.

The staff agrees with EPA's comment that employers who fail to meet the target APO are still in violation of this rule, until they achieve compliance with the target APO, even after they have submitted a revised plan. However, §114.21(h) requires employers to produce a demonstration of compliance with the target APO. In the absence of such a demonstration, an employer is assumed to be in violation of the rule, whether or not a revised ETR plan is submitted. EPA's suggested change would be redundant to the provisions of the rule.

EPA commented that the TACB needs to include a schedule in the SIP for implementing each major program element, e.g., plan review process, tracking and auditing procedure, quality assurance measures, training and certification, and public information program.

The staff will use the following ETR program implementation schedule: development of public information program: January 1993; development of training provider certification program: November 1993; development of plan review procedures: March 1994; development of quality assurance measures: May 1994; development of tracking and auditing procedures: November 1994.

The ETR program implementation is contingent upon adequate funding, which must be appropriated by the Texas Legislature in 1993. Before September 1993, the TACB can commit only current resources to submit work plans for major program elements and to work closely with the H-GAC to develop an employer survey, preliminary plan forms, and information/education programs and materials.

Commenters expressed concerns about the costs of the ETR program both for employer compliance and for program administration. Several commenters suggested that the TACB cost projections in the preamble to the proposed §114.21 were too low. GHP questioned the cost-effectiveness of the "seemingly high-dollar, federally-mandated program" and urged the TACB to gather and evaluate data on the actual program costs. GHP requested that the cost assessments to the program include both the cost to employers and the cost to the administrative agencies. The data should be provided to the public for evaluation of the ETR program as an ozone control strategy.

Coastal States expressed concern about the cost they would incur trying to encourage employees to change driving habits. They encouraged the TACB to minimize the costs and to implement a rule no more stringent than those mandated by the FCAA. S & B Engineers stated that the cost to the companies was grossly underestimated. Amoco commented that, while they recognized that the ETR program is federally mandated, one must consider the cost benefit ratio of the employer cost with the benefit received for each dollar spent on program implementation. For example, Amoco projected the cost to implement the ETR program to be several thousand dollars per ton more than the reasonably available control technology for nitrogen oxides and best available control technology for volatile organic compounds. Enjet stated that without any alternative or credit exemptions, employers' financial burdens will be doubled since they must: fund the ETR program; and fund the capital costs of alternative fuel vehicles and/or refueling equipment of the "Texas Plan." Enjet also strongly suggested that only one mandate or the other be implemented by employers. Continental commented that the $30 per employee estimate is misleading, false, and really not based on the California experience.

Continental claimed that a draft of a study of California's ETR regulations is estimating costs at $50 to $200 per employee per year. The Sierra Club commented that the costs of the ETR program appeared to be reasonable. Katy ISD expressed a need to avoid the experience of California as reported by Continental. Rice University voiced concern regarding the significant cost to implement the revisions as proposed, indicated confusion regarding implementation, and objected to the uncalculated bureaucratic cost to administer the program.

The staff recognizes the difficulty of properly accounting for employers' costs and agrees with the need to keep both TACB and employers' costs down to the minimum required to successfully meet the aims of this federally-mandated ETR program and to achieve efficient emission reductions. Information taken from "The Regulation XV Trip Reduction Program Summary of Research" by Genevieve Giuliano of the University of Southern California and Martin Wachs of the University of California, Los Angeles, (dated July 6, 1992), shows costs ranging from $12 to $263 per peak employee per year. The staff points out that with such a wide range in the costs, it is difficult to estimate the actual costs to employers. Some available information suggested that, in many cases, employers may even realize a net cost savings as a result of lower parking costs or other related benefits.

There were several comments regarding public outreach and education. H-GAC stressed that a program of outreach and information is critical to the success of ETR. One individual felt that there was not enough commitment to public information from the TACB, H-GAC, and EPA. Coastal States requested TACB's assistance in providing information and methods to employers to assist them in decision making as they develop an ETR program. Katy ISD said that notification to the school districts was lacking. As the largest employers, they wish to be singled out for notification through the Texas Education Agency. One individual felt that there was a need for more and better organized public participation in the ETR program, particularly with regard to the Regional Air Quality Planning Committee meetings held by H-GAC. The individual stated that greater efforts should be made to hold these meetings in the evenings.

The TACB staff concurs with the need for public education and public involvement. However, these suggestions may be addressed administratively and do not require a change in the rule or the SIP.

One individual requested that there be public access to employers ETR plans and that "continued compliance" be defined.

Reports and plans submitted to the agency are public record and, thus, are available to the public, unless they contain information which is clearly marked "confidential." The term "continued compliance" means that the employer is required to continue to meet the target APO every year after the deadline.

Amoco expressed concern that the employer may be subject to worker's compensation claims from employees injured while riding to work in a company sponsored carpool or from other parties injured in traffic accidents involving company-sponsored or encouraged transportation arrangements. The commenter requested that new language be added to read: "Nothing in this section shall be construed to assign liability for personal injury or property damage associated with vehicles operated to facilitate compliance with this section to any party other than the owner or operator of that vehicle."

The staff discussed Amoco's concerns with the Texas Workers Compensation Commission who said that such a section in the rule would be unnecessary. In the case of vanpools, the owner of the van carries the insurance. If the employer owned the van, then the employer would be responsible for the vehicle insurance. Whether the van is leased by the employees from an external organization or from the employer, in the event of an accident, a workers' compensation claim could not be made against the employer because the employee is riding in the van on a voluntary basis outside of work hours. A workers' compensation claim could only be made if the duties of the employee's job required that the employee ride in the van during work hours. If the employer owned the van and leased it to the employee vanpool, any claim arising from an accident would be against the employer's vehicle insurance.

The following error and corrections were noted by commenters.

EPA suggested that subsection (g) be switched with subsection (j) so that the initial plan submission schedule is presented before the reporting deadlines. EPA also noted that plan submission deadlines should be consistent throughout §114.21 and SIP.

Both HCPCD and Mitchell Energy recommended correction of subsection (j) paragraph (1) to show that employers in Harris County, instead of "Houston County," are subject to the program.

The clear intent of the proposed rule is to require ETR plans for employers in Harris County rather than in Houston County. Other suggested corrections and clarifications appear appropriate. Furthermore, the staff has identified other nonsubstantive editorial changes to clarify the requirements of the SIP revisions and rule language.

One individual stated that falsifying and failing to maintain records and failure to attain the appropriate target APO must be considered a violation of TACB Regulation IV, Control of Air Pollution From Motor Vehicles.

The staff believes that it is generally understood that falsifying and failing to maintain required records are considered to be violations of the regulation.

Camco stated that Houston needs a light-rail system, while Katy ISD suggested that mass transit be subsidized by high taxes on superclean diesel and gasoline. S & B Engineers said that the TACB should concentrate on putting additional regulations and tight schedules on the governments of cities and counties in Texas to provide the needs of an efficient public transportation system in such highly polluted areas. One individual commented that the additives to unleaded gasoline contribute to one of the most objectionable forms of smog and that large amounts of air pollutants usually associated with auto emissions come from natural sources. The commenter added that petrochemical and chemical industries along the Houston Ship Channel are routinely issued variances by the TACB and EPA, yet drivers who are within legal vehicle emission standards are now about to be punished by these regulatory agencies as if they have done something wrong.

Lubrizol argued that the chemical industry is already undertaking considerable expense to reduce the emissions within its direct control and that the chemical industry should not be responsible for its employees. McDonnell Douglas expressed concern that traffic control measures will be confused with air pollution control. In some cases, apparent solutions to traffic congestion (e.g., park and ride) do not contribute to reduced air emissions. The company urged the TACB to adopt only measures with significant measurable and enforceable emissions benefits. Coastal States suggested that the employer be granted incentives by the state and various metropolitan transit authorities.

While the staff recognizes the validity of many of these comments, they are beyond the scope of this rulemaking. Automobiles account for a considerable amount of the emissions attributable to ozone nonattainment in the Houston/Galveston area. The FCAA mandates this program to assist with the mandated emission reductions in the Houston/Galveston nonattainment area.

The TACB is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age or disability in employment or in the provision of services, programs, or activities.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting the Air Quality Planning Program staff at (512) 908-1457, (512) 9081500 FAX, or 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

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.

§114.21. Employer Trip Reduction Program.

(a) Unless specifically defined in the Texas Clean Air Act (TCAA) 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 section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Average passenger occupancy (APO)-Applies to the average number of employees per vehicle equivalent arriving at a specific employer's worksite during the morning peak travel period and equals the number of employees reporting to a worksite between 6 a.m and 10 a.m., Monday through Friday, divided by the number of vehicle equivalents in which employees report to work minus the APO credit. APO determinations may include:

(A) initial APO based on employee commuting information obtained from the initial employee survey conducted during the preparation of the employer trip reduction (ETR) plan submitted in accordance with subsection (j) of this section; and

(B) projected APO based on employee commuting information projected by the employer considering the effects of all anticipated ETR measures and incentives as of the target APO compliance deadlines established in subsection (j) of this section.

(2) APO credit-The number of vehicle equivalents less than that needed to achieve the target APO for an employer for the previous year. The APO credit equals the number of vehicle equivalents used in calculating the target APO minus the actual number of vehicle equivalents measured in the survey.

(3) Average vehicle occupancy (AVO)-The baseline number of employees per vehicle equivalents throughout the nonattainment area or a zone within the nonattainment area which has been measured for the year of the state implementation plan submission. The AVO applies to all commuting trips in the area between home and the worksite during the defined peak travel period of 6 a.m. to 10 a.m., Monday through Friday. Therefore, all commuters, including those who work for employers with less than 100 employees and who commute during the peak travel period, are included in this calculation.

(4) AVO zones-Delineations of portions of the nonattainment area that have similar modes of transportation and land use patterns.

(5) Employee-Any person, excluding volunteers, employed by a firm, person(s), business, educational institution, nonprofit agency or corporation, government department or agency, or other entity. Employee includes:

(A) any person, whether paid directly by the employer or through contract with the employer, who regularly reports to work or is assigned to a specific worksite;

(B) any temporary employee assigned to a worksite for more than one month; and

(C) any part-time employee assigned to a worksite for more than 88 hours per month, excluding Saturday and Sunday.

(6) Employer-Any person(s), firm, business, educational institution, government department or agency, nonprofit agency or corporation, or other entity which employs, by direct payroll or through contract, 100 or more persons at a single worksite. Entities under a common regulating body are considered a single employer and will require a single plan if they occupy a common worksite, unless each entity has 100 or more employees. Unassociated companies occupying a common worksite will require individual plans.

(7) Peak travel period-The time between 6 a.m. and 10 a.m., Monday through Friday.

(8) Target APO-The specified APO that each employer must achieve by the compliance deadlines, which are two years after the plan submission deadlines established in subsection (j) of this section. Target APOs have been designated in the state implementation plan for specified geographic subareas within the ozone nonattainment area, such that the weighted average of all target APOs will achieve an overall APO of at least 25% greater than the AVO for the entire ozone nonattainment area.

(9) Vehicle equivalent-The calculated fraction of a motor vehicle used by each employee for commuting during the peak travel period. For example: a single occupancy vehicle equals a 1.0 vehicle equivalent; a carpool with four employees equals a 0.25 vehicle equivalent; and an employee using transit service or a special vehicle for a disabled employee equals a zero vehicle equivalent. The vehicle equivalents for other trip reduction strategies, such as compressed workweeks, alternative fuel vehicles, telecommuting, or other measures will be calculated in accordance with procedures and formulas provided by the Texas Air Control Board (TACB).

(10) Work-related trips-Trips between home and the worksite, including any stops enroute to work during the peak travel period.

(11) Worksite-A building or a group of buildings which are in actual physical contact or separated only by a private or public roadway or other private or public right-of-way and which are owned or operated by the same employer or by employers under common control as described under the employer definition.

(b) All employers with 100 or more employees at a single worksite located in any county referenced in subsection (j) of this section shall implement programs, incentives, or other measures as necessary to achieve the applicable target APO for the geographic AVO zone or subarea where the employer is located. APO credits may be banked and used by the employer to offset a shortfall during the following year if:

(1) the APO that is measured in the survey is greater than the target APO; and

(2) the employer establishes a verifiable recordkeeping methodology to track APO credits, which has been submitted with the ETR plan referenced in subsection (d) of this section and approved by the TACB.

(c) All employers affected by this section shall register with the TACB and shall provide and update the following information by September 1 of each year beginning in 1993:

(1) the employer's name, mailing address, local street address, and telephone number;

(2) the name and title of the highest ranking official with direct responsibility for the local management of the worksite and the designated employee transportation coordinator (ETC);

(3) the type of business or industry and the associated Standard Industrial Classification code, if applicable;

(4) the number of employees located at the worksite, the work shift schedules, and the number of employees reporting to work between 6 a.m. and 10 a.m., Monday through Friday;

(5) the TACB account number(s), if applicable; and

(6) other information as requested by the TACB staff.

(d) All employers affected by this section shall submit an approvable ETR plan and related information to the TACB on forms provided by the TACB or in a format approved by the TACB in accordance with the schedules referenced in subsection (j) of this section. This plan shall convincingly demonstrate the employer's commitment and strategies for achieving the required target APO at each affected worksite by the established compliance date. The plan shall include, but shall not be limited to, the following information:

(1) the name of the designated, trained ETC, as required by subsection (e) of this section, who is responsible for the preparation of the plan and the implementation, operation, and monitoring of the applicable ETR measures and incentives at each

worksite. Verification of initial training, as required by subsection (e) of this section, must also be documented;

(2) the location and the type of business being conducted at each affected worksite;

(3) the associated initial APO for each worksite;

(4) the associated target APO for each worksite; and

(5) the results of the initial employee survey on forms provided by the TACB or in a format approved by the TACB.

(A) The survey shall be conducted in accordance with the following criteria:

(i) all employees arriving at the worksite during the peak travel period must be included in the survey;

(ii) the survey must cover five consecutive days, Monday through Friday inclusive, representing a typical week for the employer's business. The survey week should not include public holidays during or bordering the weekend on either side of the selected week nor include special rideshare promotions; and

(iii) a response rate of 75% or higher of all employees arriving during the peak travel period must be achieved for each worksite. All nonrespondents shall be considered arriving in a single occupancy vehicle, unless the response rate is 90% or greater for which the surveyed ratio will be considered for all employees.

(B) The survey results must include, but shall not be limited to, the following:

(i) the initial APO;

(ii) current commuter behavior, including data such as vehicle miles traveled, number of coldstarts, portions of commuter trips traveled in single occupancy vehicles, and other information necessary to estimate vehicle emissions; and

(iii) alternative transportation mode preferences;

(6) a description of the trip reduction measures and incentives scheduled to be implemented at each worksite. While implementation of these specific measures and incentives is not required, the employer must implement, monitor, and periodically modify, if necessary, adequate measures and incentives to ensure that the applicable target APO is achieved by the compliance date specified in subsection (j) of this section;

(7) a mechanism to ensure the proper tracking and evaluation of the effectiveness of selected trip reduction measures and incentives;

(8) an enforceable certification signed by the highest ranking official with direct management responsibility for the worksite which will:

(A) attest to the completeness, accuracy, and reliability of the plan contents;

(B) verify that the measures and incentives to be implemented have been evaluated and are designed to ensure compliance with the appropriate target APO and schedules; and

(C) commit to the full and timely implementation of all provisions of the plan, including the on-going evaluation and adjustment of ETR measures and incentives as necessary to achieve the applicable target APO by the compliance deadlines established in subsection (j) of this section;

(9) combined ETR plans may be submitted by employers which have a single official with management responsibility for multiple worksites with more than 100 employees each. Combined plans must comply with the following conditions.

(A) Compliance may be demonstrated either:

(i) for the specific target APO for each individual worksite; or

(ii) for the combined worksites by dividing the total number of employees arriving at all worksites during the peak travel period by the total number of associated vehicle equivalents for all worksites. The target APO for the combined plan shall be determined as the highest target APO at any single worksite included in the plan.

(B) Information specified in paragraphs (2), (3), (4), (5), and (6) of this subsection must be submitted separately for each worksite.

(C) Information specified in paragraphs (1) and (7) of this subsection may be aggregated and submitted for all worksites.

(D) The certification specified in paragraph (8) of this subsection must be applicable for all worksites included in the combined plan; and

(10) employers who can demonstrate compliance with the target APO by the ETR plan submission deadlines established in subsection (j) of this section must submit a complete ETR plan, with the exception of information specified in paragraphs (6) and (7) of this subsection and need not commit to any additional measures or incentives.

(e) All employers affected by this section shall designate an ETC responsible for the proper development and implementation of the ETR programs. The employer must provide adequate training, resources, and other support to this designated ETC, as necessary, to ensure the proper administration, monitoring, technical review, reporting, and promotion of selected trip reduction measures and incentives. Adequate training of the designated ETC shall be documented in the ETR plan and in subsequent annual or biennial reports, as specified in subsection (h)(2) of this section, and shall include, but shall not be limited to, the following:

(1) an initial comprehensive training course approved by the TACB and administered by a TACB certified training provider; and

(2) on-going training activities, such as relevant workshops, conferences, symposia, or other events recognized by the TACB, as necessary to maintain expertise in ETR plan administration and trip reduction measures.

(f) All employers affected by this section shall provide information, including written material, to all employees regarding the requirements of the ETR program, the measures and incentives being offered by the employer, and the air quality and financial benefits of individual participation.

(g) All employers affected by this section shall maintain complete and accurate records at the worksite or other central location within the nonattainment area for at least two years and shall make such records available to representatives of the TACB, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction in the area, upon request. These records shall include, but are not limited to, the following:

(1) the contents and results of employee surveys, market analyses, transportation studies, or other information gathering efforts;

(2) a full description of all measures and incentives offered to employees and the associated employee response;

(3) an accounting of the budget allocations and expenditures for each measure and incentive offered to employees;

(4) the statistics on the operation or coordination of employer-owned or contracted transportation services, such as vanpools or subscription buses;

(5) a copy of all publications, newsletters, brochures, or other examples of marketing, promotional, or educational activities conducted to encourage employee participation;

(6) documentation of on-going ETC training activities, as required by subsection (e) of this section; and

(7) other information associated with the development, implementation, evaluation, or modification of the ETR program.

(h) Each employer affected by this section shall evaluate the implementation of the ETR program and submit the following reports to the TACB:

(1) no later than one year following the initial submission deadline, review each of the measures and incentives implemented and submit a report reflecting the status of each measure and an estimate of the progress toward achieving the applicable target APO; and

(2) no later than two years following the initial submission deadline, provide a demonstration of compliance with the target APO.

(A) Employers who successfully demonstrate compliance with the target APO must review; update, if necessary; and resubmit to the TACB a plan to achieve continued compliance every two years. Employee surveys must be performed annually, and the results must be submitted to the TACB on forms provided by the TACB or in a format approved by the TACB.

(B) Employers who cannot demonstrate compliance with the target APO must revise and resubmit to the TACB within 60 days of the applicable compliance deadline established in subsection (j) of this section a plan to achieve compliance. The employer must continue to submit a revised plan every year until compliance with the target APO is achieved.

(i) Employers affected by this section may qualify for a de minimis exemption from the requirements of this section by applying to the executive director of the TACB and documenting in writing that fewer than 33 employees report to work between 6 a.m. and 10 a.m., Monday through Friday.

(j) All affected employers within counties specified in this subsection shall be required to submit approvable ETR plans and to demonstrate compliance with the target APO for each worksite.

(1) Employers in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be required to comply with these requirements.

(2) Employers whose employment increases to 100 or more employees or which move into the nonattainment area, an AVO zone, or a geographic subarea with a higher target APO after the scheduled deadlines, must comply with the following schedule:

(A) register as specified by subsection (c) of this section;

(B) submit an ETR plan within one year; and

(C) demonstrate compliance with the applicable target APO within two years after the deadline for plan submission established by subparagraph (B) of this paragraph.

(3) ETR plans must be submitted to the TACB in accordance with the following schedule:

(A) for employers with 400 and greater employees, no later than May 15, 1994;

(B) for employers with 200 to 399 employees, no later than July 15, 1994;

(C) for employers with 150 to 199 employees, no later than September 15, 1994; and

(D) for employers with 100 to 149 employees, no later than November 15, 1994.

(4) All employers must achieve final compliance with the target APO as soon as practicable, but no later than two years after the applicable ETR plan submission deadlines in paragraph (3) of this subsection. In formulating an enforcement policy, the board may consider any good faith effort made by the employer to achieve compliance.

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 November 18, 1992.

TRD-9215608 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

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Proposal publication date: June 5, 1992

For further information, please call: (512) 908-1457

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Chapter 116. Control of Air Pollution By Permits For New Construction or Modification

• 31 TAC §§116.3, 116.12, 116.14

The Texas Air Control Board (TACB) adopts amendments to §116.3, and §116.12, and new §116.14, with changes to the proposed text as published in the July 3, 1992, issue of the *Texas Register* (17 TexReg 4729). Amendments to §116.1, concerning Permit Requirements, have been withdrawn. Amendments to §116.3, concerning Consideration for Granting Permits to Construct and Operate, will require an alternative site analysis. A new paragraph has been added to §116.3 to allow a rocket motor or engine test facility to offset emission increases by alternative or innovative means.

Amendments to §116.12, concerning Review and Continuance of Operating Permits, remove references to operating permits, replace references to "continuance" with "renewal," establish a five-year renewal period as of December 1, 1991, and change the fee schedule to eliminate alternative methods of fees determination. A sentence has been added to §116.12(a) which exempts a permit holder from increased fees or other penalties resulting from failure to submit a renewal application by the due date when the tardiness can be attributed to military service outside the State of Texas. The new §116.14, concerning Compliance History Requirements, specifies the components of the compliance history and responsibilities of the applicant and the TACB staff in compiling the compliance history.

A public hearing was held in Austin on July 28, 1992, to consider the proposal. Written testimony was received from 19 commenters during the comment period which ended July 30, 1992. Oral testimony was presented by two commenters. Most of the comments addressed the specific changes proposed and covered a variety of issues. Dow Chemical Company (Dow), Texas Chemical Council; and DuPont, Gulf Coast Regional Manufacturing Services (DuPont) supported the revisions. The City of Dallas Department of Health and Human Services (Dallas); Enserch Processing, Incorporated (Enserch); Eastman Chemical Company, Texas Eastman Division; U.S. Environmental Protection Agency (EPA), Region 6; Gas Processors Association (GPA); Lone Star Gas Company (Lone Star); Marathon Oil Company, Texas Refining Division; Mitchell Energy Corporation; Rhone-Poulenc Basic Chemicals Company (Rhone-Poulenc); Sierra Club, Lone Star Chapter (Sierra Club); Compliance History Task Force (Task Force); Texas General Land Office; Texas MidContinent Oil and Gas Association (TMOGA); and Valero Natural Gas Partners, L.P. (Valero) generally supported the revisions with minor changes. Comments by the Task Force were supported by Dow and DuPont. The following discussion initially addresses the more general comments and then addresses the comments which apply to specific parts of the regulation.

The TACB has withdrawn the proposed revisions to §116.1 and §116.3(b), regarding operations certification, to allow for further development of the changes and consideration in future rulemaking.

Suggestions were made by the regulated community for workshops that will clarify the purpose and use of Alternative Site Analysis. The Sierra Club agreed and requested to be invited to any workshop that the TACB sponsors regarding Alternative Site Analysis. The staff will plan to conduct workshops on Alternative Site Analysis and announce these meetings to the public and the regulated community.

Regarding the proposed revisions to §116.3, Dallas, TMOGA, GPA, and an individual commented that §116.3(a)(7)(D) and §116.3(a)(10)(E), regarding the Federal Clean Air Act (FCAA) Amendments for an alternative site analysis in nonattainment areas, are vague and undefined. The staff developed this language in response to the FCAA, §173 which requires businesses to submit the analysis of alternative sites as part of the permitting process. Future permit workshops will include information for the regulated community which will describe, in detail, the proper method to comply with this requirement. Section 116.3(a)(7)(D) and §116.3(a)(10)(E) has been revised to expand and clarify the language for site analysis.

EPA commented that §116.3(a)(10)(E) requires that the alternative site be a part of the public record, but not part of the permit application. EPA suggested that the wording clearly state that alternative site analysis is to be reviewed by the TACB as part of the permit application. Section 116.3(a)(10) (E) has been revised to reflect that the alternative site analysis shall be submitted to the TACB for review as part of the permit application.

Two individuals commented on §116.3(c)(3), regarding the offsetting of emissions from rocket motors or engine test facilities, and expressed concern that the TACB would allow avoidance of offsets in a nonattainment area for ozone regardless of the type of facility.

The proposed language responds to the FCAA, §173(e)(1)-(4) in which the permitting authority of a state is required to allow a source to offset emission increases from rocket engine and motor firing and cleaning related to such firing, by alternative or innovative means. This exception to the offset requirement is limited to a narrowly defined category and cannot be extended to other facilities.

Dallas and an individual commented on §116.12(b)(2), recommending that applicable notices of violation (NOVs) include those issued by the TACB or a local air pollution control agency if the NOV resulted from a TACB regulation or permit violation.

The staff agrees with this recommendation. The new §116.14, concerning Compliance History Requirements, will require the review of any NOVs and administrative and/or criminal violations as they pertain to the permitting process. The definition of "compliance proceeding," included in §116.14(a), specifies that NOVs include those issued by the TACB as well as other agencies.

An individual objected to the use of the word "substantial" in §116.12(b) (2) as it applies to the compliance review of permit renewal applications because it is vague and undefined. The staff agrees that the word "substantial" is not specific enough to fully describe the meaning of the paragraph. Section 116.14, concerning Compliance History Requirements, provides additional terms to further describe "substantial compliance" as used in §116.12(b)(2).

Valero, Lone Star, and Enserch opposed §116.12(b)(2) which allows the consideration of NOVs in the review of compliance histories, because they may be issued by less experienced inspectors who may not fully understand the regulations and may issue NOVs when no violations exist. They contended that no permit holder should be denied a permit under such conditions or be denied due process of law. In addition, Lone Star and Enserch expressed concern with the use of the term "substantial compliance with the provisions of the Texas Clean Air Act (TCAA)" and the fact that the regulated community has not had a chance to comment on this matter. However, Lone Star and Enserch agreed with the requirements set forth in the compliance history requirements in §116.14.

The staff agrees with the commenters that a permit holder should not be denied a permit under such circumstances nor denied due process of law. The compliance history review identified in §116.12(b)(2) has been part of the renewal process since the initiation of renewals in 1986. The original §116. 12(b)(2) was reviewed by the TACB Legal Staff, was presented at public hearings for comment, and was adopted by the TACB. The proposed modifications to §116.12(b)(2) change only the term "continuance" to "renewal" to comply with the new requirements of the FCAA, Title V for renewals.

