Texas Register

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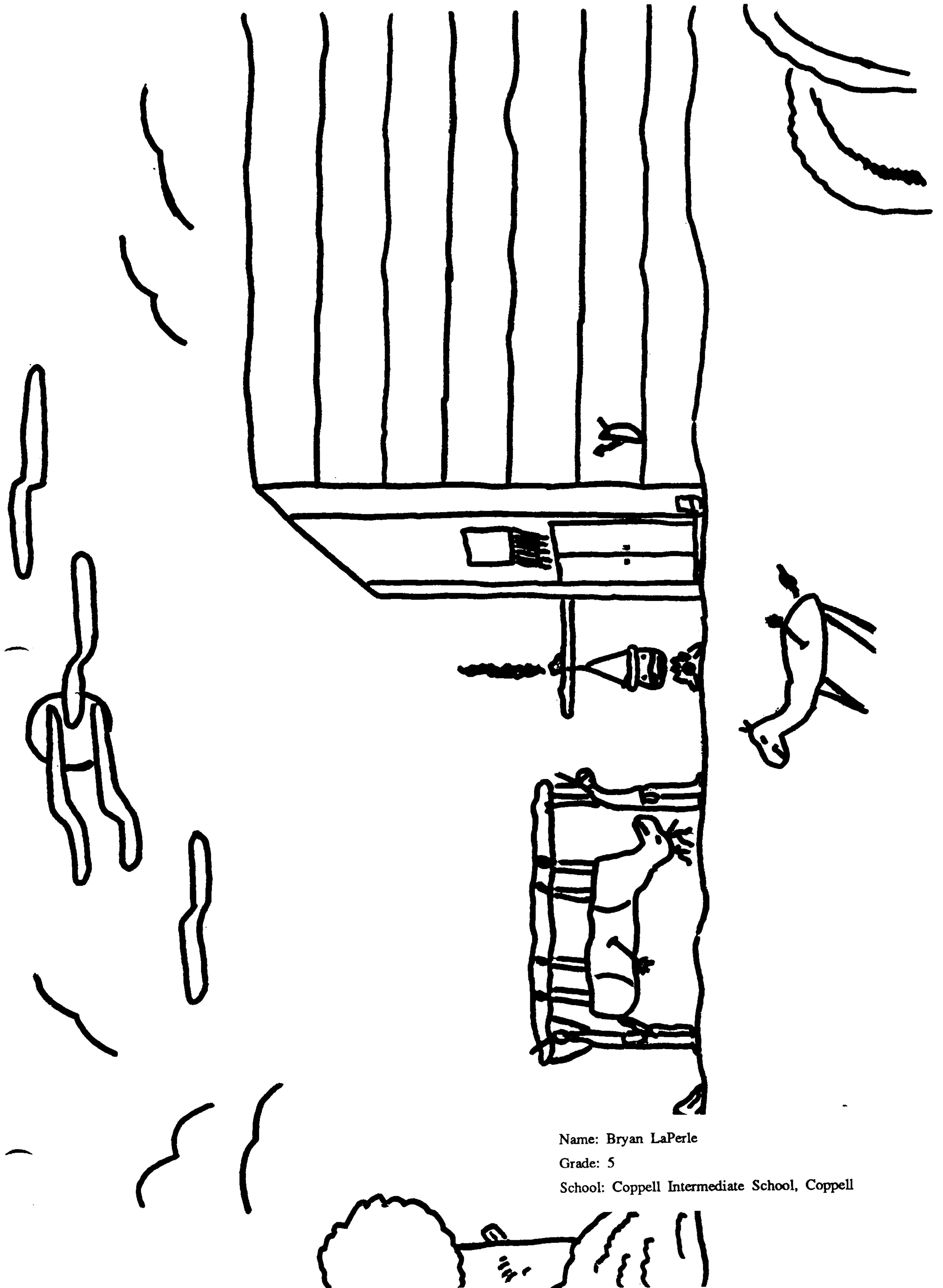