An individual objected to having permits extend beyond the expiration dates specified in the permit, as described in §116.12(f), and to the perceived failure of the TACB to use this condition as an enforcement tool. The staff disagrees with the comment regarding the expiration of permits. There are circumstances, such as contested hearings, or the lack of required data, that are beyond the control of the permit holder or the agency. Such cases would warrant a limited extension. The TACB does not use the expiration of permits as an enforcement tool. In situations resulting in delays, the TACB has provisions in §116.3(f) and §116.14(h) to void permits.

Dallas commented on §116.12(h)(2) and suggested that "Any permit scheduled for renewal before December 1, 1991, shall be renewed for a period of 15 years" be changed to "Any permit scheduled for renewal and continuance before December 1, 1991, shall be renewed for a period of 15 years" since there are no renewals before December 1, 1991.

The staff included language concerning renewals before December 1, 1991, to advise permit holders that are still on a 15-year permit cycle of the new five-year renewals and how they will be affected. Also, the staff has removed all references to the word "continuance" to comply with the Title V requirements of renewing permits instead of continuing the terms of the expired permit.

GPA and TMOGA expressed concern regarding the possibility of a permit expiring due to the applicant not being able to submit a "completed" application within 90 days after receiving notification.

The TACB concurs and has changed "completed application" to "application" in the first sentence of §116.12(h). Additional submittals needed to complete the application can be made during the review process.

GPA and TMOGA recommended adding the words "and not previously renewed" to §116.12(h)(1) and "Except as provided in paragraph (1) of this subsection" to §116.12(h)(4) to clarify the schedule for permit expiration. The staff agrees with the commenters. The rule has been rewritten to clarify expiration of permits and renewal schedules.

TMOGA suggested that operations with numerous locations and the same functional supervision be considered as a unit without referencing other parts of the whole operation; i.e., pipeline operations should be considered as a unit, while refinery operations should be considered separately for permitting purposes.

The staff recognizes the complexity of operations which have several levels of processes and functional supervision. Therefore, the agency will consider the permits of an operation on a case-by-case basis.

Sierra Club and an individual commented on §116.14(a) and stated that adjudicated decisions and compliance proceedings, as defined in the proposed rules, do not necessarily cover all instances of compliance problems.

The staff agrees that the definitions of adjudicated decisions and compliance proceedings are restrictive to a certain extent. It should be noted that those records constitute the foundation for the data in the compliance histories and applicants should be held accountable for violations for which they have been found guilty by a court or an administrative agency. Although adjudicated decisions and court proceedings do not cover all circumstances and conditions, they provide a significant amount of information relevant to the permit review process. Potential situations that could occur are considered in the investigation phase by a permit engineer before a permit is issued. Additional information regarding compliance history, while potentially relevant, generally is not warranted in view of the significantly increased resources that would be needed to develop that information. The proposed rule is consistent with the recommendation of the task force and the proposed language will be retained.

Rhone-Poulenc commented on §116.14(a)(1)(C) and expressed concern about inclusion of a pending order of any court or administrative agency in the permit review process.

The staff supports inclusion of pending judicial orders in the permitting process. Pending orders address compliance issues and can affect the permit review. The applicant will have full opportunity to address the impact of the pending order on the review of the permit and can comment regarding the lack of finality or any other associated issue.

Sierra Club commented on §116.14(c) and recommended that the amount of emission reductions required for exemption from compliance history requirements should be increased from 10% to 50%.

The intent of the 10% rule is to exempt those projects which demonstrate a net reduction. A requirement for a reduction of 50% would extensively exceed the TCAA intent of demonstrating a net reduction. The language has been retained as proposed.

Sierra Club commented further on §116.14(c) and suggested that a potential administrative problem for the TACB would be the determination of a true emissions reduction versus a paper reduction.

The word "actual" before "emissions" has been added in §116.14(c) to clarify the intent.

An individual commented on §116.14(c) and suggested that exemptions from compliance history are detrimental to the intent of the rule.

The exemption from compliance history review in §116.14(c) provides an incentive for reduced emissions. This exemption does not relieve the permit applicant from any responsibilities or requirements of the permit. The exemption segment has been retained to give additional incentives for net reductions in air pollution.

Sierra Club commented that because the TACB permits, until recently, have been on a 15-year continuance schedule, the rules should require compilation of a compliance history greater than five years (preferably 10 years) for facilities which have not undergone permit renewal for five years previous to the new renewal application.

The staff disagrees that a change to a longer review period is necessary. The TCAA, §382.0518, specifies a review of five years of compliance data. Additionally, the five-year compliance history review is consistent with the transition to a five-year renewal period as set forth by the FCAA.

GPA commented on §116.14(f). GPA agreed with the public notice provision of compliance histories, but recommended an amendment to §116.10(a), concerning Public Notice, to inform the permit applicant of the requirement. The staff agrees with the recommendation. However, the recommended change is beyond the scope of this rulemaking.

Three commenters, GPA, Lone Star, and Enserch, commented that the use of the word "may" in the statute clearly reflects that the Legislature intended to allow the TACB to review compliance history not to mandate that a compliance history, be compiled and reviewed in connection with every permit renewal. In addition, the commenters stated that §116.14 is undefined and will cause an unnecessary burden on the regulated community.

The TCAA specifically authorizes the TACB to "consider any adjudicated decision on compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this State, another State, the United States governing air contaminants, or with the terms of any permit or order issued by the Board." The staff maintains that its interpretation to consider compliance histories is consistent with TCAA language and is aligned with the recommendations submitted by the Compliance History Task Force. The staff has carefully reviewed each section of the TCAA to ensure that all compliance information obtained is pertinent and directed toward those issues which pertain to governing air contaminants and to making informed decisions regarding new permits, permit modifications, or renewals. The staff agrees that not all permit applications should have a compliance review and provisions for exemptions in §116.14(c) have been adopted as proposed.

TMOGA commented on §116.14(b) and expressed concern that the TACB would be required to investigate a large portion of "similar facilities" to comply with the regulation.

The staff agrees that §116.14(b) implies that there is an indefinite number of "similar facilities" to investigate in multilocation facilities; however, all permits are processed on a case-by-case basis. The TACB would investigate only the number of facilities required to comply with the regulation.

Valero and GPA expressed concern regarding the manner in which the compliance history will be used. The commenters stated that compliance history should only be used by the TACB to deny the granting of a permit, amendment, or renewal if an applicant's compliance history shows a recurring pattern of conduct which demonstrates a consistent disregard for compliance with permit requirements and a consistent failure to correct violations. GPA also stated that the TACB should advise an applicant that it intends to deny a permit, amendment, or renewal on that basis and that the applicant should be given an opportunity to respond to the TACB.

The staff agrees that permit applicants should not be denied due process of law. The Compliance History Task Force has recommended a manner in which the compliance history should be used by the permit staff in reaching decisions to grant or deny a permit. Staff action and responsibilities were not part of the current proposal, but have been considered as a separate issue by the TACB. The Compliance History Task Force recommendation will be used as guidance for the permitting process instead of being included in the rule.

The Compliance History Task Force recommended that language in §116.14(d) contain rules which address the information the TACB should not include in the compliance history review. The Compliance History Task Force also recommended that some restrictions include a limit as to the period under consideration, the severity of the violations, and the economic impact of such violations.

The staff agrees that there are instances in which pursuing and considering unrestricted procedures can be counterproductive to improvement of air quality or use of limited resources. A new paragraph (4) has been added to §116.14(d) , concerning the contents of the compliance history, to address the information which shall not be included in the compilation of the compliance history for applicants applying for a new permit, a renewal, or a modification of an existing permit.

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 amendments and new section are adopted under the 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.

§116.3. Consideration for Granting Permits.

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board (TACB) which will demonstrate that all of the following are met:

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

(7) The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or emissions of oxides of nitrogen (NO_x), or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (FCAA), §107, shall meet the additional requirements of subparagraphs (A)-(D) of this paragraph. Table I of §101.1 of this title (relating to Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test must be applied to any proposed VOC or NO_x emissions increase in moderate, serious, and severe ozone nonattainment areas. The de minimis thresholds are the same as the major modification levels stated in Table I, but aggregated over the previous five-year period, including the calendar year of the proposed change. The past net increase must be evaluated even when the proposed increase alone is below the major modification level. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

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

(D) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source and that benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(8)-(9) (No change.)

(10) The owner or operator of a proposed new facility in a designated nonattainment area for an air contaminant other than ozone, which will be a major stationary source or a major modification of an existing facility for that nonattainment air contaminant, must meet the additional requirements of subparagraphs (A)-(E) of this paragraph regardless of the degree of impact of its emissions on ambient air quality. Table I of §101.1 specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

(A)-(D) (No change.)

(E) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source and that benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(11)-(13) (No change.)

(b) Permit to operate. In order to be granted a permit to operate, the owner of the facility shall demonstrate that:

(1) the facility is complying with the rules and regulations of TACB and the intent of the TCAA;

(2) the facility has been constructed and is being operated in accordance with the requirements for and conditions contained in the permit to construct;

(3) the facility is being operated in accordance with any applicable new source performance standards promulgated by the Environmental Protection Agency (EPA) pursuant to authority granted under the FCAA, §111 as amended;

(4) the facility is being operated in accordance with any applicable National Emission Standard for Hazardous Air Pollutants promulgated by EPA pursuant to authority granted under the FCAA, §112 as amended.

(c) Emission reductions: offset. At the time of application for a construction permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met:

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

(3) emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source shall be allowed to be offset by alterniative or innovative means provided the following conditions are met.

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990.

(B) The source demonstrates to the satisfaction of TACB that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(C) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by TACB, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, TACB may impose an emissions fee to be paid which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

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

§116.12. Review and Renewal of Permits.

(a) Application for review and renewal of permit. The Texas Air Control Board (TACB) shall provide written notice to the holder of a permit that the permit is scheduled for review. Such notice will be provided by certified or registered United States Mail no less than 180 days prior to the expiration of the permit. The notice shall specify the procedure for filing an application for review and the information to be included in the application. The application shall be completed by the holder of the permit and returned to TACB within 90 days of receipt of the notice. Pursuant to Chapter 691, House Bill 1393 (72nd Legislature), TACB shall exempt a holder of a permit from any increased fee or other penalty for failure to renew the permit if the individual establishes, to the satisfaction of TACB, that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

(b) Permit renewal requirements.

(1) In order to be granted a permit renewal, the owner or operator of the facility shall submit information in support of the application which demonstrates that:

(A) (No change.)

(B) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for the permit and subsequent amendments, and any previously granted renewal;

(C)-(F) (No change.)

(2) TACB shall review the compliance history of the facility in consideration of granting a permit renewal. Upon request of the executive director, the application shall include additional information which demonstrates the extent to which specified notices of violation (NOVs) relate to the facility. In order for the permit to be renewed, the application shall include information demonstrating that, notwithstanding such NOVs, the facility is or has been in substantial compliance with the provisions of the Texas Clean Air Act (TCAA) and the terms of the existing permit. If the facility has a history which demonstrates failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit, the renewal shall not be granted. If the facility has any unresolved nonclerical violations of TACB rules, the renewal shall not be granted, unless the facility is brought into compliance or is complying with the terms of an applicable board order or court order prior to the expiration of the permit as identified in subsection (h) of this section.

(c) Public notification and comment procedures. The executive director shall mail a written notification to the permit holder within 30 days of receipt of a completed application for permit review and renewal as determined by the executive director of TACB. The notification will acknowledge receipt of the application and require the applicant to provide public notice of the application for permit renewal

according to §116.10(a)(3)-(5) of this title (relating to Public Notification and Comment Procedure). All requirements pertaining to signs and public notification in §116.10(a)(3)-(5) of this title and to public comments in §116.10(b) of this title which apply to proposed construction, proposed facilities, and permit applications shall apply likewise to proposed renewals, existing facilities, and renewal applications. The sign heading required under §116.10(a)(5)(A)(ii) of this title shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT." When newspaper notices are published in accordance with §116.10(a)(3) and (4) of this title, the applicant for permit renewal shall furnish a copy of such notices and dates of publication to TACB in Austin and all local air pollution control agencies with jurisdiction in the county in which the facility is located. Along with such notices furnished to TACB, the applicant shall certify that the signs required by §116.10(a)(5) of this title have been posted in accordance with the provisions of that paragraph.

(d) Renewal of permit. Subsequent to review, the executive director shall renew a permit if it is determined the facility meets the requirements of subsections (b) and (c) of this section. The executive director shall notify the permit holder in writing of the decision regarding renewal. If the permit cannot be renewed, the executive director shall forward, with the notice, a report which describes the basis for the determination. If denial is based on failure to meet the requirements of subsection (b)(1) of this section, the executive director's report shall establish a schedule for compliance with the renewal requirements. The report shall be forwarded to the permit holder no later than 180 days after TACB receives a completed application. The permit shall be renewed if the requirements are met according to the schedule specified in the report and the executive director shall notify the permit holder in writing of the permit renewal. However, if denial is based on failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit pursuant to subsection (b)(2) of this section, the renewal denial shall be final, and the Executive Director shall notify the permit holder in writing of the denial.

(e) (No change.)

(f) Effective date of existing permit. An existing permit shall remain effective until it is renewed, or until the deadline specified in the executive director's report to the permit holder, or until a date specified in any Board order entered following a contested case hearing held pursuant to subsection (e) of this section. An existing permit shall remain in effect during the course of a contested case hearing if the hearing proceeds beyond the permit expiration as identified in subsection (h) of this section.

(g) Fee for review of permit. The holder of a permit to be reviewed for renewal by TACB shall remit a fee with each renewal application, pursuant to the TCAA, §3.29(a), based on the total annual allowable emissions from the permitted facility for which the renewal is being sought, as applied to the following table:

RENEWAL FEE TABLE*

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
X ≤ 5	$ 300	-
5 < X ≤ 24	$ 300	$35/ton
24< X ≤ 99	$ 965	$25/ton
99< X ≤ 994	$ 2,840	$ 8/ton
X > 994	$10,000	-

Minimum fee: $300

Maximum fee: $10,000

*To calculate the fee, multiply the number of tons in excess of the lower limit of the appropriate category by the incremental fee, then add this amount to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be $1,615 (base fee of $965, plus incremental fee of $25 x 26 tons or $650).

This fee shall be due and payable at the time application for review and renewal is filed with TACB in response to written notice from TACB consistent with subsection (a) of this section. No fee will be accepted before the permit holder has been

notified by TACB that the permit is scheduled for review. The basis for fees is the schedule in effect at the time the application is filed. All permit review fees shall be remitted by check or money order payable to the Texas Air Control Board, located at 12124 Park 35 Circle, Austin, Texas 78753. Required fees must be received before the agency will consider an application to be complete.

(h) Failure to apply for review and renewal. A permit holder that fails to submit an application for review and renewal within 90 days after receiving notification from TACB pursuant to subsection (a) of this section, will cause the subject permit to expire, unless the time period for the submission of the application is extended by the Executive Director of TACB. Permits are subject to the following renewal schedule:

(1) Any permit issued before December 1, 1991, is subject for review 15 years after the date of issuance.

(2) Any permit issued on or after December 1, 1991, is subject for review every five years after the date of issuance.

§116.14. Compliance History Requirements.

(a) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) 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 section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjudicated decision–Any conviction, final order, judgment, or decree as follows:

(A) a criminal conviction of the applicant in any court for violation of any law of this state, another state, or of the United States governing air contaminants;

(B) a final order, judgment, or decree of any court or administrative agency, or agreement entered into settlement of any legal or administrative action brought in a court or administrative agency, addressing:

(i) the applicant's past performance or compliance with the laws and rules of this state, another state, or of the United States governing air contaminants; or

(ii) the terms of any permit or order issued by the board; or

(C) an order of any court or administrative agency, whether final or not, respecting air contaminants for the facility that is the subject of the permit application.

(2) Compliance event–An adjudicated decision or compliance proceeding as defined in this subsection.

(3) Compliance history–The record of an applicant's observance of air pollution control laws and rules of the State of Texas, other states, and of the United States. Except as provided in subsection (e) of this section, the history shall be for the five-year period prior to the date on which the application for issuance, amendment, or renewal is filed. The compliance history shall include all compliance events, as defined in this subsection.

(4) Compliance proceeding–A notice of violation issued by TACB or other agency for which TACB has recommended formal enforcement action and has notified the applicant of such recommendation.

(5) Existing site–A plant property that is not a new site.

(6) New site–A plant property having an operating history less than five years in length as of the date of application.

(7) Public notice–The public notice of application for a permit as required by §116.10(a) of this title (relating to Public Notification and Comment Procedure).

(b) Applicability of compliance history requirements.

(1) Except as provided in subsection (c) of this section, as part of its construction permit review, or the review of an amendment, or renewal of an existing permit, TACB shall compile the following information:

(A) for a new facility at an existing site or for an amendment or renewal of an existing permit, the compliance history for the existing site;

(B) for a new facility at a new site, compliance history on similar facilities, if any, owned or operated by the applicant in Texas. TACB may require the applicant to indicate which facilities the applicant considers to be similar.

(2) For a facility at a new site, if the applicant does not own or operate a similar facility in Texas, the applicant shall provide TACB with a compliance history for similar facilities owned or operated by the applicant in other states.

(c) Compliance history exemptions. TACB shall not be required to compile a compliance history where the total increased actual emissions of any specific contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site will be accompanied by greater than a 1.1 to 1 reduction of the same specific air contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site.

(d) Contents of compliance history.

(1) The compliance history shall include a listing of all adjudicated decisions and compliance proceedings, as defined in this section, involving the facility that is the subject of the permit application.

(2) If the applicant has no compliance history in the United States, then the applicant shall provide TACB with a compliance history for any similar facilities owned or operated by:

(A) a person who is presently an officer, director, or agent of the applicant;

(B) a parent corporation, subsidiary, or predecessor in interest of the applicant;

(C) one who owns 20% or more of the applicant, whether directly, as a shareholder, partner, beneficiary, or otherwise; or

(D) one who controls the applicant or has the ability to direct the conduct of the applicant.

(3) The compliance history shall include the following compliance events and associated information:

(A) for Texas facilities:

(i) criminal convictions known to TACB and civil orders, judgments, and decrees identified by stating:

(I) the style of the case;

(II) the tribunal issuing the conviction or judgment;

(III) the docket number and the date of action; and

(IV) the general nature of the alleged violation;

(ii) administrative enforcement orders identified by stating:

(I) the name or style of action;

(II) the agency issuing the order;

(III) the docket number and the date of the order; and

(IV) the general nature of the alleged violation;

(iii) compliance proceedings identified by stating:

(I) the name or style of action; and

(II) the general nature of the alleged violation;

(B) for United States facilities outside Texas:

(i) criminal convictions and civil judgments identified by stating:

(I) the style of the case;

(II) the tribunal issuing the conviction or judgment;

(III) the docket number and date of action; and

(IV) the general nature of the alleged violation;

(ii) administrative enforcement orders identified by stating:

(I) the name or style of action;

(II) the agency issuing the order;

(III) the docket number and the date of the order; and

(IV) the general nature of the alleged violation;

(iii) for notices of violation issued by the United States Environmental Protection Agency (EPA):

(I) the name of the action;

(II) the EPA identification number and date of notice; and

(III) the general nature of the alleged violation.

(4) In compiling the applicant's compliance history pursuant to subsection (b) of this section TACB shall not include the following:

(A) violations of fugitive emission monitoring and recordkeeping requirements imposed either by §101.20(1) and (2) of this title (relating to Compliance with Environmental Protection Agency Standards);

(B) state implementation plan requirements applicable to major sources in nonattainment areas where:

(i) violations occurring after the effective date of this rule have been the subject of a TACB administrative enforcement action and the board classified those violations as not being subject to compliance history review; or

(ii) violations occurring during five years preceding the effective date of this rule that have been the subject of TACB administrative enforcement action in which:

(I) TACB did not classify those violations as either major seriousness or major impact for the purpose of administrative review; and

(II) the board assessed a total administrative penalty of less than $20,000 for any of those violations.

(5) TACB may request an analysis of the significance of any of the compliance events identified in the compliance history and their relevance to the facility that is the subject of the application. TACB request shall list specific compliance events requiring such an analysis.

(e) Effective dates. The requirements of this section apply only to applications filed on or after the effective date of this section. For applications filed before June 1, 1993, neither TACB nor the applicant is required to include compliance events occurring before June 1, 1988. For applications filed on or after June 1, 1993, neither TACB nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

(f) Public notice of existence of compliance history. When public notice is required pursuant to §116.10(a) of this title, the applicant shall include the following statement in the notice: "The facility's compliance file, if any exists, is available for public review in the regional office of TACB."

(g) No derogation of existing rights and procedures. Nothing in this subsection shall diminish the rights of any party in a contested case hearing to raise any issue authorized by the Texas Health and Safety Code, §382. 0518(c), nor diminish the rights of any person to request and obtain compliance history information from TACB. Nothing in this subsection shall limit the authority of the board to request and consider any other information that is relevant to the application under the law. Nothing in this subsection shall create any right in third parties which did not exist before the effective date of this subsection.

(h) Voidance of permit applications. If an applicant does not submit data within 180 days, as requested, TACB will void the permit application. The applicant will also forfeit the fees associated with the permit application. A new permit application shall be required for further consideration by TACB.

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 November 16, 1992.

TRD-9215526 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: December 9, 1992

Proposal publication date: July 3, 1992

For further information, please call: (512) 908-1451

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Part IX. Texas Water Commission

Chapter 330. Municipal Solid Waste

Subchapter A. General Information

• 31 TAC §330.5

The Texas Water Commission (TWC) adopts §330.5, concerning general information, with changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7154). The definition of "fleet operator" has been changed in the adopted section. The adopted section implements the provisions of Senate Bill 1340, 72nd Legislature 1991, which created the WTRF program. WTRF rules were adopted by the Texas Department of Health (TDH) on December 7, 1991 (16 TexReg 7503). On March 1, 1992, TWC assumed jurisdiction over the WTRF program from TDH pursuant to Senate Bill 2, 72nd Legislature, 1991.

The WTRF program as implemented by TWC would oversee the clean-up of the State's illegal tire dump sites as well as provide management of the approximately 17 million new waste tires anticipated to be produced by the citizens of Texas annually. Implementation of

the WTRF program is intended to clean-up illegal tire dump sites and manage newly generated waste tires pose a peril to the public health, safety, and welfare of the citizens and environment of the State of Texas because of the continuous threat of diseases from vector breeding, vermin infestation, and the fire hazard created from the stockpiling of whole used or scrap tires.

A comment was submitted by Mitchell Energy and Development Corporation suggesting a wording change to the definition of "fleet operator" to mean "an individual or company that owns or operates more than 15 vehicles at one location and generates 30 or more whole used or scrap tires at one location per quarter." TWC disagrees with the commenter because qualifying fleet operator by location can allow more than 15 vehicles or greater than 30 whole used or scrap tires per business per quarter. This commenter also requested a clarification on the exemption for fleet operators. TWC agrees with the commenter and changes the definition of "fleet operator" by replacing "or" with "and" thus a fleet operator will not have to register as a generator when the fleet operator contracts with a wholesale or retail dealer of tires to perform all tire changing services on the fleet operator's vehicles.

The amendment is adopted under the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992) , §361.484, which provides the Texas Water Commission with the authority to promulgate rules reasonably necessary to implement the WTRF program.

§330.5. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

Commission–Texas Water Commission.

Executive director–Executive Director of the Texas Water Commission.

Facility–All contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storage, recycling, reuse, energy recovery, or disposal of whole used or scrap tires or shredded tire pieces.

Fixed tire shredder–A piece of equipment used to split, shred, or quarter tires which is stationary or bolted in place and cannot be transported from one area to another.

Fleet operator–An individual or company that owns or operates more than 15 vehicles and generates 30 or more whole used or scrap tires per quarter.

Mobile tire shredder–A piece of equipment used to split, quarter, or shred tires which is mounted on wheels or is skid-mounted and is hauled from one location to another.

Monthly cumulative closure cost estimate–The closure cost estimate that is the basis for the financial assurance to be provided at the beginning of any month. It is the sum of the closure cost estimates for the beginning inventory of shredded tire equivalents, the beginning inventory of whole tires generated out of state, the disabling of any processing equipment, the estimate of tire equivalents to be shred during the month, and the estimate of whole tires generated out of state to be received during the month.

Operator–The person responsible for the overall operation of the facility.

Owner–The person who owns the facility or part of a facility.

Recalculated monthly cumulative closure cost estimate–The monthly cumulative closure cost estimate recalculated using the latest cost factor for shredded tire equivalents approved by the Executive Director.

Recyclable material–Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, energy recovery, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Registration closure cost estimate–The closure cost estimate provided in the registration application which, once approved by the Executive Director, identifies the maximum number of out-of-state generated whole tires and shredded tire equivalents that may be stored at the facility, the approved cost factor for shredded tire equivalents, and the disabling of any processing equipment.

Shredded tire piece–A particle of a used or scrap tire that has been split, quartered, or shredded.

Tire generator–An individual or company that is a retailer or wholesaler of new or good used tires, a fleet operator, a manufactures, a retreaded, or that accepts whole used or scrap tires for storage.

Tire piece–A portion of a waste tire such as the sidewall, tread, bead, etc. generally though not necessarily disposed of by a business that uses some other part of the waste tire to make a product. The discarded portion of the waste tire, whether located on a PEL site, a generator site, or a special authorization site can be shredded for reimbursement from the WTRF and shall be expected to be addressed in any PEL site clean-up plan.

Waste tire–A scrap tire that has been disposed of and can no longer be used for the purpose for which it was originally intended.

Waste tire facility–An registered facility at which whole used or scrap tires or tire pieces are collected and shredded for delivery to a waste tire storage facility, a permitted waste tire monofill, or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces.

Waste tire processor–A registered mobile facility at which whole used or scrap tires or tire pieces are split, shredded, or quartered tires for delivery to a waste tire storage facility, a permitted waste tire monofill or a facility that recycles, reuses, or recovers the energy from shredded tire pieces.

Waste tire recycling fund (WTRF)–The fund into which tire fees collected on new tires that are sold in Texas are deposited.

Waste tire storage facility–A registered facility at which whole used or scrap tires or shredded tire pieces are collected and stored (before being offered as material) to facilitate the future removal of useful materials for recycling, reuse, or energy recovery.

Waste tire transporter–A registered individual or company that collects and transports whole used or scrap tires, or tire pieces or shredded tire pieces for storage, processing, or disposal.

Weighed tire–A unit of weight for shredded whole used or scrap tires that is equal to 18.7 pounds.