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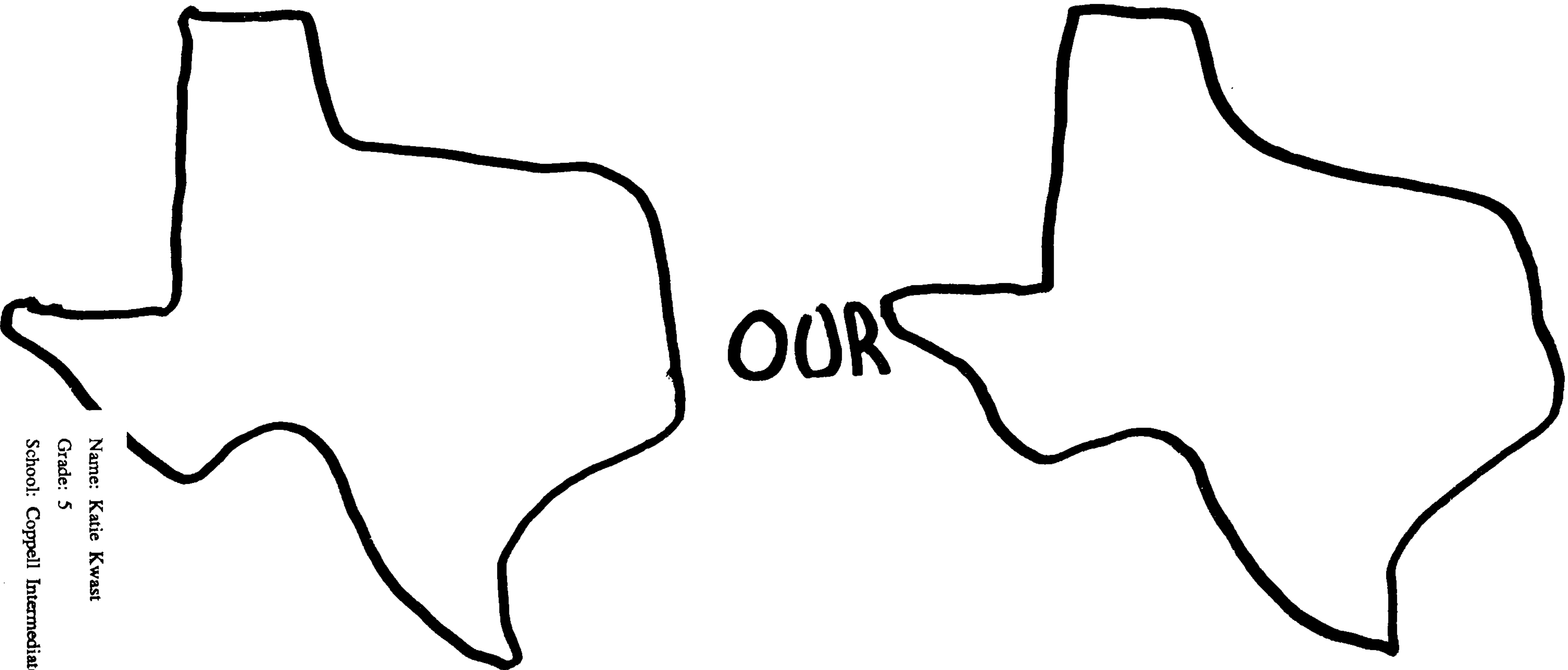

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40 TAC §255.37—1286, 1842

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Part XI. Texas Commission on Human Rights

40 TAC §321.1—1516

40 TAC §327.1—1516

40 TAC §327.8—1517

40 TAC §327.9—1517

40 TAC §327.10—1517

40 TAC §327.11—1518

40 TAC §327.13—1518

40 TAC §327.14—1518

40 TAC §§335.1-335.7—1729, 1842

40 TAC §336.1—1731, 1842

40 TAC §§337.1-337.3—1731, 1843

40 TAC §§338.1-338.8—1732

40 TAC §§339.1-339.18—1734, 1843

40 TAC §§340.1-340.28—1738, 1843

40 TAC §§341.1-341.68—1743, 1844

40 TAC §§342.1-342.3—1750, 1844

40 TAC §§343.1-343.5—1751, 1844

40 TAC §§344.1-344.3—1751, 1845

40 TAC §345.1—1752, 1845

40 TAC §346.1—1752

40 TAC §347.1—1752, 1845

40 TAC §§348.1—1753, 1846

40 TAC §§375.18-375.20—1837

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

43 TAC §25.91—1287

Part III. Texas Department of Aviation

43 TAC §§63.1, 63.2, 63.6, 63.7, 63.11, 63.12, 63.17, 63.21-63.30—1589

43 TAC §63.2—1589

Emergency Sections

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

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

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

General Practice and Procedure

• **22 TAC §231.41**

The Board of Vocational Nurse Examiners adopts on an emergency basis §231. 41, concerning general practice and procedure. Paragraphs (1), (2), and (11) are the only paragraphs out of §231.41 being adopted on an emergency basis. The reason for the emergency action is that effective May 1, 1990, the National Council Licensure Examination (NCLEX) fee increases to $40. The Appropriations Act stipulates that the board's examination application fee will also increase in an amount equal to the NCLEX fee, and the Vocational Nurse Act, §9(c) specifies that the penalty fees will equal those of the examination fees. Therefore, the board is adopting these paragraphs on an emergency basis in order for them to be in effect prior to candidates submitting applications for the October 1990 licensure examination.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§231.41. Fees. The board shall establish reasonable and necessary fees for the administration of the Act in the following amounts:

(1) examination and application fee: **$80** [$70] **(effective May 1, 1990)**;

(2) reexamination fee: **$80** [$70] **(effective May 1, 1990)** ;

(3)-(9) (No change.)

(10) penalty fees: **$40** [$35] before 90 days; **$80** [$70] after 90 days **(effective May 1, 1990**.

Issued in Austin, Texas, on March 22, 1990.

TRD-9003063 Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Effective date: May 1, 1990

Expiration date: August 29, 1990

For further information, please call: (512) 835-2071

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 29. Guaranty Acts

Subchapter B. Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association Plan of Operation

• **28 TAC §29.208**

The State Board of Insurance adopts on an emergency basis new §29.208, concerning computation of Class B assessments to be determined by the association's board of directors and assessed by the commissioner of insurance against member insurers of the Life, Accident, Health and Hospital Service Insurance Guaranty Association (the association) to carry out the powers and duties of the association under the Insurance Code, Article 21.28-D, with regard to insolvent or impaired insurers. An imminent peril to the public welfare requires adoption of the new section on an emergency basis to protect the insurance consuming public and the claimants of insolvent or impaired insurers by providing funds to pay the contractual obligations of insolvent or impaired insurers as provided in the Insurance Code, Article 21.28-D, and to facilitate the recalculation of Class B assessments, which were approved by the association on July 17, 1989, in conformance with the method of computation provided in the Insurance Code, Article 21.28-D, §9, as amended by Acts 1989, 71st Legislature, Chapter 1082, §6.19, effective September 1, 1989. The new section is necessary to establish for member insurers of the Life, Accident, Health and Hospital Service Insurance Guaranty Association the method to be used in computing Class B assessments determined by the association's board of directors and assessed by the commissioner of insurance against member insurers of the Life, Accident, Health and Hospital Service Insurance Guaranty Association. The adoption on an emergency basis includes adoption and incorporation by reference of a form entitled **Annuity Considerations and Other Deposits Reporting Form**, including instructions and definitions. The board has filed a copy of the form with the office of the Secretary of State, Texas Register Division. Persons desiring copies of the form may obtain copies from the office of the Commissioner of Insurance, Mail Code 001-0, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is adopted on an emergency basis under the Insurance Code, Article 1.04(b), which authorizes the State Board of Insurance to determine rules in accordance with the laws of this state, and under the Insurance Code, Article 21.28-D, which authorizes Class B assessments to be assessed against member insurers of the Life, Accident, Health and Hospital Service Insurance Guaranty Association for the purpose of carrying out the association's powers and duties with regard to insolvent or impaired insurers.

§29.208. Class B Assessment Computation.

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

(1) Account–Any of the following accounts created under the Life, Accident, Health and Hospital Service Insurance Guaranty Association Act, §6:

(A) accident, health, and hospital services account;

(B) life insurance account; and

(C) annuity account.

(2) Act–The Life, Accident, Health and Hospital Service Insurance Guaranty Association Act, Acts 1973, 63rd Legislature, Chapter 408, page 1052, §1, effective August 27, 1973, as amended; codified as the Insurance Code, Article 21.28-D, as amended.

(3) Association–The Life, Accident, Health and Hospital Service Insurance Guaranty Association created under the Act, §6.

(4) Commissioner–The commissioner of insurance of this state.

(5) Contractual obligation–Any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance

policy or annuity contract to which the Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include:

(A) death benefits in an amount in excess of $300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of $100,000 in the aggregate under one or more covered policies on any one life;

(B) an amount in excess of $100,000 in the aggregate under one or more annuity contracts within the scope of the Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of $5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

(C) an amount in excess of $200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life;

(D) any benefits that would have been payable under any group life, accident, or health policies or contracts of the impaired insurer for claims incurred after the next renewal date under those policies or contracts or 90 days, but in no event less than 60 days, after the date that a permanent receiver has been appointed for the insurer by a court of competent jurisdiction, whichever occurs first; or

(E) punitive, exemplary, extracontractual, or bad faith damages, whether agreed to or assumed by an insurer or insured by a court of competent jurisdiction. If the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship of the impaired insurer, that portion of the expenses of administration incurred in processing and payment of claims against the impaired insurer shall also be a contractual obligation under the Act.