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 23, 1992.

TRD-9215632 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: December 14, 1992

Proposal publication date: October 16, 1992

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

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Subchapter R. Management of Whole Used or Scrap Tires

The Texas Water Commission (TWC) adopts the repeal of §§330.801-330. 802, 330.804-330.863, 330.865, and adopts new §§330.801-330.802, 330. 805-330.818, 330.821-330.828, 330.831-330.849, 330.851-330.857, 330.861-330. 878, 330.885-330.888, and 330.889, concerning the waste tire recycling fund program. Sections 330.802, 330.805, 330.807, 330.808, 330.809, 330.811, 330. 814, 330.824, 330.831, 330.835, 330.845, 330.851, 330.868, 330.871, and 330. 872 are adopted with changes to the proposed text as pub-

lished in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7156). Sections 330. 801, 330.806, 330.810, 330.812, 330.813, 330.815-330.818, 330.821-330.823, 330. 825-330.828, 330.832-330.834, 330.836-330.840, 330.841-330.844, 330.846-330. 849, 330.852-330.857, 330.861-330.867, 330.869-330.870, 330.873-330.878, 330. 885-330.888, and 330.889 are adopted without changes and will not be republished.

The TWC received numerous comments requesting changes be made to the Senate Bill 1340. Some of the legislation addressing these changes were not restated in the proposed rules, therefore the TWC cannot respond to those comments in the context of these rules. Such changes may be addressed during a future legislative session.

In addition, the TWC received several comments in support of various sections of the rules.

Comments on the proposed rules were received from the following groups and associations: Akin, Gump, Hauer, and Feld L.L.P., Brazos Electric Cooperative, Environmental Recovery and Recycling, Inc., EnviroTech Industries, Gibson Recycling, McElroy & Sullivan L.L.P., McGinnis, Lockridge and Kilgore, Mitchell Energy and Development Corp., Phillips Tire Cutting, Southern Tire Recyclers, Inc., Texas Motor Transportation Association, Texas Tire Dealers and Retreaders Association, Tiregator, Inc., Tire Recyclers, Inc., Tire Recycling, Inc., United States Rubber Reclaiming, Inc., Waste Management of Texas, Inc., Waste Recovery, Inc. and Woods Brothers Industries, Inc.

The Waste Tire Recycling Fund (WTRF) was created pursuant to Senate Bill 1340. The intent of the WTRF was to fund the clean up of existing illegal waste tire dumps throughout the state and to insure no new illegal dumps were created by collecting new waste tires free-of-charge at the point of generation. The issue and concerns associated with the elimination of illegal waste tire dumps across the state has existed for many years. Tire dumps pose an imminent peril to the public health, safety, and welfare of citizens and the environment in the State of Texas. The adopted rules will insure the Texas Water Commission's ability to adequately administer the Waste Tire Recycling Fund Program and facilitate clean up of illegal waste tire dumps. The adopted rules will also improve management and oversight of the regulated community operating under the fund and seeking reimbursement from the fund. The rules will clarify existing confusion regarding program guidance and incorporate extensive modifications that have been made since the program was first implemented on April 1, 1992. The adopted rules also contain sections addressing financial assurance requirements to insure funds exist to clean up a processing site or storage site in the event the owner/operator is financially incapable of performing the clean up independently.

The Texas Water Commission received one comment on §330.802(a) requesting to modify the proposed language to clarify that the regulations are applicable to whole used or scrap tires which are classified as municipal solid waste and do not encompass those whole used or scrap tires which are classified as industrial solid waste. The TWC agrees and will change §330.802(a) to specify the exclusion of tires which are classified as industrial solid waste.

The Texas Water Commission received one comment on §330.802(b) requesting that the TWC limit reimbursement eligibility to those tires with a rim diameter between 12 and less than 26 inches. The legislation does not specify those tires that are eligible for reimbursement, therefore the TWC is required to reimburse for the shredding of any tire provided those shreds are less than nine square inches in size. This change would require new legislation and is not within the scope of these adopted rules.

The TWC received two comments on §330.802(c) asking that the rule be clarified to eliminate confusion about which used tires must be manifested. The TWC agrees and §330.802(c) will be changed to specify that all discarded used tires will be subject to manifesting. A discarded used tire is a tire that has already been used for the purpose for which it was originally created.

The TWC received one comment on §330.802(f) requesting to delete the prohibition on disposing of large, non-farm use tires in landfills. The TWC disagrees with the commentor because a major objective of the program is to reduce waste going to landfills. Further, disposal of large, non-farm use tires in landfills is counter-productive to one of the mandates of Senate Bill 1340 which is to ultimately reduce the amount of municipal solid waste going to landfills. Therefore, the prohibition on landfill disposal of large, non-farm use tires is not deleted and the TWC declines to change this section.

The TWC received one comment on §330.802(g) requesting that the TWC disallow payment from the WTRF for the shredding of oversize tires. Current legislation authorizes the eligibility for any tire shredded to receive reimbursement as long as the shreds are less than nine square inches in size. The TWC believes that the commentor's request would require legislative change and is not within the scope of these adopted rules.

The TWC received one comment on §330.805(a) suggesting that the definition of a generator be referenced back to §330.5 instead of restating the definition. The TWC believes that the definition contained in §330.805(a) adds sufficient clarity to the provision and will not be changed.

The TWC received three comments on §330.805(b) suggesting that the TWC modify the proposed language to allow the waste tire generator the flexibility of designating or not designating the destination of the waste tires. The TWC is in partial agreement with the commentor and will change §330.805(b) from "...shall designate," to, "...may designate," to allow greater flexibility. However, the TWC disagrees with the commentor's request to allow the generator greater flexibility in asking the transporter where the waste tires will be delivered. The TWC believes the knowledge of the ultimate destination of the waste tire is a necessary tool for the purpose of tracking and monitoring whole used and scrap tires in the WTRF program.

The TWC received one comment on §330.806 requesting that the term "regularly dispose" be quantified. However, because there are a variety of conditions that the executive director must evaluate to determine whether a generator should obtain a registration number, such as, the destination of the tires, type of tires involved and the conditions of disposal, the TWC will not change §330.806 to quantify the term.

The TWC received one comment on §330.806 and §330.807 requesting that the TWC clarify the definition of fleet operator. The intent of the rules is to not require generator registration for fleet operators that do not perform the function of tire replacement at their business location but rather contract with a tire store for replacement and disposal of the tires off-site. Since the TWC believes that this interpretation exists in the proposed rules, there is no need to change §330.806 and §330.807 of the rules to address this commentor.

The TWC received one comment on §330.807(b)(5) requesting that the TWC regulate the payment of generator tires by the waste tire processors. The TWC believes that the commentor's request is outside the scope of these rules and requires a legislative change.

The TWC received one comment on §330.807(b)(7) requesting that the TWC remove the requirement in the generator section of the manifest to include the name of the responsible party processing and storing the waste tires. The TWC agrees with the commentor and §330.807(b)(7) will be changed to remove the requirement that requires inclusion of the responsible party processing and storing the waste tires on the manifest form.

The TWC received one comment on §330.808(a) requesting that the TWC reword the subsection to include vector control requirements for both controlled and uncontrolled piles in §330.808(a), rather than repeating the requirement in §330.808(c). The TWC believes that the language contained in §330.808(a) is necessary to provide clarity to the section. Therefore §330. 808(a) will not be changed.

The TWC received one comment on §330.808(c) and §330.838(a) requesting that the maximum number of 1,500 for storage of whole tires in an trailer be increased so as to not hamper the efficiency of the regulated community. The TWC disagrees with the commentor and will not change §330.808(c) and §330. 838(a) because the 1,500 waste tire limitation pertains to generator storage (VIII-WT facilities) and is necessary to ensure that excessive numbers of waste tires are not accumulated prior to shipment to the processing facility. Additionally, the tire transporter or mobile tire processor is not limited to 1,500 waste tires when transporting such tires from the generator site to the processing site.

The TWC received one comment on §330.808(c) requesting clarification of the rules in this section to eliminate the confusion

as to the eligibility of generator waste tires. The TWC believes that §330.876(d) provides clarity as to the eligibility of generator waste tires, therefore, no rule change is necessary.

The TWC received eight comments on §330.808(d) requesting that the TWC allow the accumulation of waste tires in on-site trailers to occur from several businesses. The TWC is in partial agreement with the commentors and §330.808(d) is changed to allow generators that own or operate multiple places of the same business to consolidate their accumulated waste tires at one location. However, because of the difficulties involved in the manifest tracking of these accumulated waste tires, which is the primary tool that enables WTRF auditing, the TWC will not allow waste tires from generators of different places of businesses to consolidate their tires in one trailer. Rules addressing waste tire transfer stations are currently under consideration by the TWC.

The TWC received three comments on §330.809(a) requesting that the TWC eliminate the requirement that the generator initiate the waste tire manifest. The TWC disagrees with the commentors and will not change the rules because the cradle-to-grave manifest system required by the rules allows the tracking and monitoring activities necessary for program auditing and the assurance that fund reimbursements are made on actual tires received from the generator.

The TWC received one comment on 330.809(b) concerning the implication that the word "may" applies to the generator's responsibility to initiate the manifest. The TWC agrees with the commentor and will change §330.809(b) by striking the language "...and initiate the required manifest for each shipment" at the end of the sentence to clarify that the generator may designate the destination of the whole used or scrap tires.

The TWC received one comment on §330.809(c) requesting that the TWC clarify the language regarding when a generator without a transporter registration may and may not transport his/her tires. The TWC agrees with the need to clarify this portion of the proposed rules and changes §330.809(c) to clarify the instances when the generator must obtain a transporter registration from the TWC.

The TWC received two comments on §330.809(d) requesting that the TWC clarify the language explaining which generators are eligible for free-of-charge collection and transportation of waste tires from the point of generation. The TWC agrees with the commentor and will change §330.809(d) of the rules to state that only wholesale and retail dealers of new tires are eligible for free collection and transportation of their waste tires off site. The TWC believes that this change comports to the legislative requirements of Senate Bill 1340.

The TWC received one comment on §330.809(e) requesting that the TWC delete the recordkeeping requirements for non-discarded tires sent back to the manufacturer for adjustment. The TWC disagrees with the request due to the recordkeeping needs of the program to document the origin of scrap tires for which reimbursement may be requested.

The TWC received one comment on §330.809(f) requesting that the TWC eliminate the allowance for more stringent local ordinances. The TWC disagrees with commentor and will not change the rules to eliminate §330.809(f) because the TWC is required by law, to allow local governing bodies to implement standards more stringent and not in conflict with those required by state rules and regulations.

The TWC received one comment on §330.812 requesting that the TWC combine databases with the Texas Railroad Commission to obtain transporter information (specifically capacity, number and type of vehicles used for the transportation of tires). The TWC disagrees with the commentor and will not change §330.812 because this involves merging two separate agency programs and separate regulatory authority. This type of database manipulation would require an extensive coordination between agencies.

The TWC received two comments on §330.812(g) requesting that the TWC eliminate the exemption from registration for transport vehicles owned and operated by municipalities, counties or agencies. The TWC disagrees with the commentors and will not change §330.812(g) because the TWC believes without this exemption the burden of registering of a transport vehicle owned and operated by a municipality, county or agency would fall on taxpayers.

The TWC received one comment on §330.814 requesting that the TWC require transporter identification numbers and letters to be at least two inches in height as required under Texas Civil Statutes, Article 6701b-1, §2(b). The TWC agrees with the commentor and will change §330.814 to conform with the trucking industry law which requires markings that are not less than two inches high.

The TWC received six comments on §330.814 requesting the TWC eliminate the requirement for a tarp covering a load of waste tires or shredded tire pieces during transit. The TWC is in partial agreement with the commentors and will change §330.814 to allow the transport of waste tires without a tarp when the waste tires are not in excess of the sidewall height of the transporting vehicle, however, shredded tire pieces will require a covering tarp when in transit.

The TWC received one comment on §330.815(a) requesting that processors who are also transporters be allowed to design their own manifest form. Under §330.807(b) it is the generator's responsibility to initiate the manifest form or other similar documentation approved by the executive director. Since §330.807(b) currently allows processors who are also transporters to design their own manifest form, the TWC will not change §330.815(a).

The TWC received one comment on §330.815(a)(2) requesting clarification as to the manner in which information about transporter registrations may be obtained from the TWC. The TWC disagrees with the commentor and will not change §330.815(a)(2). The TWC believes that it is not the objective of the rules to describe the specific methods by which information can be obtained from the TWC. Such information can be obtained under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a (Vernon Supplement 1992).

The TWC received one comment on §330.817(b) requesting that the TWC collect transporter registration fees upon initial registration. The TWC disagrees with the commentor and will not change §330.817(b) because it is more accurate to collect fees based on the actual number of tires transported, rather than an estimated number of tires transported.

The TWC received one comment on §330.817 requesting that the TWC not charge a transportation fee for the transportation of retreaded/recapped tires. The TWC agrees with the commentor, however, §330.817 currently requires a transporter registration number (which includes a fee) for the transportation of whole, used or scrap tires. Under these rules, tires that can be salvaged and used for another purpose, retreaded or sold as a good used vehicle tire are not subject to the requirements of this subchapter except as noted in §330.889 (relating to the Beneficial Use of Whole Used or Scrap Tires).

The TWC received one comment on §330.817(c) requesting that the TWC invert the transporter fee schedule so those individuals that transported more waste tires annually pay a smaller annual registration fee, while those transporters that hauled fewer tires annually pay a greater annual fee. The TWC disagrees with commentor and will not change §330.817(c) because the TWC believes that the graduated payment schedule allows some relief for small or part-time transporters who do not depend on the transportation of waste tires as a sole source of livelihood.

The TWC received one comment on §330.821(e) requesting that the TWC change the rule to require registration for mobile processors that are not seeking reimbursement from the WTRF. The TWC will not change §330.821(e) because these rules only address the administration of the WTRF. Mobile tire processors or waste tire facilities not seeking reimbursement are not subject to these WTRF rules and are not required to be registered.

The TWC received one comment on §330.824(b) requesting that the TWC eliminate the monthly calibration requirement on scales used by a processor to determine shredded tire weight for reimbursement from the WTRF. The TWC disagrees with the commentor and will not change §330.824(b) because the TWC must be assured that the scale used by the processor to determine shredded tire weight is accurate for reimbursement purposes. Also, since the TWC has authorized a variety of makes and types of scales for use at the processing facility to allow greater flexibility for the processor, the requirement for frequent calibration will insure accuracy of measurement.

The TWC received one comment on §330.825(b)(1) requesting that the manifest include a place for the processor to sign as the responsible party receiving the tires. There is no change necessary since §330.825(b)(1) already requires the processor to sign the manifest and record the date and time of delivery. The manifest currently in use also includes a signature line for the processor and a space for the date and time of deposit of the tires.

The TWC received one comment on §330.825(b)(9) pointing out that much of the information on the Monthly Operations Report is applicable to storage sites, not mobile processors. The TWC believes that information required on the Monthly Operations Report relates to both mobile processor and storage site registrations. This information is necessary for adequate program tracking, therefore §330.825(b)(9) will not be changed.

The TWC received seven comments on §§330.827(b) and (d), 330.841(c), 330.842(c), 330.843, and 330.848(b)(1) requesting to change the rule to allow reimbursement for resource recovery other than shredding the tires to a size not larger than nine square inches. The commentor's request is not within the scope of these rules, as such, a change would require legislative action.

The TWC received one comment on §330.827(b)(2) requesting to add language specifying the use of tire shreds as part of a drainage layer at a permitted municipal landfill as recycling. The TWC disagrees with the commentor and will not change §330.827(b)(2) because pursuant to this rule, the TWC will evaluate recycling uses on an individual case-by-case basis. Also, landfills must obtain permission under TWC landfill permit rules for the use of tire shreds as part of a drainage layer.

The TWC received two comments on §330.831 and §330.841 requesting to combine the registrations for storage facilities and fixed processors. The TWC disagrees with the commentors and will not change §330.831 and §330.841 because registrations must remain separate to allow registration for a storage facility without a fixed processor.

The TWC received four comments on §330.831(a) and §330.832(b). Two comments requested that the TWC eliminate the use of a monofill as an authorized means of shredded tire storage. Two other comments were in agreement with the rule as proposed. The two comments requesting to eliminate the use of a monofill as an authorized means of shredded tire storage is not within the scope of these rules and such a change would involve resorting to the legislative process.

The TWC received one comment on §330.831(b)(8) asking to eliminate the requirement for a registered engineer seal on waste tire storage facility applications. The TWC disagrees with the commentor and will not change §330. 831(b)(8) because the technical nature of facility design, specification and operation requires an engineer's expertise and approval.

The TWC received two comments on §330.832(b) requesting that an exemption be granted for facilities storing shreds prior to recycling. The TWC believes that there is a need for the recycler to exhibit that the shreds received are being utilized in an efficient recycling process before the TWC would declare that a registration for storage would not be required, therefore the TWC will not change §330.832(b) to include a classification for recycling facilities.

The TWC received one comment on §330.832 requesting an additional classification of storage facility to allow short-term storage of up to 50,000 whole tires for up to 180 days without drainage and site layout plans prepared by a registered professional engineer. The TWC disagrees with the commentor because adequate fire protection and vector control must be ensured through drainage and site layout plans. Therefore, §330.832 will not be changed.

The TWC received one comment on §330.832(b)(1) requesting that the TWC allow recycling centers to be classified under a Type VIII-WT storage facility. The TWC disagrees with the commentor and will not change §330.832(b)(1) because Type VIII-WT facilities are designated solely for temporary whole tire storage and not for tire shreds.

The TWC received one comment on §330.832(b)(2) stating that the rule was in conflict with §330.832(b)(2)(A) and requesting clarification on the applicability of an VIII-R waste tire storage facility. However, the TWC believes the commentor misread the section and clarification is not necessary because the section does not contradict §330.832(b)(2)(A).

The TWC received one comment on §330.835(b)(2)(B) requesting the TWC allow larger storage piles for inside storage. The TWC disagrees with the commentor because in the event of a fire, the current rule ensures the maintenance of fire fighting capabilities for inside storage therefore, the TWC will not change §330.835(b)(2)(B).

The TWC received one comment on §330.835(b)(2)(B) requesting that the TWC eliminate the 15 foot height requirement for outside shredded tire piles. The TWC disagrees with the commentor and will not change §330.835(b)(2)(B) because of the necessity to ensure adequate accessibility for fire fighting purposes and safety of employees at the registered storage sites.

The TWC received five comments on §330.835(b)(3) requesting that the TWC eliminate the 20 foot property line or easement requirement for storing piles of tires or tire pieces outside or inside buildings. The TWC agrees with the commentor and will change §330.835(b)(3) in order to provide for a variance on a case- by-case basis, when the applicant can not meet the letter of the requirement, however, the intent of the requirement remains intact and the local fire marshal must evaluate the fire prevention portion of the application to determine whether the applicant can provide adequate fire protection measures in the event of a fire on the facility site.

The TWC received one comment on §330.835(b)(6) requesting to eliminate, or authorize the TWC to allow a variance, to the requirement for barbed wire fencing. The TWC disagrees with the commentor and will not change §330.835(b) (6) because processing facilities must be secured to protect the public from injury.

The TWC received three comments on §330.835(b)(7) requesting that the TWC eliminate the requirement regarding an adequate fire protection system if the storage facility owner/operator has obtained approval from the local fire marshall as to the adequacy of the site's system. The TWC disagrees with the commentor's request and will not change §330.835(b)(7) because the TWC believes minimum requirements on a statewide basis addressing fire prevention are necessary to provide for public safety.

The TWC received two comments on §330.835(c)(2)(G) requesting that the TWC clarify the types of generators that may be charged a fee for the collection and/or transportation of waste tires off site. The TWC agrees with the commentor and §330.811(c) will be changed and §330.811(d) will be added to clarify the type of generator that may be charged a collection and/or transportation fee by a transporter.

The TWC received two comments on §330.835(c)(2)(N) requesting that the TWC limit the requirement for transporter training by the processor that receives independent transporter tires to one annual orientation and training session. Also the commentor indicated that the requirement would result in independent transporters having to attend multiple training and orientation sessions on a quarterly basis. The TWC disagrees with the commentor and will not change §330.835(c)(2)(N) because the TWC believes that a transporter should be familiar with each storage facility's operation and guidelines. Also the TWC believes that information on program modifications can be disseminated regularly to transporters through the storage facility's training program.

The TWC received one comment on §330.843(b)(3)(F) stating that it should not be necessary to describe the location of the fixed processor's equipment since the application requires the facility address. However, the TWC disagrees with the commentor and will not change §330.843(b)(3)(F) because some facilities may have different addresses for various portions of their operations.

The TWC received one comment on §330.847(c) asking why the fixed processor registration does not require an engineering seal. The TWC will not change §330.847(c) because an engineering seal is required for storage facility applications in §330.831(b)(8) and since a fixed processor must also register as a storage facility, the engineering seal is already required.

The TWC received one comment on §330.847(d) requesting that the TWC eliminate the requirement for independent transporters to attend quarterly training and orientation sessions at all processing facilities where they do business. The TWC disagrees with the commentor and will not change

§330. 847(d) because the TWC believes that a transporter should be familiar with the processing facilities operation and guidelines. Also the TWC believes that information on program modifications can be disseminated regularly to transporters through the processor's training program.

The TWC received one comment on §330.848(b)(2) requesting to add language specifying the use of tire shreds as part of a drainage layer at a permitted municipal landfill as recycling. The TWC disagrees with the commentor and will not change §330.848(b)(2) because the TWC will approve recycling uses on an individual basis. Also, landfills must obtain permission under other TWC municipal solid waste permit rules for the use of tire shreds as part of a municipal landfill drainage layer.

The TWC received one comment on §330.851(a)(1) requesting to add language to clarify that tires that are classified as industrial solid waste are not subject to the rule. The TWC agrees with the commentor and will change §330. 851(a)(1) by adding to the end of the sentence the words "regulated by this Subchapter."

The TWC received one comment on §330.851(b)(2) noting that it conflicts with §330.852(b)(4) in that it does not include the words "a permitted tire incinerator". The TWC agrees with the commentor and will change §330.851(b) (2) by adding the words "or a permitted tire incinerator.".

The TWC received one comment on §330.852(c)(4) stating that tires that are recyclable material are not solid waste and should not be subject to the requirements contained in Subchapter R. The TWC disagrees with the commentor because some recycling facilities may operate related businesses that must comply with applicable provisions of Subchapter R. Therefore, the TWC will not change §330.852(c)(4).

The TWC received one comment on §330.862(e) indicating that the WTRF should not reimburse for tire pieces removed from PEL sites. The TWC disagrees with the commentor because the objective of the program is clean up illegal tire dumps in the State of Texas therefore, the TWC will not change §330. 862(e).

The TWC received one comment on §330.862(g) requesting that the TWC eliminate responsible party liability for the clean-up of illegal waste tire dumps. The TWC believes that the commentor's request is not within the purview of the rulemaking process because this request requires a legislative change.

The TWC received one comment on §330.863(a) requesting that the TWC eliminate the requirement that all whole used or scrap tires or tire pieces at an illegal waste tire site be collected and shredded. The TWC disagrees with the commentor and will not change §330.863(a) because the object of the WTRF program is to totally clean-up illegal waste tire sites. Many illegal waste tire sites have both whole tires and tire pieces, therefore, both forms of the tire must be picked up before the TWC will consider the site to be clean.

The TWC received two comments on §330.863(c) and §330.872(e)(3) requesting that the TWC eliminate the 25% Priority Enforcement List (PEL) requirement for WTRF reimbursement eligibility. The commentor's request is not within the scope of these rules. Such a change could only occur through the legislative process.

The TWC received one comment on §330.868(c)(14) requesting that the TWC state the maximum depth that a waste tire facility or mobile tire processor will have to dig to obtain tires buried in the ground or tires submerged in water. The TWC agrees with the commentor and will change §330.868(c)(14) to specify that the depth a waste tire facility or mobile tire processor will have to dig in order to obtain waste tires from a PEL site is six feet.

The TWC received one comment on §330.871(b)(5) requesting that only waste tires on which a $2.00 WTRF fee was charged be eligible for reimbursement upon shredding. The commentor's request is not within the scope of these rules. Such a change could only occur through the legislative process.

The TWC received one comment on §330.871(b)(5) recommending that special authorization tires, other than tires used for municipal, county or state government purposes shall not be eligible for reimbursement from the WTRF. The TWC disagrees with the commentor and §330.871(b)(5) will not be changed because the intent of the WTRF program is to eliminate all waste tire located in piles across the state. As such, the TWC provided a mechanism for citizens having tire piles numbering less than 500 to dispose of those piles without cost. Additionally, the current legislation does not specify tires what may be shredded for reimbursement. Any change to limit the type or size of tires eligible for reimbursement would require a legislative change.

The TWC received one comment on §330.871(b)(6) requesting that the TWC limit the rate of payout from the WTRF and if the WTRF is near depletion then the General Revenue fund should be drawn on to insure that processors are paid for all the tires shredded. The legislature set up the method of reimbursement from the $2.00 tire fee. Any additional funding source for the WTRF would require a legislative change.

The TWC received one comment on §330.872(e) recommending that the TWC include a maximum number of PEL tires that could be shredded for eligibility on a monthly basis. The TWC disagrees with the commentor and will not change §330.872(e) because the intent of the WTRF program is to eliminate tires in illegal waste tire piles that pose a substantial threat of harm to the public or the environment. Limiting the number of PEL tires allowed to be shredded for reimbursement eligibility to 26% eliminates the incentive to processors to clean-up PEL sites in an expeditious manner.

The TWC received one comment on §330.871(b)(6) requesting that the TWC provide the regulated community with greater than 30 days advance notice when the TWC will begin to limit the fund pay out and the number or percentage of tires for which reimbursement will be made. The TWC agrees with the commentor and will change §330.871(b)(6) to include a statement that the TWC will provide at least 30 days prior notice to commencement of controlled reimbursements from the WTRF.

The TWC received one comment on §330.872(c)(3) requesting that the TWC clarify what tires qualify as special authorization tires. The TWC defined special authorization tires in §§330.878(a)-(i) of the proposed rules. The TWC agrees with the commentor's request and has referenced §330.878(a)-(i) in §330.872(c)(3) for clarification purposes.

The TWC received two comments on §330.873(c) and §330.875(a)(2) requesting that the TWC eliminate the end user disclosure requirement and proposing that the TWC could use an independent auditor for verification that the tire shreds are actually being recycled. The TWC disagrees with the commentor and will not change the sections because should an enforcement action against a violator of the end user requirement become necessary, the TWC cannot rely on an independent auditor's verification but rather, must compile and rely on its own investigation and evidence.