(6) Covered policy–Any policy or contract within the scope of the Act, §3.

(7) Member insurer–Any insurance company authorized to transact in this state any kind of insurance to which the Act, §3, applies.

(8) Impaired insurer–

(A) a member insurer, which, after the effective date of the Act, is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of the Insurance Code, Article 21.28, as amended, and Acts 1967, 60th Legislature, Chapter 281, (Texas Insurance Code, Article 21.28-A); and that has been designated an impaired insurer by the commissioner; or

(B) a member insurer determined in good faith by the commissioner after the effective date of the Act to be unable or potentially unable to fulfill its contractual obligations.

(9) Insolvent insurer–A member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes, after the effective date of the Act, impaired to the extent prohibited by law.

(10) Premiums–Direct gross insurance premiums and annuity considerations collected from persons residing or domiciled in the State of Texas on covered contracts and policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. Premiums do not include premiums and considerations on contracts between insurers and reinsurers nor do premiums include any premiums in excess of $5,000, 000 on any covered unallocated annuity contract. Premiums in reference to member insurers are those for the calendar year preceding the assessment. Premiums in reference to insolvent or impaired insurers are those for the calendar year preceding the determination of insolvency or impairment.

(11) State Board of Insurance–The State Board of Insurance created under the Insurance Code, Article 1.02, as amended.

(12) Unallocated annuity contract–Any annuity contract or group annuity certificate that is not issued to and owned by an individual person, including guaranteed interest contracts and deposit administration contracts, except to the extent any annuity benefits under that contract or certificate are guaranteed to an individual person by an insurer.

(b) Computation. Class B assessments to be assessed in accordance with the Act, §9, are to be computed as follows.

(1) The board of directors of the association shall determine the total amount necessary for a Class B assessment for each individual insolvent or impaired insurer. In determining the amount necessary for a Class B assessment, the board of directors may consider estimates of liability of the insolvent or impaired insurer provided by the receiver appointed in accordance with the Insurance Code, Article 21.28, or by the conservator appointed in accordance with the Insurance Code, Article 21.28-A. The board of directors, however, may also consider any other information from any other source the board deems appropriate.

(2) This amount of Class B assessment shall be divided among the association's three separate accounts of:

(A) accident, health and hospital services account;

(B) life insurance account; and

(C) annuity account, in the same proportion that the premiums from covered policies covered by each of these separate accounts were received by the insolvent or impaired insurer during the calendar year preceding its impairment bears to the total premiums received on all covered policies by the insolvent or impaired insurer during the calendar year preceding its impairment.

(3) For purposes of subsection (b)(2) of this section, Page 46 of the annual statement of the insolvent or impaired insurer is the source for the life premium data and the accident and health premium data used in the assessment calculations. Should no annual statement have been filed by the insolvent or impaired insurer for the year immediately preceding impairment, then the life premium data and the accident and health premium data reflected on Page 46 of the last available annual statement filed by the insolvent or impaired insurer shall be used in the assessment calculations. Data used in the assessment calculations on the annuity considerations collected by the insolvent or impaired insurer shall be based on information obtained from the books and records of the insolvent or impaired insurer in the custody of the receiver or conservator or on any other information deemed credible by the commissioner or board of directors of the association.

EXAMPLE

If, under (b)(1), the board of directors determines that an assessment of $10 million is necessary to cover the contractual obligations for insolvent or impaired Company X, and if Company X received premiums from all covered policies during the calendar year preceding its impairment in the amounts of:

Company X	Total Texas Premiums Received on All Covered Policies During the Year Preceding Impairment
Accident and Health	$1,600,000
Life Insurance	$1,600,000
Annuities	$4,800,000
TOTAL	$8,000,000

then the PROPORTION for Company X is:

Company X	Percent of Total Texas Premiums Received on All Covered Policies During the Year Preceding Impairment
Accident and Health	Ratio of: $\frac{\$1,600,000}{\$8,000,000} = 20\%$
Life Insurance	Ratio of: $\frac{\$1,600,000}{\$8,000,000} = 20\%$
Annuities	Ratio of: $\frac{\$4,800,000}{\$8,000,000} = 60\%$

The $10 million determined as necessary under (b)(1) is then divided among the separate accounts of the association as follows:

20% of the $10,000,000 assessment or $2,000,000 from the association's accident, health, and hospital services account;

20% of the $10,000,000 assessment or $2,000,000 from the association's life insurance account; and

60% of the $10,000,000 assessment or $6,000,000 from the association's annuity account.

(4) These dollar amounts (i.e., $2,000,000 from the association's accident, health, and hospital services account; $2,000,000 from the association's life insurance account; and $6,000,000 from the association's annuity account) are then separately assessed against member insurers in the same proportion that each assessed member insurer received premiums on policies covered by each account bears to the total of such separate premiums received on all business by all assessed member insurers on policies covered by each account, as reflected in the annual statements of assessed member insurers for the year preceding the assessment. Page 46 of the annual statement of the member insurer is the source for life premium data and accident and health premium data used in the assessment calculations. Data used in the assessment calculations on annuity considerations collected by member insurers shall be based on information provided on a form sent to member insurers by the commissioner. The board hereby adopts and incorporates herein by reference a form entitled **Annuity Considerations and Other Deposits Reporting Form,** including instructions and definitions. (This form is published by the State Board of Insurance, and copies of this form are available from and on file at the offices of the Commissioner of Insurance, Mail Code 001-0, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998).

EXAMPLE

If Company A, an assessed member insurer, received premiums in the following amounts as reflected in Company A's annual statement and annuity consideration reporting form for the year preceding assessment:

Company A	Total Texas Premiums Received on All Covered Policies During the Year Preceding Assessment
Accident and Health	$1,000,000
Life Insurance	$1,000,000
Annuities	$2,000,000
TOTAL	$4,000,000

and the total amounts of such separate premiums received on all business by all assessed member insurers on policies covered by each account as reflected in the annual statements and annuity consideration reporting forms of all assessed member insurers for the year preceding the assessment are:

Accident and Health	$100,000,000
Life Insurance	$100,000,000
Annuities	$200,000,000

then, Company A's assessment is determined for each of the association's separate accounts as follows:

Accident, Health, and Hospital Services	Ratio of:	$\frac{\$1,000,000}{\$100,000,000}$	or 1%	of the $2 million to be assessed from the association's accident, health and hospital services account
Life Insurance	Ratio of:	$\frac{\$1,000,000}{\$100,000,000}$	or 1%	of the $2 million to be assessed from the association's life insurance account
Annuity	Ratio of:	$\frac{\$2,000,000}{\$200,000,000}$	or 1%	of the $6 million to be assessed from the association's annuity account

(5) Thus, Company A's assessment for each account is computed as follows:

Accident, Health, and Hospital Services	1% of $2,000,000 = $20,000
Life Insurance Account	1% of $2,000,000 = $20,000
Annuity Account	1% of $6,000,000 = $60,000

(c) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed one percent of such insurer's premiums on the policies covered by the account.

(d) The association shall deposit funds received from member insurers in payment of Class B assessments in bank accounts separately maintained for:

(1) accident and health insurance and hospital services;

(2) life insurance; and

(3) annuities.

Issued in Austin, Texas, on March 22, 1990.

TRD-9003045 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: March 22, 1990

Expiration date: July 20, 1990

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 321. Control of Certain Activities by Rule

Subchapter B. Livestock and Poultry

• 31 TAC §§321.42-321.46

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§321.42-321.46, for a 60-day period effective April 12, 1990. The text of new §§321.42-321.46 was originally published in the December 19, 1989, issue of the *Texas Register* (14 TexReg 6619).

Issued in Austin, Texas, on March 26, 1990.

TRD-9003155 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: April 12, 1990

Expiration date: June 11, 1990

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XI. Texas Commission on Human Rights

Chapter 335. General Provisions

• 40 TAC §§335.1-335.7

The Texas Commission on Human Rights adopts on an emergency basis new §§335.1-335.7, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The new sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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

A charge–The statement of facts issued under the Texas Fair Housing Act (the Act), Article IV, §4.08, upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

A complaint–A complaint filed with the commission under Article IV, §4.01, or filed with the federal government as referenced under the Act, Article IV, §4.03.

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings–The public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access comparable to or greater than that required by ANSI A117.1.

Accessible route–A continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ANSI A117. 1 is an accessible route.

Act–The Texas Fair Housing Act.