The TWC received two comments on §330.873(c)(7) and §330.875(a)(2) requesting that the TWC insure confidentiality of information submitted by the registered processor to the TWC upon request. All information submitted to the TWC falls under the Texas Open Records Act (the Act) and is subject to disclosure unless an exemption under the Act can be claimed. As such, the submitted information is public record and the TWC cannot restrict the Office of Attorney's General review and determination process that is available under the Act through these rules.

The TWC received one comment on §330.876(c) requesting that the TWC qualify innertubes as eligible for the $0.85 reimbursement for each 18.7 pounds of material without shredding because the recyclable value only exists when the innertube is in its original form. The commentor's request is not within the purview of the rulemaking process as this comment requires a legislative change.

The TWC received one comment on §330.878(c) requesting that the TWC classify those waste tires located in registered landfills in the state to be PEL tires, not special authorization tires. The TWC disagrees with the commentor and will not change §330.878(c) because the waste tires located in landfills were legally disposed of in the landfill prior to the WTRF program. PEL sites are defined as those sites containing illegally disposed of waste tires, therefore landfill tires do not qualify as PEL tires.

The TWC received one comment on §330.885 requesting that the TWC require transporters and mobile tire processors to post $0.85 per tire financial assurance for all tires transported and/or processed during a three month period of time. The TWC disagrees with the commentor and will not

change §330.885 because the legislation dictates the specific items for which the TWC shall require financial assurance. Additional financial assurance requirements would require a legislative change and as such are not within the scope of these rules.

The TWC received one comment on §330.885 requesting that the rule be changed to state that the recycling provisions are complied with by requiring the posting of financial assurance to insure the shredded tire pieces are recycled. The TWC disagrees with the commentor because the legislation specifies the financial assurance is designated for clean-up and closure of the site, not for enforcement of the recycling requirement. Developing optional financial assurance requirements is not within the scope of these rules and would require a legislative change. Therefore §330.885 will not be changed.

The TWC received one comment on §330.889 requesting clarification on tires that are being salvaged and used for beneficial purposes specifically the issue of whether those tires being salvaged and used again should be exempted from any municipal solid waste regulations contained in Chapter 330. The TWC agrees that a tire that has been salvaged and used for another purpose, retreaded or sold as a used tire is not subject to the requirements of this subchapter, however, as clarified in §330.802(b) the TWC believes that tires used for beneficial purposes must be regulated because of the potential for harm to the public or the environment due to improper use or installation.

The TWC received one comment on §330.889(f) requesting that the TWC reword the section to allow shredded tire pieces to be used only as a drainage layer or part of an approved leachate collection system at a industrial or municipal solid waste landfill. The TWC disagrees with the commentor and will not change §330.889(f) because rather than limiting the shredded tire pieces to be used only as a leachate collection system in a landfill, the TWC believes that the better approach is to preserve any future recycling alternatives that the shredded tire pieces may present.

As indicated during the hearing on the proposed rules on October 26, 1992, the TWC identified six errors that would be corrected when the rules were republished. The sections that contain the errors are stated below with a brief description of the error and the correction made to the rules. In §330. 824(d), the words, "all", and, "the" were reversed and will be corrected. Also in that section the word "side" is corrected to be plural. In §330.831(b)(3) the sentence structure implies that transporters and mobile tire processors must be manifested. The sentence is corrected to state that the waste tires must be manifested. In §330.845(c)(2)(C) the words, "special authorization", were omitted when the rules were published. This section is corrected to include those words. In §330.845(c)(10)(K) an incorrect term was used for the section. The section addresses rules for waste tire facilities but §330. 845(c)(10)(K) references mobile tire processors. This error is corrected and waste tire facilities are properly referenced. Section 330.845(c)(10)(M) incorrectly references the manifest form, however, the section contains the requirements for the monthly operations report. The error is corrected so the subsection reflects the monthly operations report. Section 330.851(b)(2) fails to include a permitted tire incinerator as a means of tire disposal, however, §330.852(b)(4) does include a permitted tire incinerator as a means for tire disposal. The error is corrected so that the two subsections are in agreement.

- **31 TAC §§330.801, 330.802, 330.804-330.863, 330.865**

The repealed sections are adopted under the Texas Water Code (Vernon 1992) , §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and the Texas Solid Waste Disposal Act, (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.484, which provides the Texas Water Commission with the authority to promulgate rules reasonably necessary to implement the Waste Tire Recycling Fund 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 November 23, 1992.

TRD-9215633 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: December 14, 1992

Proposal publication date: October 16, 1992

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

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- **31 TAC §§330.801-330.802, 330.805-330.818, 330. 821-330.828, 330.831-330.849, 330.851-330.857, 330.861, 330.878, 330.885-330. 889**

The new sections are adopted under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1340, Acts of the 72nd Legislature, 1991, which provides the Texas Water Commission with the authority to establish the rules necessary to adequately administer the Waste Tire Recycling Fund, and implement the activities necessary to insure prompt and accurate pay out from the fund, and to register and monitor the activities of waste tire generators, transporters, fixed and mobile processors, and storage and disposal facility owners or operators, and under the Texas Water Code §5.103 which gives the Texas Water Commission the authority to adopt any rules necessary to carry out its powers, duties and responsibilities.

§330.802. Applicability.

(a) The sections in this subchapter are applicable to persons that are involved in the generation, transportation, processing, storage, disposal and recycling of whole used or scrap tires that are classified as municipal solid waste and regulated by the Texas Water Commission (commission or TWC) pursuant to §330.3 of this title (relating to Applicability). The sections in this subchapter are not applicable to whole used or scrap tires that are classified as industrial solid waste.

(b) A tire becomes a whole used or scrap tire and is eligible for reimbursement under the Waste Tire Recycling Fund (WTRF) when it is discarded by a person after it has been utilized for its intended purpose. A used tire that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire is not subject to the requirements of this subchapter, except as noted in §330.889 of this title (relating to the Beneficial Use of Whole Used or Scrap Tires). A whole used tire that cannot be reused for any other purpose is a scrap tire and is subject to the requirements of this subchapter.

(c) Whole used or scrap tires that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire are exempted from the requirements to be split, quartered, or shredded at processing sites. All discarded used tires will be subject to manifesting by registered generators in accordance with the requirements in §330.807 of this title (relating to Generators of Whole Used or Scrap Tires). Tire stockpiles being held for adjustment by the manufacturer must be classified by the manufacturer for reuse or disposal within 90 days. Used tires being held for resale that are stockpiled shall receive appropriate vector control made at a frequency based upon weather conditions and other applicable local ordinances.

(d) A solid or non-pneumatic whole used or scrap tire may be disposed of in a municipal solid waste facility provided there is no other available means to reduce the tire into recyclable material.

(e) A whole used or scrap tire, attached to a rim, that is received at a waste tire facility, storage site, disposal site, or other solid waste facility shall be removed from the rim and processed in accordance with this chapter.

(f) Large whole used or scrap tires that are 26 inches or more in rim diameter or that weigh a minimum of 500 pounds are exempt from the requirements to be split, quartered or shredded at a storage site or a permitted landfill. The large whole used or scrap tires, specified in this subsection, shall not be disposed of in a landfill and shall be either recycled or stored at a registered waste tire storage facility. Adequate vector control shall be maintained at the registered waste tire storage facility that is storing these tires.

(g) Large whole used or scrap tires that are 26 inches or more in rim diameter or that weigh a minimum of 500 pounds and are capable of being shredded into pieces less than nine square inches in diameter will be eligible for reimbursement from the WTRF.

§330.805. Generators of Whole Used or Scrap Tires.

(a) Applicability. The regulations contained in these sections establish standards applicable to the generators of whole used or scrap tires. For the purpose of this subchapter, a generator shall be a person that accepts whole used or scrap tires for storage, is a fleet operator, or is a whole new or used tire retailer, wholesaler, manufacturer, or retreader.

(b) Responsibility. Each generator shall be responsible for ensuring that whole used or scrap tires are transported by a registered transporter. Each generator shall ask the transporter where his whole used or scrap tires are being delivered to, and may designate the destination of the whole used or scrap tires that they generate.

(c) Generator. A generator may not place a whole used or scrap tire or split, quartered, or shredded tire pieces in a dumpster for pickup by a collection vehicle that has an enclosed packer unit attached or that is used on a routine and/or regular collection route. All whole used or scrap tires and shredded tire pieces transported from a generator's location shall be transported and manifested in a separate, identifiable load.

§330.807. Generator Record Keeping.

(a) Maintenance of records. Copies of manifests, daily logs, or other documentation used to support activities related to the accumulation, handling, and shipment of whole used or scrap tires shall be retained by the generator at the facility site for a period of three years. All such records shall be made available to the executive director upon request.

(b) Manifest. Generators shall initiate and maintain a record of each individual load of whole used or scrap tires hauled off-site from their business location. The record shall be in the form of a five-part manifest or other similar documentation approved by the executive director. The generator shall complete the following information on the manifest:

(1) name and address of the person who generated the whole or scrap tires and the type of generator;

(2) generator commission registration number;

(3) date of the off-site shipment;

(4) name and commission registration number of the transporter;

(5) whether the generator was monetarily charged by the transporter for the service of hauling away the whole used or scrap tires;

(6) number or the weight in pounds and the type of whole used or scrap tires collected for transportation;

(7) name of responsible person(s) transporting the whole used or scrap tires or the shredded tire pieces;

(8) the physical location of the generator's site; and

(9) a signature of the representative of the generator acknowledging that the information on the manifest is true and correct.

(c) Completed manifest. A generator shall obtain a copy of the completed manifest within three months after the whole used or scrap tires were transported off-site by the transporter.

(d) Incomplete manifest. The generator shall notify the appropriate TWC district office of any transporter, mobile or fixed tire processor or storage site owner who fails to complete the manifest or fails to return a copy of the manifest within three months after the off-site transportation of the whole used or scrap tires.

(e) Generator's log. Any whole used or scrap tire generator shall maintain a log showing the date, number, type and method of transporting the whole used or scrap tires off-site. The generator shall retain this log for a period of three years and the log shall be available to the executive director for review upon request.

§330.808. On Site Storage.

(a) Generators of whole used or scrap tires may store those same tires at the location where they are generated for a period not greater than 90 days. Whole used or scrap tires stored at the generator's site must be transported off-site within 90 days of their accumulation. Tires stored out of doors in an uncontrolled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(b) Whole used or scrap tires generated by and stored at a generator's location may be collected in a transportable collection container that is mobile, completely enclosed, and lockable for a period of not greater than 90 days. The entire container shall be hauled from the site by a registered transporter, taken to a registered tire processing or storage facility, and shall be manifested.

(c) Generators of whole used or scrap tires may store those same tires at the location where they are generated provided the number of whole used or scrap tires does not exceed 500 on the ground or 1,500 in a totally enclosed and lockable container. Whole used or scrap tires stored out of doors in a controlled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(d) Generators of whole used or scrap tires shall only allow the accumulation of tires that were generated on-site to be stored at that same site. No whole used or scrap tires from separately owned places of business shall be transferred to, accepted, or located at, a site where they were not generated. Generators of whole used or scrap tires with multiple places of business may consolidate and store the whole used or scrap tires from several business locations to one location providing the number of whole used or scrap tires does not exceed 500 on the ground or 1,500 in a totally enclosed and lockable container. Whole used or scrap tires stored out of doors in a controlled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(e) Retailers and wholesalers who sell whole used or scrap tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer. Used tires that are to be resold as commodities, but are not handled as described in this subsection, shall be considered as stockpiled whole used or scrap tires and the site shall be subject to registration as a waste tire storage facility, if the number of whole used or scrap tires at the generator site exceeds 500 on the ground or 1, 500 in a totally enclosed and lockable container.

§330.809. Transportation Requirements.

(a) A generator shall initiate the manifest required in §330.807(b) of this title (relating to Generator Record Keeping) for each shipment of whole used or scrap tires transported off-site.

(b) A generator may designate the destination of all whole used or scrap tires generated at his/her location.

(c) A generator may transport his/her own whole used or scrap tires to a waste tire facility or mobile tire processor, provided a tire transporter registration has been obtained from the executive director. Generators who do not transport their own tires shall only use a tire transporter who is registered by the executive director.

(d) A waste tire transporter or a mobile tire processor shall not charge a fee on or after April 1, 1992, to the wholesale or retail dealer of new tires for collecting whole used or scrap tires for delivery to a waste tire facility or for collecting or shredding whole used or scrap tires accepted for temporary storage from purchasers of new tires. This prohibition does not apply to the transportation of whole used or scrap tires classified as reusable under §330.808(e) of this title (relating to On Site Storage). This prohibition also does not apply to manufacturers, retreaders, fleet operators, owners or operators of storage sites that contain whole used or scrap tires, and wholesale and retail dealers of used tires. This prohibition also does not apply to the transportation of whole used or scrap tires that are being disposed of in a permitted landfill or tire monofill.

(e) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment and the number of tires in each shipment. These records shall be made available to the executive director for review upon request.

(f) Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, generators may use such controls and records to satisfy the commission's requirements under this section, with approval by the executive director.

§330.811. Transporters of Whole Used or Scrap Tires.

(a) Applicability. The regulations contained in these sections establish standards applicable to transporters collecting and hauling whole used or scrap tires or shredded tire pieces. Methods of transportation shall include, but are not limited to, measures utilizing roadway, rail, and water facilities. These sections are applicable to waste tire transporters and other tire transporters who transport whole used or scrap tires or shredded tire pieces from a registered generator, waste tire facility, mobile tire processor, registered waste tire storage site, or Priority Enforcement List (PEL) site.

(b) Responsibility. Transporters shall maintain records using a manifest system as provided in §330.815 of this title (relating to Transporter Record Keeping). Each transporter shall be responsible for ensuring that whole used or scrap tires or shredded tire pieces are transported to a waste tire facility, a registered storage site, a permitted landfill or monofill, a whole used or scrap tire or shredded tire pieces recycler, or a retreader.

(c) Prohibition. A waste tire transporter may not charge a fee to a wholesale or retail dealer of new tires for collecting for delivery to a waste tire facility or for collecting and shredding used or scrap tires accepted for temporary storage by the dealer from purchasers of new tires.

(d) A registered waste tire transporter may charge a collection and/or transportation fee to a generator that accepts whole used or scrap tires for storage, is a fleet operator, is a wholesale dealer of used tires, is a retail dealer of used tires, is a manufacturer, or is a retreader. Additionally, a transporter may charge a generator (as defined in §330.805(a) of this title (relating to Generators of Whole Used or Scrap Tires)) a collection and/or transportation fee for tires that are not transported to a waste tire facility, a mobile tire processor or a storage facility.

§330.814. Vehicle and Equipment Sanitation Standards. All vehicles and equipment used for the collection and transportation of whole used or scrap tires or shredded tire pieces shall be constructed, operated, and maintained to prevent loss of whole used or scrap tires or shredded tire pieces during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude odors and insect breeding. Any vehicle or trailer used to transport whole used or scrap tires or shredded tire pieces shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number using numbers and letters at least 2 inches tall. Trailers or trucks used to transport whole used or scrap tires shall be either fully enclosed and lockable, or have sidewalls of sufficient height to contain the load. Trailers and trucks transporting whole used or scrap tires in excess of the sidewall height of the vehicle shall be covered with a tarp during transit. Trailers and trucks transporting shall be covered with a tarp during transit.

§330.824. Vehicle and Equipment Requirements.

(a) All vehicles and equipment used for the collection and shredding of whole used or scrap tires shall be constructed, operated, and maintained to prevent public health nuisances and safety hazards to operating personnel and the public. The equipment shall be periodically cleaned to prevent loose materials from being discharged while in transit or in operation.

(b) The mobile tire processor shall be equipped with or shall have access to a scale to weigh the shredded tire pieces immediately after shredding. Reimbursement from the WTRF shall be based on the after shredded weight of the tire. Any scale used that is not certified by the Texas Department of Agriculture (TDA) shall be supported with documentation as to why the scale cannot be certified and calibration documentation equivalent to the TDA must be provided to the executive director on a monthly basis from the manufacturer of the scale.

(c) The mobile tire shredder must be mounted on wheels or skids. It may not be permanently anchored in a fixed location.

(d) The mobile tire processor registration number shall be stenciled on all sides of the processing equipment.

§330.831. Storage of Whole Used or Scrap Tires or Shredded Tire Pieces.

(a) Applicability. The regulations contained in these sections establish standards applicable to persons that store whole used or scrap tires or shredded tire pieces on any public or privately owned property. Storage of whole used or scrap tires or shredded tire pieces shall be considered as a temporary means of holding such tires or tire pieces and shall require permitting or registration in accordance with this subchapter. These sections do not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) Responsibility.

(1) All persons shall properly register their property with the executive director if the intended use of the property is for the storage of whole used or scrap tires or shredded tire pieces as provided in this subchapter.

(2) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver whole used or scrap tires or shredded tire pieces at their registered waste tire storage facility or permitted waste tire monofill are properly registered with the executive director as required by §330.812 of this title (relating to Transporter Registration), §330.822 of this title (relating to Mobile Tire Processor Registration) and §330.843 of this title (relating to Waste Tire Facility Registration).

(3) Owners and/or operators shall ensure that the tire transporters or mobile tire processors that deliver whole used or scrap tires or shredded tire pieces at their registered waste tire storage facility or permitted waste tire monofill have manifested the whole used or scrap tires or shredded tire pieces as required by §330.815 of this title (relating to Trans-

porter Record Keeping), §330.825 of this title (relating to Mobile Tire Processor Record Keeping) and §330.845 of this title (relating to Waste Tire Facility Record Keeping).

(4) Owners and/or operators of waste tire storage facilities shall obtain all required necessary and appropriate state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(5) The waste tire storage facility shall maintain copies of all records required by this section for a period of three years. These records shall be made available to the executive director for review upon request.

(6) A waste tire storage facility shall maintain manifests of whole used or scrap tires or shredded tire pieces. The manifest form shall contain the following information filled out completely by the waste tire storage facility prior to final disposition of the whole used or scrap tires or shredded tire pieces:

(A) the name, physical address, and telephone number of the individual or company that is storing or disposing of the whole used or scrap tires or shredded tire pieces;

(B) the waste tire storage facility registration number;

(C) the date and time of delivery of the whole used or scrap tires or shredded tire pieces to the storage or disposal facility;

(D) the number and type of whole used or scrap tires or the weight of shredded tire pieces stored or disposed of at the registered waste tire storage facility; and

(E) the signature of an authorized representative of the waste tire storage facility acknowledging that the information on the manifest form is true and correct.

(7) If an application for registration for an VIII-R waste tire storage facility is received that is not administratively and technically complete, the WTRF staff shall notify the applicant of the deficiencies within 10 working days. If the additional information is not received within 60 days of the date of receipt of the deficiency notice, the executive director may return the incomplete application to the applicant. The executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response can not be submitted within 60 days. If, however, the applicant does not submit an administratively and technically complete application within the time frames indicated above, the application shall be considered withdrawn without prejudice.

(8) Owners and/or operators of waste tire storage facilities shall ensure that the application for registration of the waste tire storage facility is completed and sealed by a Texas registered professional engineer.

§330.835. Requirements for a Type VIII-R Waste Tire Storage Facility.

(a) Registration requirements.

(1) Persons who store or intend to store more than 500 whole used or scrap tires and/or an equivalent amount of shredded tire pieces on the ground or 1,500 whole used or scrap tires and/or an equivalent amount of shredded tire pieces in a totally enclosed and lockable container shall register these sites with the executive director. Registration forms shall be provided by the executive director upon request.

(2) Persons who apply and receive Type VIII-R facility registration from the executive director shall maintain a copy of the registration at their designated place of business and at the designated storage facility location.

(3) A Type VIII-R registration shall expire 60 months from the date of issuance. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the Type VIII-R storage facility registration.

(4) Type VIII-R storage facility owners and/or operators shall submit an amendment to their application to the commission within 15 days of a change to their registration if:

(A) any data submitted in support of the application for registration has changed;

(B) the office or place of business is relocated; or

(C) the registered name of the facility owner or operator has changed.

(5) A new Type VIII-R storage facility registration application shall be submitted to the executive director within 10 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered Type VIII-R storage facility has changed or the operator of a Type VIII-R storage facility has changed. Following the executive director's determination, the old Type VIII-R storage facility registration number shall be canceled.

(6) The commission shall suspend or revoke a Type VIII-R storage facility registration or deny an initial or renewal application for registration for cause as provided in §330.840 of this title (relating to Penalties for Owner or Operator of Waste Tire Storage Facilities). An opportunity for a formal hearing on the suspension or revocation may be requested by the applicant within 20 days after a notice of suspension or revocation has been sent by the executive director to the last known address of the registrant. If the registration is suspended or revoked, and a formal hearing has been requested by the applicant the Type VIII-R storage facility shall not accept for storage additional whole used or scrap tires or shredded tire pieces regulated under this subchapter until a final decision has been made by the commission as result of the hearing. If the suspension or revocation of the Type VIII-R storage facility registration is approved by the commission, the owner or operator of the facility shall remove all whole used or scrap tires or shredded tire pieces stored at the facility within 60 days from the date of suspension or revocation.

(7) Preparation and submission of an application for a Type VIII-R storage facility shall be in accordance with the following procedures:

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director. The application shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated so that the health, welfare, and physical property of the public as well as the environment and endangered species are protected. Failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director. The submission of false information shall constitute grounds for denial of the initial or renewal application or suspension or revocation of the current Type VIII-R storage facility registration.

(B) The application for a registration of a Type VIII-R storage facility shall be submitted in triplicate to the executive director with all supporting data also submitted in triplicate unless otherwise directed by the executive director. Following receipt of the application, the executive director will forward to the applicant a letter acknowledging receipt of the application.

(C) Data presented in support of an initial or renewal application for a Type VIII-R storage facility shall consist of:

(i) the legal name and address of the individual, partnership, corporation, city, county or other governmental entity that is applying for the registration and will be responsible for operations at the Type VIII-R storage facility;

(ii) the legal name and address of landowner where the Type VIII-R storage facility will be or is currently located;

(iii) the current status of the Type VIII-R storage facility; (i.e. proposed or existing);

(iv) the specific location of the Type VIII-R storage facility by street address, if within the city limits, or distance and direction from a city corporate limits or road intersection. The Type VIII-R storage facility location shall be further described by giving the direction (using compass headings as N, NE, E, etc.) and distance measured perpendicularly (in feet or miles), unless otherwise noted, from each Type VIII-R storage facility boundary to a known physical feature (such as a road, highway, canal, creek, etc.);

(v) the location of the Type VIII-R storage facility by county, or extraterritorial jurisdiction of a city;

(vi) the estimated number of whole used or scrap tires or shredded tire pieces to be received daily;

(vii) the size of the Type VIII-R storage facility in acres;

(viii) the maximum number of whole used or scrap tires or shredded tire pieces to be stored at the Type VIII-R storage facility;

(ix) the intended purpose of the whole used or scrap tires or shredded tires pieces stored at the Type VIII-R storage facility;

(x) the time period that the whole used or scrap tires or shredded tire pieces will be stored at the Type VIII-R storage facility (not to be in excess of 12 months unless written authorization for a longer storage period has been granted by the executive director);

(xi) the storage method (tire pile on the ground, inside a building or enclosure, totally enclosed and lockable containers);

(xii) a topographic map which shall be a United States Geological Survey 7-1/2 minute quadrangle sheet or equivalent, encompassing the area of the site and showing the location of area streams (particularly those entering and leaving the site), and marked to show the Type VIII-R storage facility boundaries, and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey Federal Center, Denver, Colorado 80225;

(xiii) a general location map, which shall be all or a portion of a half-scale county map, prepared by the Texas Department of Transportation, annotated as necessary to show the location of the Type VIII-R storage facility; prevailing wind direction; residences, cemeteries, and recreational areas within a one mile radius of the Type VIII-R storage facility and location and type of surface of all roads within a one mile radius which will be used for entering or leaving the Type VIII-R storage facility. If only a portion of the map sheet is used, the portion shall include scale, date, north arrow, and two or more latitudes and longitudes. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P.O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(xiv) a statement from the property owner substantially equivalent to §330.905 of this title (relating to Appendix E-Form for Property Owner Affidavit) shall be submitted when the applicant is not a city, county, state agency, federal agency, or other governmental entity and is not the owner of record of the land described in the application, or does not have an option to buy the land. The statement shall be witnessed and notarized. If the property owner does not sign the statement, the applicant shall provide the executive director with documentation that the property owner has been properly notified and advised of his/her responsibilities and potential liabilities in relation to the operation of a Type-VIII-R waste tire storage facility on the owner's land;

(xv) a Type VIII-R storage facility layout plan showing location of the storage areas, fire lanes, access roads (internal and external), fire control facilities, facility security and fencing, maintenance and control buildings, sanitation facilities, location and description of the type of tire processing equipment to be used, and other operational buildings to be located on the Type VIII-R storage facility;

(xvi) a drainage plan showing drainage flow throughout the Type VIII-R storage facility area, specifically the potential for contaminated stormwater runoff from storage piles, or wastewater runoff from areas of the waste tire storage facility where equipment is operated or stored; locations of streams; and any other important drainage feature of the facility. Any additional surface drainage controls that are necessary to ensure facility containment and treatment of potentially contaminated stormwater or wastewater shall be designed by a registered professional engineer in accordance with §330.65(b)(5)(F)(iii) and (v) of this title (relating to Technical Information Required for Landfill Sites Serving 5,000 Persons or More-Site Development Plan). If, during review of the application or after issuance of the registration, a detailed drainage plan is determined to be required, then it shall be prepared, signed, and sealed by a registered professional engineer in accordance with §330.58 of this title (relating to Preparation of Application) within the time period requested by the executive director;

(xvii) a legal description of the Type VIII-R storage facility consisting of the official metes and bounds description including the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application;

(xviii) a Type VIII-R storage facility operating plan containing information outlined in subsection (c) of this section; and

(xix) an applicant's statement and signature provided by the applicant, or the authorized representative empowered to make commitments for the applicant, that he/she is familiar with the application and all supporting data and is aware of all commitments represented in the application and that he/she is also familiar with all pertinent requirements in these regulations and he/she agrees to develop and operate the Type VIII-R storage facility in accordance with the application, the sections in this subchapter, and any special provisions that may be imposed by the executive director.

(b) Design requirements for Type VIII-R waste tire storage facility.

(1) A Type VIII-R waste tire storage facility shall be designed so that the health, welfare and safety of operators, transporters, and others who may utilize the Type VIII-R waste tire storage facility is maintained.

(2) Whole used or scrap tires or shredded tire pieces may be stored using tire piles, inside storage, or lockable containers, or a combination of any of the aforementioned methods.