Aggrieved persons–Any person who claims to have been injured by a discriminatory housing practice; or believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Attorney General–The Attorney General of Texas.

Building–A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

Building entrance on an accessible route–An accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1.

Commission–The Texas Commission on Human Rights.

Common use areas–Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

Complainant–A person, including the commission, who files a complaint

under the Act, Article IV.

Conciliation–The attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.

Conciliation agreement–A written agreement setting forth the resolution of the issues in conciliation.

Controlled substance–Any drug or other substance, or immediate precursor included in the definition in the Controlled Substances Act (21 United States Code 802), §102.

Court–A district court in the county in which the alleged discriminatory housing practice occurred.

Designee–An employee of the commission authorized to execute such duties, powers, and authority as may be conferred by the executive director subject to the provisions of the Act or these rules.

Discriminatory housing practice–An act prohibited by Article III and Article IX of this Act.

Dwelling–Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one or more families; or any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one or more families.

Entrance–Any access point to a building or portion of a building used by residents for the purpose of entering.

Examiner–A person designated by the commission to conduct a hearing.

Executive Director–The executive director of the Texas Commission on Human Rights.

Exterior–All areas of the premises outside of an individual dwelling unit.

Familial status–A person who is subject to a discriminatory housing practice because of pregnancy; domiciled with an individual younger than 18 years of age in regard to whom the person is the parent or legal custodian or has the written permission of the parent or legal custodian for domicile with that person; or in the process of obtaining legal custody of an individual younger than 18 years of age.

Family–Includes a single individual.

Federal government–United States Department of Housing and Urban Development.

Federal law–Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Public Law 100-430).

First occupancy–A building that has never before been used for any purpose.

Ground floor–A floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

Handicap–A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. In this Act the term does not include current illegal use of or addiction to any drug or illegal or federally controlled substance; and reference to an individual with a handicap or to handicap does not apply to an individual because of that individual's sexual orientation or because that individual is a transvestite. As used in this definition physical or mental impairment means:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance);

(C) any major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(D) having a record of such an impairment such as a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activities;

(E) regarded as having a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation; having a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or having no physical or mental impairment but is treated by another person as having such an impairment.

Hearing–A proceeding conducted to receive evidence or argument on a matter before the commission.

Hearing examiner–An examiner who is not a member of the commission.

Interior–The spaces, parts, components, or elements of an individual dwelling unit.

Intervenor

A person other than a complainant or respondent who, upon showing a justiciable interest in a matter before the commission, is permitted to become a party to a proceeding.

Modification–Any change to the public or common use areas of a building or any change to a dwelling unit.

Multifamily dwellings–Buildings consisting of four or more dwelling units if the buildings have one or more elevators; and the ground floor of the dwelling units in other buildings consists of four or more dwelling units.

Municipality–A local political subdivision that enforces a local ordinance prohibiting discriminatory housing practices which has been determined to be substantially equivalent to federal law by the federal government.

Nonparty participant–A person other than a party who is admitted to participant status and who according to commission procedure supports or opposes, in part or whole, an application submitted to the commission.

Party–A person who, having a justiciable interest in a matter before the commission, is admitted to full participation in a proceeding concerning that matter.

Person–One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

Pleading–A written allegation by a party or complainant of his claims in the form of a complaint, exception, reply, motion, or answer.

Premises–The interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

Proceeding–A conference, meeting, hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the dismissal of a complaint. It may be rulemaking or adjudicative.

Public use areas–Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

Register–The *Texas Register*.

Residential real estate-related transaction–Making or purchasing loans or providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling; or to secure residential real estate; or the selling, brokering, or appraising residential real estate property.

Respondent–The person accused of violation of the Act in a complaint of a discriminatory housing practice; or any person identified as an additional or substitute respondent under the Act, Article IV, or any agent of an additional or substitute

respondent.

Site–A parcel of land bounded by a property line or a designated portion of a public right of way.

Standards for accessibility and usability for physically handicapped people–Compliance with the appropriate requirements of the American National Standard for buildings and facilities commonly cited as "ANSI A117.1" or another standard that affords handicap persons accessibility and usability comparable to or greater than that required by ANSI A117.1.

Substitute respondent–A person not named in the complaint if in the course of the investigation the commission determines a person should be accused of a discriminatory practice.