(A) Tire piles consisting of whole used or scrap tires or shredded tire pieces shall be no greater than 15 feet in height nor shall the pile cover an area greater than 8,000 square feet.

(B) Whole used or scrap tires or shredded tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Inside storage piles or bins shall not exceed 12,000 cubic feet with a 10 foot aisle space between piles or bins.

(C) Whole used or scrap tires or shredded tire pieces may be stored in trailers provided the trailer is totally enclosed and lockable and shall not be capable of containing more than 1,500 whole used or scrap tires or equivalent number of shredded tire pieces.

(3) Outside piles consisting of whole used or scrap tires or shredded tire pieces and entire buildings used to store whole used or scrap tires or shredded tire pieces shall not be within 20 feet of the property line or easements of the Type VIII-R storage facility. The executive director may grant a variance to the 20 foot property line or easement requirement on a case-by-case basis in cases of unusual building codes or site conditions. In order for the applicant to be granted a variance, the applicant must demonstrate to the satisfaction of the executive director that the distance that is the subject of the variance is adequate for fire fighting purposes and meets the other applicable requirements of this subchapter.

(4) Whole used or scrap tires shall be split, quartered, or shredded within 90 days from the date of delivery to the Type VIII-R storage facility. Large whole used or scrap tires that are 26 inches or more in rim diameter or that weigh a minimum of 500 pounds are exempt from this requirement. Appropriate vector controls shall be used at a frequency based upon type and size of piles, weather conditions and other applicable local ordinances.

(5) There shall be a minimum separation of 20 feet between outside tire piles consisting of whole used or scrap tires or shredded tire pieces. This 20-foot space shall be designated as a fire lane and shall be an all-weather road. The open space between buildings and outside tire piles consisting of whole used or scrap tires or shredded tire pieces shall be a minimum of 20 feet and kept open at all times and maintained free of rubbish, equipment, tires, or other materials.

(6) The Type VIII-R storage facility shall be completely enclosed with a chain-link type security fence at least six feet in height with no less than three strands of barbed wire encircling the top of the fence with lockable gates. Storage buildings or enclosures not enclosed with a chain-link type security fence shall be secured by lockable doors. Waste tire storage facilities shall be kept locked during all non-operational hours.

(7) The Type VIII-R storage facility shall have an adequate fire protection system using fire hydrants or a firewater storage pond or tank at the facility. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements. The fire marshall within whose jurisdiction the waste tire storage facility is located shall approve the fire protection system. A letter approving the fire protection system from the fire marshall shall be included in the application for waste tire storage facility registration.

(8) The Type VIII-R waste tire storage facility shall have a large capacity carbon dioxide or dry chemical fire extinguisher(s) located in strategically-placed enclosures throughout the entire site. Fire extinguishers used at waste tire storage facilities with inside and outside storage should be equally spaced within the facility to provide quick access from any location within the facility. The minimum spacing between fire extinguishers, inside and outside, shall be 100 feet. The minimum number of fire extinguishers or fire hydrants for each waste tire storage facility shall be one per acre.

(9) If required, suitable drainage structures or features shall be provided to divert the flow of rainfall run-off or other uncontaminated surface water within the Type VIII-R storage facility to a location off-site.

(10) Each site shall conspicuously display at the entrance a sign at least one and 1/2 feet by two and 1/2 feet in size with clear, legible letters stating the name of the Type VIII-R storage facility using the words "waste tire storage facility", the registration number, and operating hours.

(11) A Type VIII-R storage facility located within a designated floodplain area shall provide adequate protection levees or dikes to prevent the discharge off-site of any contaminated material stored within the Type VIII-R storage facility.

(12) The Type VIII-R storage facility shall be designed in accordance with all local building codes, fire codes, or other appropriate local codes.

(c) Type VIII-R waste tire storage facility operating plan.

(1) The purpose of the Type VIII-R storage facility operating plan is to provide specific guidance and instructions for the management and operation of a Type VIII-R waste tire storage facility. The operating personnel shall have instructions in sufficient detail to enable them to conduct day-to-day operation in a manner consistent with the design of the Type VIII-R storage facility and the requirements contained in this subchapter.

(2) The Type VIII-R storage facility operating plan shall include guidance or instructions on the following:

(A) security, facility access control, the hours and days during which tire-hauling vehicles will be accepted, traffic control, and safety;

(B) sequence of the development of the Type VIII-R storage facility such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(C) control of loading and unloading of whole used or scrap tires or shredded tire pieces within designated areas so as to minimize operational problems at the Type VIII-R storage facility;

(D) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(E) vector control procedures for any type of vector that may be found at the Type VIII-R storage facility;

(F) a procedure for removal of any waste material that is not a whole used or scrap tire or shredded tire piece to a disposal facility permitted by the commission. This procedure must include the means to be used for removal of the waste material illegally deposited at the Type VIII-R storage facility. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins or be returned to the transporter's vehicle and removed from the Type VIII-R storage facility. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(G) a facility employee shall be designated by the owner or operator to inspect each load of whole used or scrap tires or shredded tire pieces that is delivered to the Type VIII-R storage facility. The employee shall have the authority and responsibility to reject unauthorized or improperly manifested loads, or loads that contain whole used or scrap tires that were obtained from wholesale or retail dealers of new tires by charging such individuals or

companies for the collection of those tires. The employee shall also be authorized to have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel. The name of the designated employee shall be provided to the executive director by the owner or operator of the facility;

(H) a procedure whereby the transporter manifest required by §330.807 of this title (relating to Generator Record Keeping), the daily log and other required documents shall be maintained at the Type VIII-R storage facility for a period of three years and be made available for inspection by the executive director or authorized agents or employees of local governments having jurisdiction to inspect the storage facility;

(I) dust and mud control measures for access roads, fire lanes, and storage areas within the Type VIII-R storage facility;

(J) posting of signs and enforcement of Type VIII-R storage facility rules;

(K) wet-weather operations;

(L) preventive maintenance procedures for all storage areas, tire processing equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the Type VIII-R storage facility in use during the active operating period of the Type VIII-R storage facility. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist;

(M) incorporation of other instructions as necessary to ensure that the Type VIII-R storage facility personnel comply with all of the operational standards for the facility; and

(N) the waste tire storage facility owner or operator shall conduct a training program on a quarterly basis, for all waste tire storage facility employees that transport or handle whole used or scrap tires or shredded tire pieces. This training program shall address the review and proper completion of manifest forms prior to the transportation of whole used or scrap tires from a generator, or the acceptance of whole used or scrap tires or shredded tire pieces at the waste tire storage facility. Transporters not employed by the waste tire storage facility but that deliver whole used or scrap tires or shredded tire pieces to the waste tire storage facility shall be required to attend a training and orientation program to familiarize the transporter with facility operational guidelines and requirements, the acceptable procedures for the collection and transportation of whole used or scrap tires from a generator (specifically when a collection fee can or cannot be charged), the proper completion of a manifest form, and the rules and regulations under which all aspects of the generation, transportation, processing, storage, and disposal of whole used or scrap tires or shredded tire pieces are governed. A waste tire storage facility owner or operator shall submit written documentation to the executive director indicating that the training and orientation programs required in this section, have been completed. This written documentation shall be submitted by the waste tire storage facility owner or operator to the executive director within 10 days of completion of the training and orientation program.

(d) Type VIII-R waste tire storage facility record keeping.

(1) General requirements.

(A) The executive director approved Type VIII-R storage facility layout plan, Type VIII-R storage facility operating plan, and all supporting data to the application, is an operational requirement. Any significant deviation as determined by the executive director, from any part of the site layout plan or operating plan or other supporting data without prior approval from the executive director shall be a violation of this subchapter.

(B) A copy of the registration with all supporting data, including the approved Type VIII-R storage facility layout plan, the approved Type VIII-R storage facility operating plan, and the commission's current rules shall be on-site at all times. The facility supervisor shall be knowledgeable of current commission rules and contents of the approved Type VIII-R storage facility application in relation to the operational requirements of the specific Type VIII-R storage facility.

(C) All drawings or other sheets prepared for revisions to a Type VIII-R storage facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(2) Daily log. Persons that store whole used or scrap tires or shredded tire pieces subject to control under this subchapter shall maintain a record of each individual delivery and removal. Such record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include, at a minimum, the:

(A) name and commission registration number of the waste tire storage facility;

(B) physical address of the Type VIII-R storage facility;

(C) number of whole used or scrap tires or shredded tire pieces received at the Type VIII-R storage facility;

(D) number of whole used or scrap tires or shredded tire pieces, removed from the Type VIII-R storage facility (for disposal, resale, recycling, reuse or energy recovery);

(E) specific location in the Type VIII-R storage facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires or shredded tire pieces are delivered or removed (for disposal, resale, recycling, reuse or energy recovery);

(F) description of specific events or occurrences at the Type VIII-R storage facility relating to routine maintenance, fires, theft, spraying for vectors, observations of vectors or evidence of vectors, or other similar events or occurrences;

(G) number of whole used or scrap tires being held for resale, adjustments, or other purposes;

(H) name and signature of facility representative acknowledging truth and accuracy of the daily log; and

(I) the name, address, telephone number, and date of the individual or company delivering or removing the whole used or scrap tires or shredded tire pieces to or from the Type VIII-R waste tire storage facility.

(3) Manifests. The Type VIII-R storage facility operator shall retain a copy of all manifests received from a mobile tire processor or waste tire facility, or waste tire transporter for whole used or scrap tires or shredded tire pieces delivered to the Type VIII-R storage facility or removed from the Type VIII-R storage facility. The Type VIII-R waste tire storage facility shall ensure that the top copy of the five-part manifest shall be returned to the generator completely filled out within 90 days of the date and time of collection as indicated in Section 1 of the manifest form.

(4) Maintenance of records and reporting. The Type VIII-R storage facility operator shall retain a copy of all records showing the collection and disposition of the whole used or scrap tires or shredded tire pieces. Such copies shall be retained for three years and made available for review to the executive director upon request.

(5) Annual report. The Type VIII-R storage facility owner or operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number of whole used or scrap tires or shredded tire pieces delivered, the disposition of whole used or scrap tires or shredded tire pieces, and the number of whole used or scrap tires or shredded tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

(6) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, the Type VIII-R waste tire storage facility owner or operator shall use such controls and records to satisfy the commission's requirements, upon review and approval by the executive director.

§330.845. Waste Tire Facility Record Keeping.

(a) General Requirements.

(1) The executive director approved waste tire facility layout plan, facility operating plan, and all supporting data to the application, is an operational requirement. Any significant deviation as determined by the executive director, from any of the above without prior approval from the executive director shall be a violation of this subchapter.

(2) A copy of the registration with all supporting data, including the approved waste tire facility layout plan, the approved waste tire facility operating plan, and the commission's current rules shall be on-site at all times. The facility supervisor shall be knowledgeable of current commission rules and the contents of the approved application in relation to the operational requirements of the specific waste tire facility.

(3) All drawings or other sheets prepared for revisions to a waste tire facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Maintenance of records. The waste tire facility shall maintain copies of all records required by this section for a period of three years. These records shall be made available to the executive director for review upon request.

(c) Required records. A waste tire facility shall maintain manifests of whole used or scrap tire pieces.

(1) The manifest shall contain the following information filled out completely by the waste tire facility prior to final disposition of the whole used or scrap tire pieces:

(A) the name, physical address and telephone number of the individual or company that is processing the whole used or scrap tires;

(B) the waste tire facility registration number;

(C) the date and time of delivery of the whole used or scrap tires to the waste tire facility;

(D) the number and type of whole used or scrap tires delivered to the registered waste tire facility; and

(E) the signature of an authorized representative of the waste tire facility acknowledging that the information on the manifest form is true and correct.

(2) The daily log shall include at a minimum the following:

(A) the name and commission registration number of the waste tire facility;

(B) the physical address of the waste tire facility storage site;

(C) the total number and type of whole used or scrap tires received at the waste tire facility from PEL sites, special authorization sites and generators, listed separately;

(D) the total number and type of whole used or scrap tires processed, and the amount, by weight, of shredded tire pieces;

(E) the amount by weight of shredded tire pieces removed from the waste tire facility for storage, recycling, disposal, resale, reuse or energy recovery; and

(F) the name and signature of an authorized facility representative acknowledging the truth and accuracy of the daily log.

(3) A waste tire facility shall maintain a record of the specific location in the waste tire facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires are located upon delivery.

(4) A waste tire facility shall maintain a record of the description of specific events or occurrences at the waste tire facility relating to routine maintenance, fires, theft, spraying for vectors, or other similar events or occurrences.

(5) The facility shall maintain equipment and vehicle preventive maintenance records.

(6) The facility shall maintain the annual report required by the executive director.

(7) The facility shall maintain a log containing copies of all monthly reimbursement vouchers submitted to the executive director for reimbursement.

(8) The facility shall maintain a record of the dates and documentation of calibration by the manufacturer of the scale.

(9) The facility shall maintain a daily log of unmanifested tires listing the number and type of whole used or scrap tires received, the name of the individual or company that delivered the tires, and the date that the tires were delivered to the waste tire facility.

(10) The facility shall maintain a log containing copies of the monthly operations reports. This report shall contain the following information and shall be completely filled out each month by the waste tire facility owner or operator:

(A) the month and date that the report was completed by the waste tire facility owner or operator;

(B) the name of the waste tire facility as shown on the monthly reimbursement voucher;

(C) the mailing address and telephone number of the waste tire facility;

(D) the name of a contact person employed by the waste tire facility;

(E) the shredding operation time;

(F) the amount in weighed tire units or whole tires that were stored at or removed from the waste tire storage site for which reimbursement was requested;

(G) the amount in weighed tire units or whole tires that were stored at or removed from the waste tire storage facility for which reimbursement was not requested;

(H) the monthly and total financial assurance secured and recorded with the Texas Water Commission Financial Assurance Section;

(I) the carry-over in weighed tire units for PEL, generator, or special authorization tires shredded during that and previous months;

(J) a list of all generators whose manifests were accepted during that month;

(K) a list of all transporters that delivered whole used or scrap tires to the waste tire facility during that month;

(L) a diagram of the storage site outlining the specific tire piles and the weight of shredded tire pieces deposited in each pile during that month; and

(M) the signature of an authorized representative of the waste tire facility acknowledging that the information on the monthly operations report is true and correct.

(d) Annual report. A waste tire facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number and type of whole used or scrap tires collected, shredded, the disposition of such tires, and the amount by weight of shredded tire pieces removed from the facility and delivered to a registered waste tire storage facility, a permitted waste tire monofill, or a recycling, reuse or energy recovery facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, waste tire facility operators shall use such controls and records to satisfy commission requirements under this section upon review and approval by the executive director.

§330.851. Disposal of Whole Used or Scrap Tires.

(a) Applicability.

(1) The regulations contained in these sections establish standards applicable for the disposal of whole used or scrap tires or shredded tire pieces regulated by this subchapter.

(2) For the purpose of this section, the disposal of whole used or scrap tires or shredded tire pieces pertains to the disposition of any whole used or scrap tire or shredded tire pieces in a permitted municipal solid waste landfill, in a permitted tire monofill, in a waste tire facility designed for the recycling, reuse or energy recovery of whole used or scrap tires or shredded tire pieces, or permitted tire incinerator.

(b) Responsibility.

(1) Owners and/or operators of waste tire storage facilities containing whole used or scrap tires or shredded tire pieces shall ensure that any whole used or scrap tires or shredded tire pieces delivered to or removed from their facility are disposed of pursuant to §330.853 of this title (relating to Permit Requirements of Waste Tire Disposal Facilities).

(2) Individuals or companies that dispose of whole used or scrap tires or shredded tire pieces regulated by this subchapter shall do so only at a permitted municipal solid waste landfill, a permitted waste tire monofill, a facility engaging in recycling, reuse or energy recovery, or a permitted tire incinerator.

§330.868. Approval to Collect and Process Tires from PEL Sites.

(a) Prior to collecting and/or shredding whole used or scrap tires or tire pieces from any PEL site, a mobile tire processor or waste tire facility shall provide a clean-up plan and a time schedule for completing the clean-up of all whole used and scrap tires or tire pieces from the PEL site. Clean-up activities shall commence only after the submitted plan and schedule have been approved by the commission's district office and the provisions of §330.865 of this title (relating to Assignment of PEL Sites) have been met.

(b) If the executive director finds that any of the schedule related information described in subsection (c)(1)-(14) of this section to be unacceptable, an amended clean-up plan or time schedule shall be negotiated between the commission's district office and the waste tire facility or mobile tire processor before additional whole used or scrap tire or tire pieces are removed from the PEL site for shredding.

(c) The Site Clean-Up Plan submitted by a mobile tire processor or waste tire facility shall, at a minimum, include the following:

(1) the estimated number of whole used or scrap tires or tire pieces collected, and the shredding capacity, in either tires or pounds of shredded rubber per day, that the waste tire facility or mobile tire processor can perform at the site;

(2) the approximate number of days required to complete the site clean-up, however, if more whole used or scrap tires or tire pieces are located on the PEL site than the original number of tires used to calculate the overall project length, a correction factor may be applied, following verification and approval from the commission's district office;

(3) the date, or range of dates that work on the PEL site shall commence;

(4) the waste tire facility or mobile tire processor registration number;

(5) the name under which the waste tire facility or mobile tire processor registration number was issued;

(6) whether the waste tire facility or mobile tire processor intends to shred all the whole used or scrap tires or tire pieces on the PEL site, transport all such tires to a registered waste tire facility, or conduct the clean-up using both methods;

(7) the total number of whole used or scrap tires or tire pieces by weight from other PEL sites that, as of the date the site clean-up plan was filed, have been collected and/or shredded;

(8) the total number of whole used or scrap tires or tire pieces by weight from in-state sources other than PEL sites that, as of the date the Site Clean-Up Plan was filed, have been collected and/or shredded;

(9) the method of recycling, reuse or energy recovery planned for the whole used or scrap tires or tire pieces that are proposed to be collected and shredded by the waste tire facility or mobile tire processor;

(10) the registration number(s) of all waste tire transporters who are expected to transport whole used or scrap tires or tire pieces from the PEL site;

(11) the identification by name and registration number of any temporary waste tire storage sites proposed to be utilized for either whole used or scrap tires or tire pieces prior to shredding;

(12) a health and safety plan shall be included to identify, at a minimum, the following:

(A) how water shall be provided to the site workers while at the PEL site;

(B) a discussion of the manner in which vectors will be controlled at the PEL site;

(C) the emergency routes to the nearest hospital with a map outlining the route kept in a designated vehicle at all times;

(D) the safety or protective garments that will be provided to the PEL site workers to ensure their safety. At a minimum, gloves and back supports must be made available to the workers loading the whole used or scrap tires or tire pieces into the vehicles for transport; and

(E) rest room facilities must be provided to the PEL workers at PEL sites containing more than 50,000 tires or at PEL sites that are expected to take more than one week to complete clean-up;

(13) each load of whole used or scrap tires or tire pieces transported from a PEL site shall be manifested showing the PEL site name and identification number on the lines designated company name and registration number, respectively; and

(14) a discussion stating whether the PEL site is suspected to have tires buried or submerged on-site. The discussion will state that should the PEL site contain tires buried in the ground or tires submerged under water, then the depth that the waste tire facility or mobile tire processor will dig to retreive and remove those whole used or scrap tires or tire pieces from the site shall not be in excess of six feet.

(d) The executive director may require that because of exceptional conditions, only waste tire facilities or mobile tire processors that are willing to transport all whole used or scrap tires or tire pieces off the PEL site prior to shredding at a registered waste tire facility shall be allowed to collect and shred tires from that specific PEL site.

(e) The executive director may require that collection and shredding at a PEL site be conducted only between certain hours of the day and on certain days of the week.

§330.871. Waste Tire Recycling Fund (WTRF).

(a) Applicability. The regulations contained in these sections establish standards and procedures for the operation of the WTRF program.

(b) Responsibility.

(1) Each individual or company that operates as a mobile tire processor or waste tire facility and that is eligible to participate in the WTRF program shall be responsible for operating in compliance with the provisions of this subchapter.

(2) Each individual or company that owns or operates an illegal waste tire site or is a generator of whole used or scrap tires shall be responsible for complying with the provisions of this subchapter.

(3) The executive director requires that all whole used or scrap tires on which the $2.00 WTRF fee is assessed for the replacement tire shall be subject to the free collection and transportation of those whole used or scrap tires from the generator's place of business (authorized by the Texas Health and Safety Code Annotated, Chapter 361, §361.480 entitled Tire Collection Fee Prohibited), provided the generator is a wholesale or retail dealer of new tires.

(4) If a $2. 00 WTRF fee is assessed on a replacement tire, then the tire that was disposed of as a waste tire shall not be charged an additional disposal fee by the wholesale or retail dealer of the tire.

(5) A whole used or scrap tire that does not fit the criteria for assessment of the $2.00 WTRF fee as defined in §330.872(d) of this title (relating to WTRF Program), may still be eligible for reimbursement under the WTRF provided the whole used or scrap tire is shredded to pieces that are less than nine square inches in size.

(6) The executive director shall have the authority to limit the rate of payout from the WTRF should the WTRF become depleted, by limiting the number or weight of whole used or scrap tires or tire pieces that a waste tire facility or mobile tire processor shall be reimbursed for shredding for a specific month. The executive director shall notify the waste tire facility or mobile tire processor at least thirty days prior to the commencement of this activity.

§330.872. Waste Tire Recycling Fund (WTRF) Program.

(a) Purpose. The purpose of the WTRF is to provide a means for the shredding of all whole used or scrap tires or tire pieces within the boundaries of the State of Texas so that the material contained in the tires can be effectively reused, recycled, or used in energy recovery facilities. The methods for recycling whole used or scrap tires or tire pieces are as follows:

(1) resale of whole tires;

(2) retreading of whole tires;

(3) use of the tires or portions of the tires in the manufacture of parts or products;

(4) beneficial use of whole tires; or

(5) shredding whole tires into pieces nine square inches or less in size.

(b) Objectives. The objectives of the WTRF program are to clean-up illegal waste tire sites that contain whole used or scrap tires or tire pieces, to collect whole used or scrap tires that are generated on a daily basis prior to being deposited at an illegal waste tire site, and to aid in the development of industries and businesses that recycle, reuse or recover the energy from whole used or scrap tires or shredded tire pieces.

(c) Whole used or scrap tire category The whole used or scrap tires that have been determined by the executive director to be eligible for reimbursement within the WTRF program are categorized as follows:

(1) whole used or scrap tires or tire pieces from illegal waste tire sites and certain legal waste tire storage sites listed on the PEL;

(2) whole used or scrap tires from a generator that accumulates the whole used or scrap tires on a daily basis; and

(3) whole used or scrap tires or tire pieces from sources other than those indicated in paragraphs (1) and (2) of this subsection, as approved by the executive director. For the purposes of this subchapter, and the WTRF program, whole used or scrap tires or tire pieces in this third category shall be called special authorization tires. (For a complete explanation of special authorization tires refer to §330.878(a)-(i) of this subchapter.)

(d) A $2.00 tire fee shall be collected on each new tire sold for an automobile, van, bus, truck, trailer, semi-trailer, truck tractor and semi-trailer combination, or recreational vehicle that has a rim diameter equal to or greater than 12 inches but less than 26 inches. This fee shall be deposited into the WTRF. The monies in the WTRF shall be used to reimburse the mobile tire processors and the waste tire facilities that comply with the requirements of this subchapter for the shredding of whole used or scrap tires or tire pieces.

(e) Operation of the WTRF Program. The WTRF program shall be operated in the following manner:

(1) A mobile tire processor or waste tire facility that wishes to participate in the WTRF program shall be in compliance with the requirements of this subchapter prior to a determination by the executive director of eligibility for reimbursement from the WTRF.

(2) a mobile tire processor or waste tire facility that intends to shred whole used or scrap tires or tire pieces for reimbursement shall shred the tires or pieces to a particle size of nine square inches or less.

(3) A mobile tire processor or waste tire facility shall shred at least 25% of the monthly weight of shredded tire pieces from PEL sites.

(4) A mobile tire processor or waste tire facility shall shred at least 25% of the monthly weight of shredded tire pieces from generator sites.

(5) A mobile tire processor or waste tire facility shall shred no greater than 50% of the monthly weight of shredded tire pieces from sources that have been designated by the executive director as special authorization tires.

(6) Any remaining percentage of the monthly weight of shredded tire pieces can be obtained from the categories in paragraphs (3)-(5) of this subsection.

(7) The mobile tire processor or waste tire facility shall submit his/her reimbursement request on a payment voucher to the executive director on a monthly basis. The payment voucher form shall be supplied by the executive director.

(8) The mobile tire processor or waste tire facility shall maintain and retain all reimbursement records for a period of three years and shall make such records available to the executive director for review upon request.

(9) The mobile tire processor or waste tire facility shall be reimbursed in an amount equal $0.85 for each 18.7 pounds of weighed tire shredded by the processor during the preceding calendar month.

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 November 23, 1992.

TRD-9215634 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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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 O. State Sales and Use Tax

• 34 TAC §3.354

The Comptroller of Public Accounts adopts an amendment to §3.354, concerning debt collection services, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7196).

The first amendment is a minor change to the definition of debt collection service that was made by the 72nd Legislature, 1991.

The second change deletes from the rule the provisions of subsection (b)(3) requiring the writer of the dishonored check to be responsible for paying the cost incurred to process a dishonored check, including the sales tax due on the debt collection service. The amendment has the effect of making the person who received the dishonored check and hired a debt collector to collect the debt responsible for the sales tax on the debt collection service.

Changes to subsection (g) are being made to clarify the comptroller's policy on who is responsible for reporting tax when the customer claims the service being provided benefits locations both in Texas and out of state.

Subsection (h) was reformatted and reworked. Other minor changes were made to the section for clarification

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215572 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: December 11, 1992

Proposal publication date: October 16, 1992

For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Videotapes and Photographs

• 37 TAC §1.71

The Texas Department of Public Safety adopts an amendment to §1.71, concerning disposition of photographs, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7197).

The adoption of the amendment will ensure videotapes, photographs, or negatives are properly retained for civil and criminal litigation and other administrative uses.

The amendment revises the undesignated head, rule title, and subsections (a) and (b) by adding videotapes. Subsection (a) revises public property to agency property generally available to the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

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 November 17, 1992.

TRD-9215676 James R Wilson
Director
Texas Department of Public Safety

Effective date December 14, 1992

Proposal publication date: October 16, 1992

For further information, please call: (512) 465-2000

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Fees for Copies of Records

• 37 TAC §1.124

The Texas Department of Public Safety adopts an amendment to §1.124, concerning safety responsibility bureau fees, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7198).

The adoption of this amendment will ensure that costs for processing and searching of nonstandard records will be assessed to those utilizing the service and not be imposed to the taxpaying public

The amendment increases the fee from $1.00 to $7.00 for processing and searching nonstandard records pertaining to motor vehicle traffic accidents and/or safety responsibility cases in compliance with the Open Records Act, Texas Civil Statutes, Article 6252-17a, §9(b).

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §411 006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the department.

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 November 17, 1992.

TRD-9215675 James R. Wilson
Director
Texas Department of Public Safety

Effective date: December 14, 1992

Proposal publication date: October 16, 1992

For further information, please call: (512) 465-2000

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Control

• 37 TAC §91.69

The Texas Youth Commission (TYC) adopts an amendment to §91.69, concerning detention, without changes to the proposed section as published in the September 29, 1992, issue of the *Texas Register.*

The amendment will bring about more efficient detention hearings.

The amendment clarifies time limits for conducting a detention hearing necessary to continue detaining a youth.

No comments were received regarding adoption of the amendment.

The amendment is proposed under the Human Resources Code, §61.040, which provides the Texas Youth Commission with the authority to establish and operate places for detention.

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 November 18, 1992.

TRD-9215606 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: December 11, 1992

Proposal publication date: September 29, 1992

For further information, please call: (512) 483-5244

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TITLE 40. Social Services and Assistance

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter D. Resources

• 40 TAC §15.435

The Texas Department of Human Services (DHS) adopts an amendment to §15. 435, concerning the exclusion of retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the client, in its Medicaid Eligibility chapter.

The justification for the amendment is to comply with federal regulations published in the Federal Register/Volume 57, Number 154.

The amendment will function by excluding retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the client.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. The adopted amendment is effective August 10, 1992, to comply with federal requirements.

§15.435. Liquid Resources.

(a)-(m) (No change.)

(n) Certain cash payments for medical or social services.

(1) Cash received for medical or social services that is not countable income is not a resource for the calendar month after the month of receipt. Cash kept until the first moment of the second calendar month after its receipt becomes a countable resource at that time. This exclusion does not apply to cash reimbursement for medical or social services already paid for by the client.

(2) For one calendar month following the month of receipt, retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the client are excluded from resources deemed to the client.

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 November 23, 1992.

TRD-9215667 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: August 10, 1992

For further information, please call: (512) 450-3765

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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 of the Texas Department of Insurance, at a public hearing held at 10:30 a.m. on November 12, 1992, under Docket Number 1942, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted amendments as proposed by Roeder & Moon, Inc. in a petition filed in the Chief Clerk's Office on August 31, 1992. The petition recommended revising the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employers' Liability by 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. Based on these amendments, the upper payroll limitation would apply to those workers involved in motion picture production. Roeder & Moon, Inc.'s petition (Reference Number W-0892-56), was published in the

October 9, 1992, issue of the *Texas Register* (17 TexReg 7058).

The State Board has jurisdiction over this matter pursuant to the Insurance Code, Article 5.60 and Article 5.96.

The amendments as adopted by the State Board of Insurance are as follows: Maximum Renumeration 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.

MOTION PICTURE PRODUCTION-in studios or outside-ALL OPERATIONS UP TO THE DEVELOPMENT OF NEGATIVES and Clerical, Drivers.....9610.

The entire remuneration of all employees shall be included in computing premium, subject however to a maximum payroll amount either shown under Miscellaneous Values or filed by the insurance company.

This notification is made pursuant to the Texas Insurance Code, Article 5. 96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Consistent with Texas Insurance Code, Article 5.96(h), prior to the effective date, December 12, 1992, of this action, the board will notify all insurers writing workers' compensation insurance.

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 November 23, 1992.

TRD-9215640 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: December 12, 1992

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-6327

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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 at the Office of the Secretary of State in lobby of 221 East 11th Street, 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 on Aging

Wednesday, December 2, 1992, 2:30 p.m. The Finance Committee and Internal Audit Subcommittee of the Texas Board on Aging of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of the minutes of November 12, 1992 finance committee meeting; internal audit subcommittee business to include: discuss approval of minutes of the November 12, 1992 internal audit subcommittee meeting; consider possible revisions to recommendations and/or timelines on personnel internal audit and recommend to finance committee; update on other prior internal audits and report to finance committee; adjourn; review internal audit subcommittee report to include: report on status of personnel internal audit and recommend to board; update on all other prior internal audits and report to board; report on framework for request for proposals to area agency on aging network for use of housing bond fees to present to board; review alternatives and make recommendation to board for accomplishing the legal assistance component of the Health Care Financing Administration grant; report on monthly operating expenditures for presentation to board; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: November 23, 1992, 2:19 p.m.

TRD-9215698

Thursday, December 3, 1992, 9:30 a.m. The Citizens Advisory Council of the Texas Board on Aging of the Texas Department on Aging will meet at the Wyndham Austin Hotel at Southpark, South IH-35 at Ben White, Wyndham Room C, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of the November 12, 1992 board minutes; call Citizens Advisory Council (CAC) to order; discuss approval of the September 23, 1992 CAC minutes; hear public testimony; act on nominations to CAC to fill unexpired term from Lower Rio Grande Valley Region; indirect costs study; revised service standards; model request for proposals (RFPs); contracts for Area Agencies on Aging's (AAA's) contractors, TDoA/AAA contract; standards for designation of planning and service areas; formula to allocate Title III "F" funds; recommendation for accomplishing legal assistance component of Health Care Financing Administration grant; revisions to recommendations/timelines on personnel internal audit; reports on administrative streamlining; client information system and automated information system steering committee; fixed route and demand response transportation systems' reporting and service delivery; framework for RFPs to AAAs for use of housing bond fees; monthly operating expenditures; audit updates; TDoA Legislative Advocacy Plan; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: November 23, 1992, 2:12 p.m.

TRD-9215697

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Texas Department of Agriculture

Tuesday, December 1, 1992, 10:30 a.m. The Texas Sheep and Goat Raisers Commodity Board of the Texas Department of Agriculture will meet at the Texas Sheep and Goat Raisers Association, 233 West Twohig, San Angelo. According to the complete agenda, the board will administer oath of office; discuss and act on: terms of office; election of officers; selection of name for the board; setting rate of assessment and procedure for collection; selection of bank for deposit of assessments collected and process for disbursement of funds; discuss TDA policies; discuss and act on employment of personnel; reimbursement of election costs; establishment of by-laws; other legal board requirements; advisory committees; and discuss other business.

Contact: Sandy Whittley, P.O. Box 2290, San Angelo, Texas 76902, (915) 655-7388.

Filed: November 23, 1992, 4:49 p.m.

TRD-9215727

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Tuesday, December 1, 1992, 7 p.m. The Southern Rolling Plains Cotton Producers Board of the Texas Department of Agriculture will meet at the Miles Co-op Gin, FM 1692, 1 1/2 miles Northwest of Miles, Miles. According to the complete agenda, the board will call the meeting to order; establish quorum of directors present to reading and approval of minutes of prior meeting and/or meetings; treasurer's report; presentation of bills, and approval of the same-list or income and expenses; report of activities by board reporter; committee reports; reports from special guests with discussion and action on proposals; discuss old business; discuss and act on combined growers meeting with Runnels County Ag Day activities; discuss new business; discuss and act on Boll Weevil Eradication update; inactive status of producers board; priorities for State Support Committee; and establish an agenda for the next meeting.

Contact: Sid Long, P.O. Box 30036, San Angelo, Texas 76903, (915) 453-2383.

Filed: November 20, 1992, 4:28 p.m.

TRD-9215624

Wednesday, December 2, 1992, 8 a.m. The Texas Wheat Producers Board of the Texas Department of Agriculture will meet at the Harvey Hotel, 3200 I-40 West, San Jacinto Room, Amarillo. According to the agenda summary, the board will call the meeting to order; discuss and act on minutes of August meeting; report from TDA; financial report; collections and refund report and projections; quarterly activity report; USWA Executive Committee meeting; USWA Long Range Planning Committee; wheat food council directors meeting; 1993 board election; and set next meeting date; presentation of board-directed annual salary review and related information; activity reports; meet in executive session to discuss individual employee salaries, held in accordance with Texas Civil Statutes Annotated, Article 6252-17, §2(g); act on employee salaries; and discuss new business from board members.

Contact: Bill Nelson, Texas Commerce Bank, 2201 Civic Circle, Suite 803, Amarillo, Texas 79109, (806) 352-2191.

Filed: November 20, 1992, 4:29 p.m.

TRD-9215625

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Texas Council on Alzheimer's Disease and Related Disorders

Wednesday, December 2, 1992, 9:45 a.m. The Texas Council on Alzheimer's Disease and Related Disorders will meet at 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the council will hear opening remarks; recognize council appointments; discuss approval of the minutes of previous meeting; discuss and possibly act on: legislative update; Texas Department of Health's sick pool policies and Alzheimer's program watts line; report on the study of special care units for nursing facility residents with cognitive impairment; nursing home standards and reimbursement task force; and hear council input.

Contact: Veronda L. Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: November 19, 1992

TRD-9215540

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Texas Commission for the Blind

Friday, December 4, 1992, 10:30 a.m. The Governing Board of the Texas Commission for the Blind will meet at the Holiday Inn Riverwalk North, 110 Lexington Avenue, San Antonio. According to the complete agenda, the board will make introductions; discuss approval of minutes for August 14, 1992, and September 9, 1992; discuss executive director's year-end report; approval of capital purchases; approval of fiscal year 1993 internal audit plan; meet in executive session pursuant to Article 6252-17, §2(e) and §2(g), Vernon's Annotated Civil Statutes to discuss personnel and pending legal matters; and discuss appointment of executive director for fiscal year 1993.

Contact: Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: November 23, 1992, 2:19 p.m.

TRD-9215699

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Texas Bond Review Board

Tuesday, December 1, 1992, 1 p.m. The Texas Bond Review Board will meet at the Sam Houston Building, Room 710, 201 East 14th Street, Austin. According to the complete agenda, the board will call the meeting to order; announcement of executive session to review applicants for executive director position; consideration of interim executive director; announcement of interim executive director; and adjourn.

Contact: Tom K. Pollard, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: November 23, 1992, 3:43 p.m.

TRD-9215703

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Texas Catastrophe Property Insurance Association

Tuesday, December 8, 1992, 8:30 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will meet at the TCPIA All Purpose Room, 2801 South Interregional, Austin. According to the complete agenda, the board will call the meeting to order (reading of antitrust agreement); discuss approval of the minutes of the September 11, 1992 board of directors meeting; report of the: chairman of the board; secretary/treasurer; manager; underwriting director; counsel; Insurance Information Institute; executive committee; underwriting committee; reinsurance committee; participation committee; claims committee; First City fee schedule-presentation; standard building code-presentation; actuary opinion on reserves; close out of old years; TCPIA depopulation plan; 1993 PIPSO subscribers fee; unbudgeted cash expenses; TDI building code committee; discuss any other business that may come before the board; date and location of next meeting; and adjourn.

Contact: Frank R. "Buddy" Rogers, 2801 South IH-35, Austin, Texas 78741, (512) 444-9612.

Filed: November 20, 1992, 10:20 a.m.

TRD-9215580

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Texas Department of Commerce

Tuesday, December 1, 1992, 9 a.m. The Texas Partnership for Economic Development of the Texas Department of Commerce will meet at 816 Congress Avenue, 11th Floor Board Room, Austin. According to the complete agenda, the department will discuss approval of adoption of minutes; subcommittee reports (capital formation, transportation, education/research and development, telecommunications); break; discuss progress, timelines and set next meeting date. (Note: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or who need assistance in having English translated into Spanish, should contact Maria Tissing, (512) 320-9685, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Maria Tissing, P.O. Box 12728, Austin, Texas 78711, (512) 320-9685.

Filed: November 23, 1992, 4:32 p.m.

TRD-9215726

Friday, December 4, 1992, 9 a.m. The State Job Training Coordinating Council Executive Committee of the Texas Department of Commerce will meet at the Omni Hotel, 700 San Jacinto Boulevard, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comment; make introductions; opening remarks; update from committees on council activity; report from the Smart Jobs Task Force; act on SJTCC comments on proposed JTPA regulations; discuss future direction and role of SJTCC; and adjourn. (Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or who need assistance in having English translated into Spanish, should contact Kevin Faulkner (512) 320-9885, TDD-(512) 320-9798 or Relay Texas (800) 735-2988 at least two days before this meeting so that appropriate arrangements can be made).

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: November 24, 1992, 9:50 a.m.

TRD-9215733

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Texas Education Agency

Wednesday, December 9, 1992, 9 a.m. The Texas Vocational and Applied Technology Education Committee of Practitioners of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 1-109, Austin. According to the complete agenda, the purpose of this meeting is to review and make recommendations on the core standards and measures of performance for vocational and applied technology education as required by Public Law 101-392, Carl D. Perkins Vocational and Applied Technology Education Act. The committee recommendations will be submitted to the State Board for Vocational Education (State Board of Education) at the January 1993, meeting. This is a collaborative effort between the Texas Education Agency and the Texas Higher Education Coordinating Board. In public schools, the core standards and measures of performance will address the quality of programs for secondary students enrolled in vocational and applied technology education and for adults enrolled in training programs under the jurisdiction of the local education agency. In postsecondary institutions, the core standards and measures of performance will address the quality of postsecondary and adult vocational and applied technology education programs.

Contact: R. D. Bristow, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9311.

Filed: November 20, 1992, 3:30 p.m.

TRD-9215616

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Interagency Council for Genetic Services

Friday, December 4, 1992, 8:30 a.m. The Texas Genetics Network Advisory Committee of the Interagency Council for Genetic Services will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will hear public comments; discuss approval of the minutes of September 17, 1992, meeting; and discuss and possibly act on report from Interagency Council for Genetic Services concerning Texas Department of Health contractor activity briefs including University of Texas Health Science Center at San Antonio, University of Texas Health Science Center at Houston, Texas Tech University Health Science Center, Center for Genetic Services, University of Texas Southwestern Medical Center at Dallas, Baylor College of Medicine, University of Texas Medical Branch in Galveston, and Scott and White Hospital; subcommittee reports on education, quality assurance, genetic services, data collection, ethics; reports from state agencies and other representatives on council concerning their activities; Ad Hoc Committee future and organization of genetics in Texas; by-laws changes; budget status; grant objectives; member and committee assignments; and hear announcements and comments not requiring council action.

Contact: Bill Moore, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D. D., (512) 458-7708 at least two days prior to the meeting.

Filed: November 19, 1992, 11:12 a.m.

TRD-9215539

Friday, December 4, 1992, 1 p.m. The Interagency Council for Genetic Services will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will hear public comments; discuss approval of the minutes of September 17, 1992, meeting; and discuss and possibly act on advisory committee report; activities and future plans (regarding reorganization of Texas Department of Health under House Bill 7 (HB7), reorganization of Texas Department of Mental Health and Mental Retardation under HB7 and progress on screening of state school residents, reorganization of Texas Department of Human Services under HB7, and University of Texas system); budget status; future functions, structure and activities of council; legislative mandates; council member assignments; and hear announcements and comments not requiring council action.

Contact: Bill Moore, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D. D., (512) 458-7708 at least two days prior to the meeting.

Filed: November 19, 1992, 11:12 a.m.

TRD-9215538

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Texas Department of Health

Tuesday, December 1, 1992, 10:30 a.m. The Hospital Data Advisory Committee New Member Orientation of the Texas Department of Health will meet in Room M-618, 1100 West 49th Street, Austin. According to the complete agenda, the committee will introduce committee members; discuss and review department and Bureau of State Health Data and Policy Analysis; statutory charge to the committee concerning function and responsibility; activities of bureau and Hospital Data Advisory Committee, including data collection, financial and utilization data and discharge abstract data; bylaws; and travel reimbursement policy and procedures.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1992, 11:08 a.m.

TRD-9215680

Tuesday, December 1, 1992, 1:30 p.m. The Hospital Data Advisory Committee of the Texas Department of Health will meet in Room M-653, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of previous meeting; and discuss and possibly act on legislative activities update; 1992 cooperative Texas Department of Health, American Hospital Association, and Texas Hospital Association annual survey of hospitals; hospital discharge data analysis; changes in bylaws; and election of officers.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1992, 11:09 a.m.

TRD-9215681

Friday, December 4, 1992, 9:30 a.m. The Texas Emergency Medical Services Advisory Council of the Texas Department of Health will meet at the Radisson Hotel-Town Lake, 111 East First Street, Austin. According to the complete agenda, the council (TEMSAC) will hear opening remarks; discuss approval of the minutes of previous meeting; and discuss and possibly act on chairman's report; report of chief of Bureau of Emergency Management; committee reports on providers, education, public information and education, medical directors, and accreditation; and hear announcements and comments.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1992, 11:09 a.m.

TRD-9215682

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Texas Hospital Equipment Financing Council

Monday, November 30, 1992, 11 a.m. The Texas Hospital Equipment Financing Council will meet at the Texas State Treasury, 200 East 10th Street, Room 212, Austin. According to the complete agenda, the council will discuss approval of minutes; status of annual report and audit status; discuss and possibly accept final terms of standby purchase agreement with FUJI Bank, Limited; hold discuss on regarding costs for THEFC seal; responses to request for proposal for a GIC and possibly accept proposal(s); and discuss possible agenda items for the next meeting.

Contact: Rose-Michel Munguia, 200 East 10th Street, #309, Austin, Texas 78701, (512) 463-5971.

Filed: November 19, 1992, 3:37 p.m.

TRD-9215565

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House of Representatives

Wednesday, December 2, 1992, 10 a.m. The Texas Veteran's Memorial Committee of the House of Representatives will meet at the John H. Reagan Building, Room 101, 105 West 15th Street, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; status on Veteran's Memorial project; and adjourn.

Contact: Representative Frank Collazo's Office, Susan Trahan or Arlene Pace, P.O. Box 2910, Austin, Texas 78769, (512) 463-0850.

Filed: November 18, 1992, 4:30 p.m.

TRD-9215530

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Texas Department of Housing and Community Affairs

Monday, November 30, 1992, 11 a.m. The Program Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; discuss compliance and monitoring program update; consider Resolution Trust Corporation contract for compliance and monitoring; Resolution Trust Corporation Sale Program to public agencies; income adjustments on multifamily program; tax exempt and taxable multifamily rules; policy discussion on refunding/restructuring of any multifamily properties; proposed refunding on multifamily bond issues for Colorado Club, Remington Hill, and High Point; policy of eligible receipients for Home Improvement Loan Program; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meetings so that appropriate arrangements can be made.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3932.

Filed: November 20, 1992, 1:17 p.m.

TRD-9215599

Wednesday, December 2, 1992, 2 p.m. The Ad Hoc Income Tax Credit Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; discuss low income tax credit applications; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meetings so that appropriate arrangements can be made.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3932.

Filed: November 20, 1992, 1:16 p.m.

TRD-9215598

Monday, December 7, 1992, 9:30 a.m. Audit Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; discuss report from internal audit regarding audit activities for fiscal year 1992, as required by Senate Bill 3, §9.02, 72nd Legislature, First Called Session; compliance monitoring and quality control; status of statewide and external audits in progress; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meetings so that appropriate arrangements can be made.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3932.

Filed: November 20, 1992, 1:17 p.m.

TRD-9215600

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Texas Department of Insurance

Tuesday, December 1, 1992, 10 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public meeting for the purpose of concurrently reconvening Docket Numbers 1945, 1946 and 1947 to consider prehearing matters including, but not limited to, consideration of the Texas Automobile Insurance Service Office's (TAISO's) admission as a party and any other matters that may aid in the simplification of issues.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 19, 1992, 2:01 p.m.

TRD-9215555

Wednesday, December 2, 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 the request by Bruco, Inc. for a hearing on calculation of experience modifiers applicable to workers' compensation insurance. Docket Number 1957.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 23, 1992, 3:45 p.m.

TRD-9215708

Wednesday, December 2, 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 the order creating state of supervision, appointment of supervisor and notice of hearing on First Fidelity Life Insurance Company. Docket Number 11603.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 23, 1992, 3:45 p.m.

TRD-9215710

Thursday, December 3, 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 Patrick H. Parsons who holds a Group I, Legal Reserve Life Insurance Agent's license, Local Re-

cording Agent's License and Variable Contract Agent's license. Docket Number 11586.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 23, 1992, 3:45 p.m.

TRD-9215709

Thursday, December 3, 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 the application for reinstatement with amendments of the articles of incorporation of West Texas Fidelity Life Insurance Company, Waco, changing the name of company, changing the home office of the company, rewriting the purpose clause of the company, increasing the authorized capital stock, pertaining to cumulative voting, naming the directors and pertaining to director liability.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 23, 1992, 3:44 p.m.

TRD-9215707

Wednesday, December 3, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; solvency; litigation; budget; staff reports; commissioner's orders; consider filings by United Community Insurance Company, Great American Insurance Company, Millers' Mutual Insurance Association of Illinois, North American Specialty Insurance Company, and Gerling America Insurance Company; consider Texas Medical Liability Insurance Underwriting Association Servicing Contract for 1993; consider property insurance dividend application of Pacific Employers Insurance Company; consider excess of loss filings; consider workers' compensation negotiated deductible filings by Petroleum Casualty Company, Aetna Life and Casualty, Credit General Insurance Company of Texas, and Colonial Casualty Insurance Company; consider clarification of and possible amendment of Board Order 59678 which pertains to Aetna Casualty and Surety negotiated deductible; consider request by the Travelers Indemnity Company of Rhode Island and the Travelers Insurance Company requesting transfer of appointment as designated insurer.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 20, 1992, 3:49 p.m.

TRD-9215618

Tuesday, January 5, 1993, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1959 to consider the appeal from Commissioner's Orders Number 92-0838 and 92-1005 in the matter of David E. Quintanilla.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 19, 1992, 2:01 p.m.

TRD-9215558

Wednesday, January 6, 1993, 11 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1960 to consider adoption of amendatory endorsements for homeowners, dwelling, farm and ranch and farm and ranch owners policies to prohibit the refusal to renew such policies based on the condition of the premises unless there is a change in the condition(s) of the premises, the insurer has notified the insured of the condition and provided the insured adequate time to correct the condition.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 19, 1992, 2:01 p.m.

TRD-9215557

Thursday, January 7, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1961 to consider possible adoption of manual rules and endorsements to govern the writing of large deductibles for residential property.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 19, 1992, 2:01 p.m.

TRD-9215556

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Judicial Districts Board

Thursday, December 10, 1992, 10 a.m. The Judicial Districts Board will meet at Rooms 206-207, Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the board will review duties; discuss recent United States Supreme Court decisions regarding the methods of selection of judges; and consider matters pertaining to the redistricting of judicial districts pursuant to Article 5, §7a, of the Texas Constitution.

Contact: C. Raymond Judice, 1414 Colorado Street, Austin, Texas 78711, (512) 463-1625.

Filed: November 20, 1992, 10:07 a.m.

TRD-9215577

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Texas Department of Licensing and Regulation

Thursday, December 10, 1992, 9 a.m. The Inspections and Investigation; Talent Agencies of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Lee Peterson doing business as Independent Casting Agent for violation of Vernon's Texas Civil Statutes, Articles 5221a-9, Texas Civil Statutes; 16 TAC §78.20(a) and §78.40(a), business and commerce code, Chapter 17 and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: November 23, 1992, 4:17 p.m.

TRD-9215711

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Texas Council on Offenders with Mental Impairments

Friday, December 4, 1992, noon. The Texas Council on Offenders with Mental Impairments will meet at 1033 La Posada, Texas Commission on Law Enforcement Officer Standards, Austin. According to the complete agenda, the council will call the meeting to order; hear introductions; hear public comments; discuss approval of minutes of previous meeting; approval of biennial report; hear committee reports; select nominating committee; hear executive director's report; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406.

Filed: November 20, 1992, 10:21 a.m.

TRD-9215581

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Texas Board of Licensure for Nursing Home Administrators

Friday, November 20, 1992, noon. (Rescheduled from November 20, 1992, 10 a.m.). The Texas Board of Licensure for Nursing Home Administrators met at the Holiday Inn, 6911 North IH-35, Austin. According to the emergency revised agenda summary, the board called the meeting to order; took roll call; agenda approval; may have approved minutes; heard committee reports; received public comment; final vote on public comment rules; final vote on application rules; final vote on $10 fee for continuing education sponsors; discussed and possibly took action on implementing the NAB exam; discussed and possibly took action on increasing continuing education requirements to forty hours every two years; action on a notification policy; discussed increasing the partial endorsement fee; set next meeting date; and adjourn. The emergency status was necessary as four board members were unable to make originally scheduled time, and without these members there would be no quorum.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 445-2505.

Filed: November 19, 1992, 4:55 p.m.

TRD-9215568

Tuesday, December 8, 1992, 8 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Chris Cole Building Auditorium, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the board will conduct a public hearing to receive comments regarding the proposed rule amendment to 22 TAC §245.1. Persons with disabilities who have special needs who are planning to attend the meeting should contact the TBLNHA office at (512) 458-1955.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: November 23, 1992, 4:19 p.m.

TRD-9215715

Tuesday, December 8, 1992, 9 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Chris Cole Building Auditorium, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the board will conduct a public hearing to receive comments regarding the proposed rule amendment to 22 TAC §247.4(e). Persons with disabilities who have special needs who are planning to attend the meeting should contact the TBLNHA office at (512) 458-1955.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: November 23, 1992, 4:19 p.m.

TRD-9215716

Tuesday, December 8, 1992, 10 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Chris Cole Building Auditorium, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the board will conduct a public hearing to receive comments regarding the proposed rule to 22 TAC §249.5. Persons with disabilities who have special needs who are planning to attend the meeting should contact the TBLNHA office at (512) 458-1955.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: November 23, 1992, 4:19 p.m.

TRD-9215717

Tuesday, December 8, 1992, 1 p.m. The Education Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 210, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; discuss approval of agenda; discuss the proposed rule for increasing the CE hours to 40 every two years; discuss public hearing on NAB rule; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: November 23, 1992, 4:19 p.m.

TRD-9215713

Tuesday, December 8, 1992, 2:30 p.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Chris Cole Building Auditorium, 4800 North Lamar Boulevard, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of agenda; education committee report; discuss and possibly take action on proposed amendment to Rule 247.4(e); final vote on public comment rules; final vote on application rules; final vote on $10 fee for continuing education sponsors; set next meeting date; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: November 23, 1992, 4:19 p.m.