To rent–To lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

§335.2. Purpose. These procedural and substantive rules are established by the commission for executing its responsibilities in the administration and enforcement of the Texas Fair Housing Act. Based on its experience in the administration of the Act and upon its evaluation of suggestions for amendments submitted by interested persons, the commission from time to time may amend and rescind these rules in accordance with the Texas Civil Statutes, Article 6252-13a.

§335.3. General Construction. These rules shall be construed according to the fair import of their meaning so as to further policies and purposes of the Texas Fair Housing Act. The commission does not intend that a failure to comply with these rules by the commission should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required under these rules or the Act. The commission intends that substantive rules shall impose obligations, rights, and remedies, which are the same as provided by federal law and regulations of the federal government.

§335.4. Authority. These rules are issued under the commission's authority to administer and enforce the Texas Fair Housing Act pursuant to Article II.

§335.5. Severability. If any rule of the commission or portion thereof is adjudged by a court to be invalid or if any rule of the commission, or portion thereof, is not in conformity with applicable state laws or administrative regulations of the state, that judgment does not affect the remainder of the rules.

§335.6. Availability. The rules of the commission shall be available to the public at all offices of the commission and shall be on file with the offices of the attorney general, speaker of the house, and lieutenant governor and as required by the Texas Civil Statutes, Article 6252-13a.

§335.7. Scope. It is the policy of Texas to provide, within constitutional limitations, for fair housing throughout the state and to provide rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of brokerage services or in the availability of residential real estate-related transactions.

Issued in Austin, Texas, on March 22, 1990.

TRD-9003082 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: March 23, 1990

Expiration date: May 22, 1990

For further information, please call: (512) 837-8534

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Chapter 336. Commission

• 40 TAC §336.1

The Texas Commission on Human Rights adopts on an emergency basis new §336.1, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new section covers the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new section covers the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The section may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new section is adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§336.1. Powers of the Commission. The commission may exercise those general powers as provided under the Texas Fair Housing Act, Articles II, IV, and VI.

Issued in Austin, Texas, on March 22, 1990.

TRD-9003083 William M. Hale
Executive Director
Texas Commission on Human Rights

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For further information, please call: (512) 837-8534

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Chapter 337. Referral to Municipalities

• 40 TAC §§337.1-337.3

The Texas Commission on Human Rights adopts on an emergency basis new §§337.1-337.3, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The new sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§337.1. Referral Authority. Pursuant to the Texas Fair Housing Act, Article II, the commission may defer proceedings under this Act and refer a complaint to a municipality that has been approved by the federal government as having adopted an ordinance that is substantially equivalent to federal law.

§337.2. Eligibility.

(a) Pursuant to the Texas Fair Housing Act, (the Act), Article II, the commission may defer proceedings under the Act and refer complaints to a municipality that is in compliance with the following requirements:

(1) a municipality adopts and enforces an ordinance that has been approved by the federal government as substantially equivalent to federal law;

(2) a municipality adopts and enforces an ordinance that has been approved by the commission as substantially equivalent to the Act;

(3) a municipality certifies that it shall exercise the same powers and enforcement authority as provided under federal law and the Act.

(b) To certify a local municipality for purposes of deferring proceedings under the Act and referring complaints under this chapter and the Act, Article II, the following materials and information shall be submitted to the commission:

(1) a copy of the local ordinance which is determined to be substantially equivalent to federal law;

(2) a letter verifying that the ordinance of the municipality has been approved by the federal government as substantially equivalent to federal law;

(3) a copy of rules, policies, and procedures governing the administration and enforcement of the local ordinance determined to be substantially equivalent to federal law and the Act;

(4) a copy of the organizational chart of the municipality's internal structure for enforcing the local ordinance determined to be substantially equivalent to federal law and the Act.

(c) Upon examination of the materials and information provided by the municipality, the executive director on behalf of the commission shall notify the municipality in writing as to the determination of its eligibility.

(d) If the commission does not certify the municipality in accordance with this chapter and the Act, Article II, the executive director on behalf of the commission shall identify in writing the reasons for noncertification and endeavor to provide the municipality with the necessary assistance to comply with the requirements established by this chapter.

§337.3. Cooperative Agreements. The commission shall endeavor to enter into cooperative agreements with local municipalities certified under §337.2 of this chapter (relating to Eligibility) to ensure effective and integrated administrative review procedure, to share information, and to provide technical assistance and training.

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For further information, please call: (512) 837-8534

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Chapter 338. Exempted Residential Real Estate-Related Transactions

• 40 TAC §§338.1-338.8

The Texas Commission on Human Rights adopts on an emergency basis new §§338.1-338.8 concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. These rules may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§338.1. Sale or Rental of a Single-Family House by an Owner.