TRD-9215714

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State Pension Review Board

Tuesday, December 8, 1992, 10 a.m. The State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, PRB Conference Room, Fourth Floor, Room 406, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; discuss reading and adoption of minutes of previous meeting; executive director's report; discuss and possibly act on concerning legislation regarding voluntary contribution money; discuss and possibly act on Port Arthur actuarial status; elect officers (chairman and vice-chairman) for calendar year 1993; discuss old business; make announcements and invitation for audience participation; annouce next meeting; and adjourn.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: November 20, 1992, 10:07 a.m.

TRD-9215578

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Texas State Board of Physical Therapy Examiners

Sunday, December 6, 1992, 7 p.m. The Education Committee of the Texas State Board of Physical Therapy Examiners will meet at the Wyndham Southpark, 4140 Governor's Row, Austin. According to the complete agenda, the committee will discuss board's criteria for board-approved foreign-trained education credentialing entities.

Contact: Sherry L. Lee, 3001 South Lamar Boulevard, #101, Austin, Texas 78704, (512) 443-8202.

Filed: November 24, 1992, 9:08 a.m.

TRD-9215731

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Public Finance Authority

Friday, November 20, 1992, 1 p.m. The Board of the Public Finance Authority met at the Red Lion Hotel, Salon F, G and H, IH-35 at U.S. 290 East, Austin. According to the emergency revised agenda summary, the board called the meeting to order; discussed possible approval of minutes; considered a resolution authorizing the issuance of bonds to refund certain previously issued bonds and to finance projects for the Texas Parks and Wildlife Department, the execution and delivery of the bonds and resolving related matters; considered a resolution authorizing the issuance of bonds to refinance projects for the Texas National Research Laboratory Commission through refunding bonds of the Public Finance Authority, the execution and delivery of documents in connection therewith, and the taking action

to effect the sale and delivery of the bonds and resolving related matters; considered a resolution establishing a program to provide funds for the acquisition of projects by various agencies of the State of Texas; authorizing the issuance of commercial paper notes and a promissory note to a liquidity agent, in order to finance or refinance projects and renew, refinance or refund the commercial paper notes, the execution and delivery of documents in connection therewith, and the taking of action to effect the sale and delivery of the note and resolving related matters; considered adoption of new and/or amended rules for the master lease purchase program; considered hiring bond counsel for the TDMHMR-TDCJ financing; considered a resolution to retain Anne L. Schwartz as General Counsel and Interim Executive director; considered setting a date for next board meeting and other business; and adjourned. The emergency status was necessary due to the calling of an emergency City Council meeting the previously reserved City Council Chambers were not available to the board for this meeting.

Contact: Teresa McCleary, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: November 20, 1992, 8:04 a.m.

TRD-9215569

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Public Utility Commission of Texas

Tuesday, December 1, 1992, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the agenda summary, the commission will consider the interest rates for 1993 and the following dockets: 10909, 11206, 11236, 11243, 11352, 11245, 10495, 11353, 11502, 10787, 10019, 11227, P-11448, P-11543, P-10990, P-11143, and 9305. The commissioners will also set the adjustment of the new assessment percentages for the funding of the intrastate portion of Relay Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1992, 4:29 p.m.

TRD-9215725

Tuesday, December 1, 1992, 9:05 a.m. The Administrative Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the agenda summary, the division will discuss reports; discuss and act on budget and fiscal matters including approval of a resolution to participate in the Texas Public Finance Authority's master equipment lease financing program; presentation of monthly financial statements; procedures for FO and administrative meetings; discuss amendment to PUC Policy Number Two concerning hiring of economic and regulatory policy division director and staff; discuss staff development of an IRP rule; approval of dates and questions for publication concerning IRP regional hearings; approval of questions for publication concerning renewable energy resources; and regulatory flexibility for electric coops and small LECs including telephone coops; status report on 5-state audit of SWB; adjournment 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: November 23, 1992, 4:28 p.m.

TRD-9215724

Tuesday, December 1, 1992, 1:30 p.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 11588-application of Contel of Texas, Inc. to revise tariff, to provide for the concurrence with the Maximizer 800 Service Offering in the Southwestern Bell Wide Area Telecommunications Service (WATS) tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1992, 4:25 p.m.

TRD-9215719

Wednesday, December 2, 1992, 9 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 10832-Houston Lighting and Power Company standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities, pursuant to Substantive Rule 23.66(h)(3).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1992, 4:26 p.m.

TRD-9215720

Wednesday, December 2, 1992, 9 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 11574-complaint of William H. Todd against Sam Houston Electric Cooperative, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 1992, 2:55 p.m.

TRD-9215564

Thursday, December 3, 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 11534-application of Untied Telephone Company of Texas, Inc. to offer billed number service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1992, 4:24 p.m.

TRD-9215718

Monday, December 14, 1992, 9 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 hearing on the merits in Docket Number 11371-petition of Central Power and Light Company for authority to implement an economic development rider.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 1992, 2:55 p.m.

TRD-9215563

Wednesday, January 27, 1993, 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 hearing on the merits in Docket Number 11538-petition of Sam Houston Electric Cooperative, Inc. to change its economic development service schedule.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 20, 1992, 3:25 p.m.

TRD-9215615

Wednesday, March 3, 1993, 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 11292-application of Entergy Corporation and Gulf States Utilities Company for sale, transfer, or merger.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 20, 1992, 3:25 p.m.

TRD-9215614

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Texas Rehabilitation Commission

Wednesday, December 2, 1992, 1 p.m. The Board of the Texas Rehabilitation Commission will meet at the Brown-Heatly Building, Public Hearing Room, First Floor, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the board will take roll call; introduce guests; give invocation; discuss approval of minutes of board meeting of September 24-25, 1992; commissioner's comments; update on disability determination services; update on DDS compliance audit pilot project; independent audit status (Article V, Section 32); board member signatures on legislative appropriations request transmittal letter; approval of achievement bonus; meet in executive session to review of potential litigation; personnel practices; and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and management audit. (These subjects will be discussed in Executive Session pursuant to Sections 2(e), 2(g), and 2(r), Open Meetings Act (Article 6252-17, Vernon's Texas Civil Statutes. Board delegates approval to the Commissioner to take action on matters pertaining to the federal/state relationship with the Social Security Administration which would serve the best interests of the commission).

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4004.

Filed: November 20, 1992, 1:57 p.m.

TRD-9215608

Wednesday, December 2, 1992, 1 p.m. The Board of the Texas Rehabilitation Commission will meet at the Brown-Heatly Building, Public Hearing Room, First Floor, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the board will take roll call; introduce guests; hear commissioner's comments; continuation of board agenda of December 2, 1992; meet in executive session to review potential litigation; personnel practices; and staff presentations involving the Texas Rehabilitation Commission; disability determination services and management audit. These subjects will be discussed in Executive Session pursuant to Sections 2(e), 2(g), and 2(r), Open Meetings Act (Article 6252-17, Vernon's Texas Civil Statutes).

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4004.

Filed: November 20, 1992, 1:57 p.m.

TRD-9215610

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Center for Rural Health Initiatives

Wednesday, December 2, 1992, 1:30 p.m. The Executive Committee of the Center for Rural Health Initiatives will meet at the First National Bank Community Room, 307 North Mason Street, Bowie. According to the complete agenda, the committee will discuss CRHI staffing; Rural Health Clinic contract approvals; Legislative Report Development; and Advisory Committee reports.

Contact: Laura Jordan, 211 East Seventh Street, #915, Austin, Texas 78767, (512) 479-8891.

Filed: November 20, 1992, 8:14 a.m.

TRD-9215570

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Texas Savings and Loan Department

Monday, December 7, 1992, 10 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408 (State Office of Administration Hearings), Austin. According to the agenda summary, the department will hold a hearing to accumulate a record of evidence in regard to the application of First American Savings Banc, A Savings Association, Bedford, Tarrant County, to relocate a branch office from 8555 Airport Freeway, North Richland Hills, to 6940 North East Loop 820, North Richland Hills, from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1350.

Filed: November 23, 1992, 3:34 p.m.

TRD-9215701

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School Land Board

Tuesday, December 1, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the complete agenda, the board will discuss approval of previous board minutes; Giddings Field, Fayette County; Giddings (Austin Chalk-3) Field, Fayette County; Ellie C. (Wilcox) Field, Duval County; Wildcat Field, Colorado County; applications to lease highway rights of way for oil and gas, Jackson County; consideration of telephone line easement from the Adjutant General's Department to Southwestern Bell Telephone, Travis County; consideration of a resolution to partially dissolve the El Paso County Lower Valley Water District pursuant to Acts 1989, 71st Legislature, Chapter 573, S.$, as amended by Acts 1991, 72nd Legislature, Chapter 597, S.111, in order to remove all or a portion of Permanent School Fund land included in such district; consideration of a resolution to partially dissolve the El Paso County Water Authority pursuant to Acts 1989, 71st Legislature, Chapter 573, S.4, as amended by Acts 1991, 72nd Legislature, Chapter 597, S.111, in order to remove all or a portion of Permanent School Fund land included in such district; Coastal public lands-commercial lease amendment, Clear Lake, Harris County; commercial lease assignments, St. Tr. 3, Sabine Pass, Jefferson County; report on status of B. Miller mitigation proposal and pending coastal easement application, Laguna Madre, Cameron County; coastal public lands-lease applications, Galveston Bay, Harris County, and Hynes Bay, Refugio County; easement applications, Oyster Bay, Brazoria County; Laguna Madre, Cameron County; East Matagorda Bay, Galveston County; Copano Bay, Aransas County, and Tres Palacios Bay, Matogorda County; structure permit renewals, Laguna Madre, Kenedy County; Christmas Bay, Brazoria County; Laguna Madre, Kleberg County; Guyton Cut, Brazoria County; and Titlum Tatlum, Brazoria County; and meet in executive session to discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: November 23, 1992, 4:18 p.m.

TRD-9215712

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Senate Interim Committee on State Affairs Subcommittee on Workforce Development

Thursday, December 10, 1992, 9 a.m. The Senate Interim Committee on State Affairs Subcommittee on Workforce Development will meet at the State Capitol-House Chamber, Austin. According to the complete agenda, the committee will call the meeting to order; public testimony will be heard on recommendations contained in the staff report to the Subcommittee on Workforce Development. The report, "A Quality Workforce: The Premier Chip In A High Stakes Game," is available at the committee office, Room 904, Sam Houston Building; and adjourn.

Contact: Joe Gagen, P.O. Box 12068, Austin, Texas 78711, (512) 463-0380.

Filed: November 20, 1992, 9:49 a.m.

TRD-9215573

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Interagency Council on Sex Offender Treatment

Friday, December 11, 1992, 9 a.m. The Board of the Interagency Council on Sex Offender Treatment will meet at the Texas Juvenile Probation Commission, 2015 South IH-35, Austin. According to the complete agenda, the board will hear public comment on Proposed Registry Criteria from 9-11 a.m.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711-2546, (512) 464-1314.

Filed: November 23, 1992, 10:14 a.m.

TRD-9215674

Friday, December 11, 1992, 11 a.m. The Board of the Interagency Council on Sex Offender Treatment will meet at the Texas Juvenile Probation Commission, 2015 South IH-35, Austin. According to the complete agenda, the board chair-Judy Briscoe will convene meeting; discuss adoption of minutes; hear executive director's report; discuss Registry Criteria changes; discuss Senate study on Penile Plethysmograph; standards of care; hear public comment; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711-2546, (512) 454-1314.

Filed: November 23, 1992, 10:13 a.m.

TRD-9215673

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Sunset Advisory Commission

Tuesday, November 24, 1992, 9 a.m. (Rescheduled from November 18, 1992) The Sunset Advisory Commission met at the House Chamber, State Capitol Building, Austin. According to the emergency revised complete agenda, the commission called the meeting to order; took testimony from the Health Care Licensing Agencies from the November 19th and 20th public hearing; presented staff reports and public testimony for the Texas Department of Insurance/Office of Public Insurance Counsel; and proposed next meeting date on December 10 and 11. The emergency status was necessary due to unexpected length of special session caused postponement of meeting.

Contact: Susan Kinney, Room 305, Reagan Building, 105 West 15th Street, Austin, Texas 78701, (512) 463-1300.

Filed: November 20, 1992, 3:50 p.m.

TRD-9215619

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Board of Tax Professional Examiners

Wednesday, December 16, 1992, 2:30 p.m. The Board of Tax Professional Examiners will meet at the Joe C. Thompson Center, Room 2-120, 26th and Red River Streets, Austin. According to the agenda summary, the board will take roll call; notice and quorum; introduction of guests; discuss approval of minutes of August 17, 1992 meeting; action items include certification and recertification; proposal for rule changes regarding classification prior to 1983; discussion items include privatization of property tax education and revision board rules on certification requirements and education; professional standards committee report; requests for appropriations for 1994-1995; information items included are registrant population and classifications; budget hearings and status of special session; discuss planning calendar; hear public comment; and adjourn.

Contact: Sam H. Smith, 4301 Westbank Drive, Austin, Texas 78746-6565, (512) 329-7982.

Filed: November 23, 1992, 1:58 p.m.

TRD-9215687

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Texas Southern University

Tuesday, December 1, 1992, 4 p.m. The Finance Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee will consider matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 23, 1992, 2 p.m.

TRD-9215690

Tuesday, December 1, 1992, 5 p.m. The Personnel and Academic Affairs Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee will consider reports on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 23, 1992, 2:01 p.m.

TRD-9215691

Friday, December 4, 1992, 8:30 a.m. The Board of Regents of Texas Southern University will meet at Texas Southern University, University Library, Fifth Floor, Houston. According to the complete agenda, the board will meet to consider minutes; report of the president; report from standing committees; and meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: November 23, 1992, 2:01 p.m.

TRD-9215692

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Texas Department of Transportation

Wednesday, December 2, 1992, 9 a.m. The Motor Vehicle Board of the Texas Department of Transportation will meet at 815 Brazos Street, Suite 302 (Brazos Building), Austin. According to the agenda summary, the board will call the meeting to order; take roll call; discuss approval of minutes of Texas Motor Vehicle Commission meeting on August 5, 1992; elect vice-chairman of Motor Vehicle Board; discuss argument on proposal for decision; argument on motions for rehearing in Lemon Law cases; agreed orders; orders of dismissal-licensing and enforcement; and other: staff recognition; report by division director concerning consolidation of Texas Motor Vehicle Commission with Texas Department of Transportation; review of litigation status report; review of consumer complaint recap report including decisions made by examiners, division director, and board; and adjourn.

Contact: Russell Harding, 815 Brazos, #300, Austin, Texas 78701, (512) 476-3587.

Filed: November 20, 1992, 10:15 a.m.

TRD-9215579

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University of North Texas/Texas College of Osteopathic Medicine

Friday, December 4, 1992, 8 a.m. The Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet at the Texas College of Osteopathic Medicine, Medical Education Building I, Board Room, Eighth Floor, Fort Worth. According to the complete agenda, the board of UNT: discuss approval of minutes; meet in executive session (UNT/TCOM: legislative update; liability insurance; UNT: fraternity housing; current lawsuits, Women Regents Professors report; faculty issues in communications and public

address and computer science); routine academic reports; regents faculty lecturer; discuss personnel; professor emeritus recommendations; leave of absence; department and degree name changes; transfer of degree programs in biochemistry to biological sciences; joint UNT-NTRI sponsored projects and revenue sharing policies; authority of policy department; fee waiver; information resources initial operating plan; gift report; renovate men's gym an auditorium building; sprinkler system-Kerr Hall; Fouts Field repairs; project status report; hotel/conference center/golf course; placement office presentation, coordinating board study of administrative costs; TCOM: discuss approval of minutes, meet in executive session (affiliations; external examinations; lawsuits update; Saperstein contract); administrative changes and new doctoral degree; personnel; naming of buildings; information resources initial operating plan; gift report; medical services; research and development plan; project status report; student issues; and other noteworthy items (information).

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 23, 1992, 2:26 p.m.

TRD-9215700

Thursday, December 3, 1992, 1:30 p.m. The Role and Scope Committee of the Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet at the Texas College of Osteopathic Medicine, Medical Education Building III, Rare Book Room, Fort Worth. According to the complete agenda, the committee of TCOM· discuss administrative changes and new doctoral in biomedical sciences; discuss personnel; naming of buildings; UNT: routine academic reports; regents' faculty lecture; personnel; professor emeritus recommendations; leave of absence; department and degree name changes; transfer of degree programs in biochemistry to department of biological sciences; joint UNT-NTRI sponsored project and revenue sharing policies; authority of police department; athletic update; and sexual harassment policy.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 23, 1992, 2:01 p.m.

TRD-9215696

Thursday, December 3, 1992, 2 p.m. The Advancement Committee of the Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet at the Texas College of Osteopathic Medicine, Medical Education Building I, Board Room, Eighth Floor, Fort Worth. According to the complete agenda, the committee of TCOM: will discuss development update; UNT: discuss athletic update; introduction of new personnel; capital campaign progress report; special events status; master plan for advancement; and advancement update.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 23, 1992, 2.01 p.m.

TRD-9215695

Thursday, December 3, 1992, 3 p.m. The Budget and Finance Committee of the Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet at the Texas College of Osteopathic Medicine, 810 Medical Education Building I, Fort Worth. According to the complete agenda, the committee of TCOM: discuss information resources initial operating plan; gift report; internal audit plan; medical services; research and development plan; report on interest earnings; UNT: discuss fee waiver for NTRI, UNT Foundation and UNT Alumni Association; information resources initial operating plan; gift report; report on interest earnings, internal audit update, chancellor's accounts; and athletic update.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 23, 1992, 2·01 p.m.

TRD-9215693

Thursday, December 3, 1992, 4 p.m. The Facilities Committee of the Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet at the Texas College of Osteopathic Medicine, Medical Education Building I, Board Room, Eighth Floor, Fort Worth According to the complete agenda, the committee of TCOM· discuss project status report; UNT. renovate men's gym; renovate auditorium building; install fire sprinkler-Kerr Hall; Fouts Field repairs; project status report; hotel/conference center/golf course; planning for Music Performance Hall; and coordinating board space standards.

Contact: Jan Dobbs, P.O Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 23, 1992, 2:01 p.m.

TRD-9215694

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The University of Texas at Austin

Monday, November 23, 1992, 3:30 p.m. The Council for Intercollegiate Athletics for Women of The University of Texas at Austin met at the Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council called the meeting to order, discussed approval of minutes of previous meeting; discussed new business; announcements/information reports; and adjourned.

Contact: Jody Conradt, UT Austin, BEL-718, 33800, Austin, Texas 78712, (512) 471-7693.

Filed: November 19, 1992, 2:41 p.m.

TRD-9215562

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University of Texas Health Center at Tyler

Thursday, December 3, 1992, 11:30 a.m. The Animal Research Committee of the University of Texas Health Center at Tyler will meet at the Biomedical Research Building, Room 116, Highways 155 and 271 North, Tyler. According to the complete agenda, the committee will discuss approval of minutes; hear chairman's report-Dr. Peterson; veterinarian's report-Dr. Thedford; discuss old business-final approval of handbook; new protocols/addenda: protocol on use of transgenic mice in emphysema research; protocol on raising antisera in sheep; protocol on P-450 cytochrome in rabbits; addendum on use of rabbits in a study of white cells, and adjourn.

Contact: Barry Peterson, Ph D., P.O. Box 2003, Tyler, Texas 75710, (903) 877-7012.

Filed: November 24, 1992, 8:34 a.m.

TRD-9215729

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Texas Water Commission

Wednesday, December 2, 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 actions; rules; executive sessions; in addition, the commission will consider items previously posted for open meeting and at 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: November 20, 1992, 4:27 p.m.

TRD-9215622

Wednesday, December 2, 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 com-

mission will consider approving the following matters on the uncontested agenda: new permits; amendments; minor amendments; renewals; district matters; water rate matters; water right matters; examiner's memorandum; feasibility studies; issuance of radioactive material license; in addition, the commission will consider items previously posted for open meeting and at 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: November 20, 1992, 4:27 p.m.

TRD-9215623

Wednesday, December 2, 1992, 9 a.m. (Revised agenda). 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 Examiner's Memorandum and Order concerning the application of City of San Angelo for an amendment to Permit Number 10641-03 to authorize the disposal by irrigation of 11,300,000 gallons per day average treated domestic wastewater effluent in Tom Green County, and Segment Number 1421 of the Colorado River Basin.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: November 23, 1992, 3:43 p.m.

TRD-9215704

Wednesday, December 2, 1992, 9:a.m. (Revised agenda). 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 request for commission in response to Senate Bill 1099, of sufficiency of rules for salt cavern disposal of hazardous waste.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: November 23, 1992, 3:43 p.m.

TRD-9215705

Thursday, December 3, 1992, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 236, Austin. According to the agenda summary, the commission will hold a hearing on Memorial Point Utility District of Polk County's application for a standby fee.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 20, 1992, 4:35 p.m.

TRD-9215626

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Application Number TA-6945 submitted by Kinney County requesting authorization to divert and use a total of three acre-feet of water for a three-year period from various streams in the Nueces River Basin, for industrial purposes (county roadway construction and maintenance) in Kinney County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 463-4584.

Filed: November 20, 1992, 4:36 p.m.

TRD-9215627

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Application Number TA-6940 submitted by Kinney County requesting authorization to divert and use a total of three acre-feet of water for a three-year period from various streams in the Rio Grande Basin, for industrial purposes (county roadway construction and maintenance) in Kinney County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 463-4584.

Filed: November 20, 1992, 4:37 p.m.

TRD-9215628

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Texas Workers' Compensation Research Center

Monday, November 23, 1992, 10 a.m. The Texas Workers' Compensation Research Center held an emergency meeting at the Texas Workers' Compensation Insurance Fund, Third Floor Training Room, 100 Congress Avenue, Austin. According to the complete agenda, the board called the meeting to order; considered and possibly awarded contract on nonsubscription project; and adjourned. The emergency status was necessary as this meeting was set at the scheduled on November 16 to continue discussion of Agenda Item 8 from the agenda of November 16, 1992. Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 346-6197 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Annette Gula, 3636 Executive Center Drive, Austin, Texas 78731, (512) 346-6197.

Filed: November 20, 1992, 10:21 p.m.

TRD-9215582

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Regional Meetings

Meetings Filed November 19, 1992

The Colorado River Municipal Water District (revised agenda) Board of Directors met at 400 East 24th Street, Big Spring, November 24, 1992, at 9 a.m. Information may be obtained from O. H. Ivie, Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9215543.

The Deep East Texas Regional MHMR Services (revised agenda) Board of Trustees met at Ward R. Burke Community Room-Administrative Facility, 4101 South Medford Drive, Lufkin, November 24, 1992, 3 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9215537.

Texas State Board of Dental Examiners met at Red Lion Hotel, 6121 IH-35 North, Austin, November 20-21, 1992, at 8 a.m. Information may be obtained from C. Thomas Camp, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701 (512) 463-6400. TRD-9215542.

The Gulf Bend MHMR Center Interagency Community Management Team met at 1404 Village Drive, Victoria, November 25, 1992, at noon. Information may be obtained from Linda F. White, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9215567.

The Jasper County Appraisal District Jasper CAD Board of Directors will meet at 137 North Main, Jasper, December 3, 1992, at 7 p.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9215566.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, November 23, 1992, at 7 p.m. Information may be obtained from Donald Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9215561.

The Lower Rio Grande Valley Development Council Board of Directors met at 311 East Tyler, Harlingen, November 24, 1992, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9215559.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadway, Abilene, December 9, 1992, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9215541.

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Meetings Filed November 20, 1992

The Brazos Valley Quality Work Force Planning Committee met at 301 Post Office Street, Bryan, November 24, 1992, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801, (409) 823-4988. TRD-9215571.

The Central Appraisal District of Johnson County Board of Directors met at 109 North Main, Suite 201, Room 202, Cleburne, November 23, 1992, at 4:30 p.m. Information may be obtained from Priscilla A. Bunch, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9215575.

The County Education District #14 will meet at the Pampa Middle School Library, 2401 Charles Street, Pampa, November 30, 1992, at 7 p.m. Information may be obtained from Dawson Orr, 321 West Albert, Pampa, Texas 79065, (806) 669-4700. TRD-9215620.

The Dallas Area Rapid Transit Minority Affairs Committee met at the DART Office, 1401 Pacific Avenue, Dallas, November 24, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9215596.

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 1401 Pacific Avenue, Dallas, November 24, 1992, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9215594.

The Dallas Area Rapid Transit Board of Director's met at the DART Office, 1401 Pacific Avenue, Dallas, November 24, 1992, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9215595.

The Dewitt County Appraisal District Board of Directors met at the Dewitt County Appraisal Office, 103 Bailey Street, Cuero, November 23, 1992, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9215597.

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Meetings Filed November 23, 1992

The Central Texas Council of Governments Central Texas Private Industry Council, Inc. will meet at 2600 South First Street, Temple Junior College, Arnold Student Union Building/Leopard Room, Temple, December 10, 1992, at 10 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9215631.

The Golden Crescent Privat' Industry Council, Inc. GC Quality Work Force Planning Committee will meet at the Cuero Community Hospital, South Wing, Yoakum Highway, Cuero, December 1, 1992, at 7 p.m. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9215702.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main, Hallettsville, December 9, 1992, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9215678.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, December 2, 1992, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9215630.

The Middle Rio Grande Development Council Texas Review and Comment System Committee will meet at the Uvalde City Hall, Conference Room, Corner of Main and Getty Streets, Uvalde, November 30, 1992, at 4 p.m. Information may be obtained from Dora Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9215706.

The Mills County Appraisal District will meet at the Mills County Courthouse, Jury Room, Goldthwaite, November 30, 1992, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9215677.

The Region 18 Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, December 3, 1992, at 7 p.m. Information may be obtained from Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 567-3210. TRD-9215679.

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Meetings Filed November 24, 1992

The Southwest Milam WSC Board of Directors will meet at 114 East Cameron, Rockdale, November 30, 1992, at 7 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76557, (512) 446-2604. TRD-9215734.

The Region VII Education Service Center Board of Directors will meet at Johnny Cace's Restaurant, Highway 80 East, Longview, December 7, 1992, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9215728.

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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 State Board of Public Accountancy

Quality Review Oversight Board Members

The Texas State Board of Public Accountancy (TSBPA), in accordance with provisions of Texas Civil Statutes, Article 6252-11c, announces the awarding of a personal service contract to a certified public accountant to evaluate and identify specific technical issues as part of the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on the quality reviews established by the quality review rules of the board.

The solicitation for proposals was published in the July 31, 1992, issue of the *Texas Register* (17 TexReg 5381).

Of the proposals initially received, two were accepted.

The Board has now awarded the third and final contract solicited to: Priscilla Slade, Ph.D., Texas Southern University, Jesse H. Jones School of Business, Department of Accounting, 3100 Cleburne, Allen Building, Room 210, Houston, Texas 77004.

This consultant contract began November 13, 1992 and ends August 31, 1993. The fee estimate is $20,000 for each contract, plus expenses which may not exceed $5,000 for each contract, at a contract price of $100 per hour.

The Board is being provided the initial implementation design for the oversight and monitoring of sponsoring organizations for compliance with the minimum standards for performing and reporting on the quality reviews.

Issued in Austin, Texas, on November 17, 1992.

TRD-9215497 William Treacy
Executive Director
Texas State Board of Public Accountancy

Filed: November 18, 1992

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Texas Education Agency

Request for Applications #701-93-005

This request for applications is filed in accordance with Public Law 100-297, Elementary and Secondary Education Act (ESEA), Chapter 1.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications (RFA #701-93-005) from school districts to defray the costs of capital expenses incurred since July 1, 1985, in serving private, religiously-affiliated schools as a result of the requirements of *Aguilar v. Felton.*

Description. The Texas Education Agency's first priority for the distribution of these funds will be the reimbursement to districts for the amounts which they have expended on capital expenses from Chapter 1 during the period from July 1, 1985, through June 30, 1992. The second priority for the distribution of these funds will be to cover the costs of capital expenses being incurred from Chapter 1 during the 1992-1993 school year.

Project Funding. A state total of $1,090,061 is available for funding these projects. These monies must be expended by September 30, 1993. This project is 100% funded from ESEA, Chapter 1 federal funds.

Selection Criteria. All applications submitted in response to this request for applications must meet the following conditions to be considered for approval.

The district must have incurred capital expenses during the period from July 1, 1985-June 30, 1992; or will incur capital expenses during the current 1992-1993 fiscal year.

Districts that report expenditures for capital expense items during school years 1985-1986 through 1991-1992 will receive funds in the amounts of their actual expenditures for capital expense items. The definition of capital expense includes technician costs for computer-assisted instruction (CAI) supervision. If funds are not sufficient to defray all such expenditures, a prorated share will be granted. These funds must be expended to provide instructional programs.

Districts that report the greatest need of capital expenses during school year 1992-1993 will receive funds based on the following criteria.

The average amount of funds the LEA has paid for capital expenses for the years 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, and 1991-1992. The points are awarded as follows:

Average expenditure	Number of points
Less than $ 5,000	0 points
$ 5,001 to $10,000	3 points
$10,001 to $15,000	5 points
$15,001 to $20,000	8 points
$20,001 to $25,000	10 points
$25,001 to $30,000	13 points
$30,001 to $35,000	15 points
$35,001 to $40,000	18 points
$40,001 to $45,000	20 points
$45,001 to $50,000	23 points
More than $50,000	25 points

The average percentage of funds the LEA has paid for capital expenses in relation to its basic Chapter I grant for the years 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, and 1991-1992. The number of points will be the average percentage of funds rounded to the nearest whole percentage point not to exceed 25 points.

The percentage of increase in the number of students from religiously-affiliated private schools who are served in 1992-1993 as compared with 1984-1985. The number of points will be the percentage of increase rounded to the nearest whole percentage point not to exceed 25 points.

The percentage of increase in the number of students from religiously-affiliated private schools who are served in 1992-1993 as compared with the average of the years 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, and 1991-1992. The number of points will be the percentage of increase rounded to the nearest whole percentage point not to exceed 25 points.

Further Information. For clarifying information about this request, contact Maria Huth and Lou Beavers, Division of Accelerated Instruction, Texas Education Agency, (512) 463-9374.

Deadline For Receipt of Application. The deadline for submitting an application to the Document Control Center of the Texas Education Agency is 5 p.m., Monday, February 1, 1993. Please refer to the RFA number in your request.

Requesting the Application. A copy of the complete request for application (RFA #701-93-005) may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, or calling (512) 463-9304.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215617 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: November 20, 1992

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Texas Ethics Commission

Correction of Error

The Texas Ethics Commission adopted new 1 TAC §§20.111, 20.113, 20.115, 20.117, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20. 137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, and 20.161, concerning rules concerning reports. The rules appear in the November 17, 1992, *Texas Register* (17 TexReg 8089).

Due to a typographical error by the *Texas Register* the Table of Contents on the front cover of the *Register* listed the page number incorrectly as 8069. The correct page number is 8089.

Governor's Office of Immigration and Refugee Affairs

Notice of Grant Award

This grant award was made under the authority of the Immigration Nursing Relief Act of 1989 (Public Law 101-238).

Publication Date. A request for proposals was published in the February 18, 1992, issue of the *Texas Register* (17 TexReg 1399).

Description of Services. The request called for proposals to provide outreach and education about the antidiscrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA) to workers in Texas. Contracts were awarded for a broad range of community outreach and education activities, a statewide 800 hotline number for workers, and "teatro presentations" using the anti-discrimination theme.

Name and Address. The following organizations have received awards under this grant in the amounts specified: Bi-lingual Education Institute (BEI) , 6363 Richmond Avenue, Suite 301, Houston, Texas 77057, $74,548; Catholic Family Services, Inc., 123 North Avenue N, Lubbock, Texas 79401, $56,114; Centro Latino Americano, 6001 Gulf Freeway B-144, Houston, Texas 77023, $126, 562; Diocesan Migrant and Refugee Services, Diocese of El Paso, 1200 North Mesa, El Paso, Texas 79901, $105,070.05; Immigration Counseling Services, Catholic Charities/Diocese of Dallas, 3845 Oak Lawn Avenue, Dallas, Texas 75219, $32,400; Motivation, Education, and Training, Inc. (MET), 307 North College, Cleveland, Texas 77328, $296,345; Mid Valley Community Center, 2323 Kennedy Drive, Weslaco, Texas 78596, $70,873.22;

Sin Fronteras Organizing Project, 514 South Kansas, El Paso, Texas 79901, $30,000.

Value and Date of Contract. The total dollar value of all contracts is $791,912.27. The contract periods extend from October 1, 1992 to October 1, 1993, by which date all work associated with the contract must be completed.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215601 David A. Talbot
General Counsel
Office of the Governor

Filed: November 20, 1992

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Texas Department of Insurance

Notice of Hearing

The State Board of Insurance, of the Texas Department of Insurance, under Docket Number 1961, will hold a public hearing scheduled for January 7, 1993, at 9 a.m, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, to consider the adoption of manual rules and endorsements to govern the writing of large deductibles for residential property. The rules and forms provide for the availability of large deductibles on homeowners, dwelling, farm and ranch and farm and ranch owners policies with options allowing the large deductibles to be applied to all perils in the policies or to the perils of windstorm, hurricane, hail and wind driven rain only. The deductible amounts may range from $1,000 to $10,000 with appropriate premium credits applied depending on the amount of the deductible. The establishment of the appropriate premium credits will be considered with the adoption of the manual rules and endorsements.

The availability of large deductibles for residential property will encourage insurers to write property along the Texas Coast on a voluntary basis as well as provide insurance markets in other areas of Texas where availability of insurance may be a problem. In addition, an optional large deductible program offers insureds a method of reducing the cost of insurance for those insureds willing to accept such large deductibles.

Copies of the full text of the endorsements and manual rules 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 Angie Arizpe at (512) 322-4147, (refer to Reference Number P-1092-65-I)

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

TRD-9215638 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: November 23, 1992

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The State Board of Insurance, of the Texas Department of Insurance, under Docket Number 1960, will hold a public hearing scheduled for January 6, 1993, at 11 a.m., IN Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, to consider the adoption of amendatory endorsements for homeowners, dwelling, farm and ranch and farm and ranch owners policies to prohibit the refusal to renew such policies based on the condition of the premises unless there is a change in the condition(s) of the premises, the insurer has notified the insured of the condition and provided the insured adequate time to correct the condition.

The addition of the condition to these policies ensures that policyholders have the opportunity to correct conditions that may otherwise cause the property to become uninsurable and gives the insurer assurance that the property will be maintained in an insurable condition.

Copies of the full text of the endorsements are available for review in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number P-1092-64-I).

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

TRD-9215637 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: November 23, 1992

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Legislative Budget Office
Joint Budget and Stratgic Plan Hearing
Schedule

EXECUTIVE AND LEGISLATIVE BUDGET OFFICES
Joint Budget and Strategic Plan Hearing Schedule*
Appropriations Requests for the 1994-1995 Biennium
(For the period of Nov. 30-Dec. 4, 1992)

Agency	Date	Place
Department of Criminal Justice	Dec. 2--2:00 p.m.	Room 106, John H. Reagan Building, 15th and North Congress, Austin, Texas

*NOTE: Please confirm above dates, times and locations in the event you plan to attend a hearing, since experience has shown that some rescheduling always occurs.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215613 Larry Kopp
Assistant Director for Budgets
Legislative Budget Office

Filed: November 20, 1992

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Public Utility Commission of Texas

Correction of Error

Public Utility Commission of Texas adopted 16 TAC §23.27, conerning rate setting flexibility for services subject to significant competition. The rule was published in the November 10, 1992, *Texas Register* (17 TexReg 7884).

Due to an error by the *Texas Register* a sentence was dropped from subsection (f). It should read as follows: "(f) Severability. If any provision of this section or the application thereof to any person or any cercumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable."

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Notice of Intent to File Pursuant to PUC Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23. 27 for approval of customer-specific PLEXAR-Custom Service for Methodist Hospital, Houston.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Methodist Hospital pursuant to PUC Substantive Rule 23.27(k). Docket Number 11586.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Methodist Hospital. The geographic service market for this specific service is the Houston 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 17, 1992.

TRD-9215522 John H. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 18, 1992

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23. 27 for approval of customer-specific PLEXAR-Custom Service for Southwestern Bell Corporation, San Antonio.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Southwestern Bell Corporation pursuant to PUC Substantive Rule 23.27(k). Docket Number 11579.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Southwestern Bell Corporation. The geographic service market for this specific service is the San Antonio 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 17, 1992.

TRD-9215523 John H. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 18, 1992

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Texas Low-Level Radioactive Waste Disposal Authority

Correction of Error

The Texas Low-Level Radioactive Waste Disposal Authority submitted a request for consulting services which was published in the November 10, 1992, *Texas Register* (17 TexReg 7959).

The heading "Notice of Contract Award" was incorrect. The correct heading should read "Consultant Proposal Request".

On page 7960 in the paragraph under "Services Previously Performed" the name Hugh Bryant was misspelled.

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Senate Interim Committee on Health and Human Services

Public Hearing/Meeting Notice

The Senate Committee on Health and Human Services will hold a meeting on November 30, 1992, to take testimony and vote on its draft legislation relating to private psychiatric, substance abuse, medical rehabilitation, and guardianship issues.

The meeting will begin at 9:30 a.m. in Room 104 of the John H. Reagan Building at 105 West 15th Street, Austin. Visitor Parking is available at 15th Street and Congress Avenue.

Because of time constraints, the Committee must limit testimony to specific recommendations on the proposed legislation. Witnesses should bring written copies of any suggested revisions for distribution to the members at the time of discussion. Persons who are not able to attend the hearing may mail written statements to the Committee office at the previous address.

The Committee expects this to be the last meeting before the regular legislative session begins; however, there will be additional opportunities for comments when the bills are considered during the legislative session.

Please call the Committee office for copies of the draft legislation or answers to questions.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215574 Sandra Bernal-Malone
Committee Clerk
Senate Interim Committee on Health and Human Services

Filed: November 20, 1992

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Texas Water Commission

Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Alamo Petroleum Exchange, SWR Number 41654, on November 13, 1992, assessing $6,400 in administrative penalties with $1,280 deferred and foregoned pending compliance.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2047.

Issued in Austin, Texas, on November 18, 1992.

TRD-9215560 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 19, 1992

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Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of November 9-November 20, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application-new permit, amendment, or renewal.

Alumax Mill Products, Inc.; the applicant operates a plant that manufactures rolled aluminum; the plant site is approximately five miles west of the City of Texarkana, southwest of the junction of U.S. Interstate Highway 30 and FM 989 and adjacent to the northern limit of the Town of Nash in Bowie County; amendment; 02742.

City of Bridge City; the wastewater treatment facilities; are on Bower Drive, approximately 2,000 feet southeast of the State Highway 87 bridge over Cow Bayou within Bridge City in Orange County; renewal; 10051-01.

Camco International, Inc. doing business as Nowcam Services; an oil and gas field services facility; the plant site is on the east side of Waverly Road, approximately one-half mile north of the intersection of Greens Road and Waverly Road in the City of Houston, Harris County; new; 03472.

Carroll Pack; a dairy; the dairy is on the east side of an unnamed county road located six miles south of the City of Stephenville and two miles south of the intersection of FM Road 914 and FM Road 847 in Erath County; new; 03501.

Chevron U.S.A., Inc. doing business as Chevron U.S.A. Products Company; a petroleum storage and transfer facility; the plant site is on the south side of State Highway 31 East, approximately four miles east of the City of Dawson, Navarro County; renewal; 02865.

Chevron U.S.A., Inc., Port Arthur Refinery; an integrated oil refinery; the plant site is in the vicinity of the State Highway 87 bridge crossing over Taylor Bayou which is southwest of the City of Port Arthur in Jefferson County; amendment; 00309.

City Public Service of San Antonio; V.H. Braunig Steam Electric Station; the plant site is at 16120 Streich Road, approximately 2.75 miles northwest of the City of Elemendorf in Bexar County; amendment; 01515.

City of Copperas Cove; The New Northeast Wastewater Treatment Facilities; are approximately 7,000 feet northeast of the City's central business district and approximately 2,000 feet northeast of the intersection of Georgetown Highway and Military Highway in the City of Copperas Cove in Coryell County; renewal; 10045-04.

David K. Moore doing business as DKM Enterprises; a convenience store and restaurant; site is on the west side of State Highway 62, one tenth of a mile south of the intersection of State Highway 62 and State Highway 12, Orange County; renewal; 03011.

East Cedar Creek Fresh Water Supply District; the wastewater treatment facilities; are approximately 0.5 mile north-northeast of Enchanted Oaks, approximately 0.8 mile south of State Highway 198 where State Highway 198 turns abruptly east, approximately 6.8 miles south of Mabank in Henderson County; amendment; 11890-01.

Empak, Inc.; a commercial industrial wastewater treatment plant; the plant site is at 2759 Battleground Road in Harris County; amendment; 01731.

F and S Dairy; the dairy operation; is on the south side of FM Road 219 approximately one mile east of the intersection of FM Road 219 and State Highway 281 in Hamilton County; amendment; 03256.

City of Farmersville; the wastewater treatment facilities; are approximately 1,600 feet south of the intersection of State Highway 78 and U.S. Highway 380 in the southwest corner of the City of Farmersville in Collin County; renewal; 10442-01.

Feather Crest Farms, Inc.; the poultry operation; is on the east side of State Highway 21, approximately one mile northeast of the intersection of State Highway 21 and FM Road 2038 in Brazos County; amendment; 02345.

Fort Bend Municipal Utility District Number 69 and Skyline Properties, Inc.; the wastewater treatment plant is approximately 3,000 feet west and 5,000 feet south of the intersection of FM Road 1464 and U.S. Highway 90A in Fort Bend County; amendment; 12981-01.

Fort Davis Water Supply Corporation; the Fort Davis Wastewater Treatment Facilities; the plant site is one mile south of State Highway 17, approximately 500 feet north of Cemetery Road and 1/2 mile east of Fort Davis in Jeff Davis County; renewal; 10971-01.

Hercules Incorporated, Deer Park Plant; a plant which manufactures hydrocarbon resins; the plant site is at 2727 Miller Cut-Off Road in the City of LaPorte in Harris County; amendment; 02406.

Hill Country Utilities, Inc.; the Lamplight Village Subdivision Wastewater Treatment Facilities; the plant site is approximately 300 feet north of Parmer Lane and one mile east of FM Road 1325 in Travis County; renewal; 11402-01.

Hoechst Celanese Chemical Group, Inc., Pampa Plant; an organic chemicals production facility; the plant site is southwest of the intersection of U.S. Highway 60 and FM Road 2300, approximately three and 1/2 miles southwest of the City of Pampa in Gray County; amendment; 02891.

Holcomb Brothers Sand Pits, Inc.; a sand and gravel mining operation; the plant site is approximately 2,800 feet east of State Highway 249, just north of the intersection of Huffsmith and Kohrville Road, Harris County; new; 03521.

Jones Chemicals, Inc.; Houston Chemical Plant; the plant site is at 1777 Haden Road in the City of Houston, Harris County; renewal; 01801.

Klaas Talsma; the dairy operation; is on the south side of an unnamed County Road located approximately eight miles southeast of the intersection of U.S. Highway 281 and U.S. Highway 67 in the City of Stephenville and four miles north of the Community of Duffau in Erath County; amendment; 03145.

Knox Oil of Texas, Inc.; the wastewater treatment facilities; are approximately 500 feet south of the intersection of Interstate Highway 35 and FM Road 310, on the west side of Interstate Highway 35 in Hill County; renewal; 12945-01.

City of Lipan; the wastewater treatment facilities will serve the City of Lipan; the plant site is north of the City of Lipan, approximately 1.5 miles northeast of the intersection of FM Road 4 and FM Road 1189 in Hood County; new; 13590-01.

Luther's Bar-B-Q, Inc.; a wastewater treatment facility for a restaurant; the plant site is at 703 West FM Road 1960 at Hafer Road in Harris County; renewal; 02508.

Marathon Oil Company, Pasadena Terminal; a light oil storage terminal; the plant site is at 431 North South Avenue in the City of Pasadena, Harris County; renewal; 02557.

Albert M. Miller; the Miller's Cove Wastewater Treatment facilities; the plant site is approximately 0.75 mile southwest of the intersection of State Spur Number 158 and Interstate Highway 30, just south of Winfield in Titus County; renewal; 11750-01.

Montgomery County Municipal Utility District Number 39; the wastewater treatment facilities; the plant site is approximately 2,000 feet east of Interstate Highway 45, approximately 1 1/2 mile south of FM Road 1488, adjacent to the Missouri Pacific Railroad Tracks and an unnamed tributary in Montgomery County; renewal; 11658-01.

M-I Drilling Fluids Company; a drilling fluids manufacturing and service company; the plant site is approximately 2,400 feet southwest of the San Bernard River/U.S. Highway 59 bridge, and about five miles east of the town of Hungerford, Wharton County; renewal; 02469.

Oklahoma Metal Processing Company, Inc. (doing business as Proler Metal Processing Company); a metals reclamation and shredding plant; the plant site is at 7501 Wallisville Road on the northwest quadrant of the intersection of Wallisville Road and Wayside Drive, Harris County; new; 03532.

City of Paris; the wastewater treatment facilities; are approximately six miles north of the City of Paris, 1.7 miles northeast of the intersection of FM Road 1499 and U.S. Highway 271 and 1/2 mile east of U.S. Highway 271 in Lamar County; renewal; 10479-02.

City of Poteet; the wastewater treatment facility; the plant site is approximately 0.4 mile east of State Highway 16 and 0.75 mile south of FM Road 476 in the southern section of the City of Poteet in Atascosa County; new; 13630-01.

Purina Mills, Inc.; an animal feed plant; the plant is at 825 State Highway 36 North in Fort Bend County; renewal; 02932.

Redland Stone Products Company; a sand and gravel production plant; the plant site is on the south side of Flat Creek approximately 0.4 miles west of the FM Road 434 and three miles north of the intersection of FM 434 and FM 3400, McLennan County; renewal; 00331.

Shell Oil Company, Odessa Refinery; a petroleum refinery; the plant site is adjacent to South Grandview Street south of the City of Odessa and southeast of the intersection of U.S. Highway 385 and Interstate 20 in Ector County; amendment; 01437.

Star Enterprises; a bulk petroleum products terminal; the plant site is at 2661 Steven Street in the City of Houston in Harris County; renewal; 01172.

Southwestern Graphite Company, Division of Dixon Ticonderoga; a graphite mine and processing plant; the plant site is approximately 2.1 miles north of the State Highway 29 crossing over Clear Creek which is approximately 10 miles west of the City of Burnet; Burnet County; renewal; 00350.

Texas Department of Criminal Justice-Institutional Division; the Central Unit Number One Wastewater Treatment Facilities; are approximately 3,500 feet northwest of the intersection of State Highway 6 and U.S. Highway 90A in Fort Bend County; renewal; 10986-01.

Texas Utilities Electric Company; the Trinidad Steam Electric Station; the plant site is on the north shore of Trinidad Lake off FM Road 764, approximately one mile south of the City of Trinidad, Henderson County; renewal; 00947.

Texas Utilities Electric Company; Valley Steam Electric Station; the plant site is adjacent to Valley Lake (Brushy Creek Reservoir) on FM Road 1752 approximately two miles north of the City of Savoy in Fannin County; renewal; 00948.

Twinwood (U.S.), Inc.; the Twinwood Wastewater Treatment Facilities; the plant site is located approximately 1.5 miles southwest of the City of Simonton and the intersection of FM Roads 1093 and 1489, between Guyler Road and Brundreff Road in Fort Bend County; renewal; 13089-01.

United States Department of the Air Force; Laughlin Air Force Base Wastewater Treatment Facilities; the plant site is on the southwest of Laughlin Air Force Base, approximately 2.3 miles northeast of the intersection of U.S. Highway 277 and Spur 317 in Val Verde County; renewal; 12651-01.

United States Department of the Interior, Amistad National Recreation Area; the plant site is south of the Amistad Village, approximately 13 miles north of the City of Del Rio, Val Verde County; new; 03505.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215629 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: November 20, 1992

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Public Notice

The Texas Water Commission (TWC) hereby provides official notification of the publication of reasonable costs for Petroleum Storage Tank Remediation (PSTR) Fund to all interested parties. A new application for reimbursement, application guidance manual, and reasonable cost guideline are available to interested parties.

The effective date of the application for reimbursement is December 1, 1992. Mandatory use of this application is required as of January 1, 1993. The reasonable cost guidelines will be applicable to all application process as of December 1, 1992.

Any questions concerning this matter, please call Sharon Mooney, (512) 908-2274.

Information may be obtained by contacting the TWC offices listed following: Texas Water Commission, PST Division-Messenger Building A, (512) 908-2200, 12118 North IH-35, Austin, Texas 78753, (512) 908-2200; District 1-Amarillo, 3918 Canyon Drive, Amarillo, Texas 79109-4996, (806) 353-9251; District 2-Lubbock, 4630 50th Street, Suite 602, Lubbock, Texas 79414-3509, (806) 796-7092; District 3-Waco, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335; District 4-Duncanville, (Main Office), 1019 North Duncanville Road, Duncanville, Texas 75116-2201, (214) 298-6171; District 5-Tyler, (Main Office), 11406 Highway 64 East, Route 14 Box 254, Tyler, Texas 75707, (903) 566-0476; District 6-Beaumont, 4820 Ward Drive, Beaumont, Texas 77705-0328, (409) 842-9413; District 7-Houston, 5144 East Sam Houston Parkway North, Houston, Texas 77015, (713) 457-5191; District 8-San Antonio, 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5028, (512) 490-3096; District 9-San Angelo, 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-9479, District 10-Odessa, 2626 J. B. Shepperd Parkway Boulevard, Buildings B-101, Odessa, Texas 79761, (915) 362-6997; District 11-Weslaco, 813 East Pike Boulevard, Weslaco, Texas 78596-4935, (512) 968-3165; District 12-Corpus Christi, 4410 Dillon Lane, Suite 47, Corpus Christi, Texas 78415-5326, (512) 851-8484; District 14-Austin, 1700 South Lamar Boulevard, Building 1, Number 101, Austin, Texas 78704-3360, (512) 463-7803; District 15-El Paso, 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925, (915) 778-9634.

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

TRD-9215635 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: November 23, 1992

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Request for Proposal

The Texas Water Commission (TWC) wishes to retain a professional engineering services firm for statewide emergency responses to oil and hazardous material incidents pursuant to the Texas Water Code and the Health and Safety Code. This contract will be let for the remainder of state fiscal year 1993 and may be renewed for state fiscal years 1994/95/96.

This request for proposals (RFP) is for the establishment of a professional services contract for furnishing all personnel, materials, equipment, and supervision necessary to conduct emergency response to oil and hazardous materials incidents on a statewide, 24-hour per day basis in accordance with all state and federal requirements and in accordance with TWC directives.

Specified work shall consist of containment and countermeasures; investigation; analytical; cleanup, mitigation, transportation, and disposal; restoration; and security services. All books, records, documents, and other evidence directly pertinent to performance of work under the contract shall be maintained in accordance with generally accepted accounting principles and practices, and shall be available to TWC and its authorized representatives. All work shall comply with contract requirements. A selection committee of five TWC staff members will be formed on or about the due date for the proposals. The names of the committee members will not be divulged until after the contractor selection process is complete. The committee will evaluate and score the proposals. The contractors that pass the financial stability section will be ranked from the highest to the lowest total score as determined by the committee: the committee will recommend award of contract by rank order from the highest to the lowest. The commissioners will make the contract award. Upon award of contract, compensation for services will be negotiated generally on a fixed unit rate basis. If negotiations break down, TWC staff will proceed to negotiate with the next highest scoring competitor(s). The TWC may award more than one contract up to a maximum total of three contracts. The additional two contractors will represent backup contractors to the primary contractor

Although absolute funding levels cannot be determined, generally this contract is funded by the Texas spill response fund and waste remediation fee fund. An amount

of $300,000 is budgeted for fiscal year 1993 and this contract will be let for no more than that amount.

A proposal package further describing proposal requirements will be sent to each prospective proposer upon request. This proposal package may be obtained on the day of publication of this notice in the *Texas Register* or after November 27, 1992, from: David Barker, Team Leader, Emergency Response, Texas Water Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711, (512) 908-2510. The proposal package will contain instruction and information necessary for the preparation and submission of proposals.

Mr. Barker is the designated person to whom proposals may be made. Additional information may be obtained by calling (512) 908-2510. Five typed copies of each proposal must be received at the address listed before 5 p.m. December 30, 1992, which is the closing time and date for proposals.

No proposal may be withdrawn after the schedule closing time for at least 120 calendar days. Costs for preparing proposals shall be solely the responsibility of the proposer. In case of ambiguity or lack of clarity in the proposal, the TWC reserves the right to interpret the proposal in a way most advantageous to the TWC, or to reject the proposal. Proposal amendment, revision, or alteration to proposals after the final date of submission will not be accepted. The contents of all proposals shall be considered as a part of the public record unless prohibited by law. The submittal of confidential or proprietary information should be under separate cover on or before 5 p.m. on the closing date. Confidential information should be limited and must include an explanation of the basis for confidentiality and more specifically demonstrate that the information meets an exception under the Texas Open Records Act. The TWC reserves the right to reject or return confidential information.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215636 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: November 23, 1992

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