(a) Nothing in the Texas Fair Housing Act, other than the prohibitions against discriminatory advertising, applies to the sale or rental of a single-family house by an owner, provided the following conditions are met:

(1) the owner does not own, have any interest in or have reserved on his behalf, under an express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. This exemption applies to only one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental;

(2) the house is sold or rented without the use of sales or rental facilities or services of a real estate broker, agent, or salesman licensed under the Real Estate License Act (Texas Civil Statutes, Article 6573a) or if an employee or agent of a licensed broker, agent, or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families. This exemption applies to only one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental.

(b) Nothing in the Texas Fair Housing Act, other than the prohibitions against discriminatory advertising applies to the sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residency.

§338.2. Sale, Rental, or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not for Profit Institution. The Texas Fair Housing Act does not prohibit a religious organization, association, or society, or a not for profit institution, or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

§338.3. Housing Owned or Operated by a Private Club. The Texas Fair Housing Act does not prohibit a private club not open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members, or from giving preference to its members.

§338.4. Local or State Restrictions on Maximum Number of Occupants of a Dwelling. The Texas Fair Housing Act does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or restriction relating to health or safety standards or a requirement of nondiscrimination in any other state or federal law.

§338.5. Appraisals of Real Property. The Texas Fair Housing Act does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

§338.6. Familial Status.

(a) Nothing in the Texas Fair Housing Act regarding discrimination based on familial status applies to housing for older persons, if the commission determines that

the housing is specifically designed and operated to assist elderly persons under a federal or state program; the housing is intended for, and solely occupied by, persons 62 years of age or older; or the housing is intended and operated for occupancy by at least one person 55 years of age or older per unit as determined by commission rules.

(b) The exemption related to housing for persons 62 years or older, satisfies the requirements of this section even though:

(1) there are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) there are unoccupied units, provided that such units are reserved for occupancy for persons 62 years of age or older;

(3) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(c) The exemption related to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, shall satisfy the following requirements:

(1) the housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. Significant facilities and services specifically designed to meet the physical or social needs of older persons include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this section);

(2) it is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this requirement the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph:

(A) whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable;

(B) the amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;

(C) the income range of the residents of the housing facility;

(D) the demand for housing for older persons in the relevant geographic area;

(E) the range of housing choices for older persons within the relevant geographic area;

(F) the availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of this paragraph;

(G) the vacancy rate of the housing facility;

(3) at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this paragraph until 25% of the units in the facility are occupied;

(4) the owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

(A) the manner in which the housing facility is described to prospective residents;

(B) the nature of any advertising designed to attract prospective residents;

(C) age verification procedures;

(D) lease provisions;

(E) written rules and regulations;

(F) actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations;

(5) housing satisfies the requirements of this section even though:

(A) on September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988, are occupied by at least one person 55 years of age or older;

(B) there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or older;

(C) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§338.7. Illegal Manufacture or Distribution of a Controlled Substance. The Texas Fair Housing Act does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

§338.8. Health or Safety of Individuals or Damage to Property. Nothing in the Texas Fair Housing Act requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

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Chapter 339. Discriminatory Housing Practices

• 40 TAC §§339.1-339.18

The Texas Commission on Human Rights adopts on an emergency basis new §§339.1-339.18, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. These sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. These sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§339.1. Real Estate Practices Prohibited. In accordance with the commission's interpretation of discriminatory housing practices it shall be unlawful for a person to:

(1) refuse to sell or rent a dwelling after the making of a bona fide offer, refuse to negotiate for the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin; or discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with the sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin;

(2) make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination;

(3) represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when the dwelling is in fact available;

(4) induce or attempt to induce for profit a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, handicap, familial status, or national origin;

(5) discriminate against a person in making a real estate-related transaction available or in the terms or conditions of a real estate- related transaction because of race, color, religion, sex, handicap, familial status, or national origin by a person whose business includes engaging in a residential real estate-related transaction.,

(6) deny any person access to, or membership or participation in, a multi-listing service, real estate brokers, organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, or service, or facility because of race, color, religion, sex, handicap, familial status, or national origin;

(7) intimidate or interfere with or attempt to intimidate or interfere with a person intentionally, whether or not acting under color of law, by force, or threat of force:

(A) because of the person's race, color, religion, sex, handicap, familial status, or national origin and because the person is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of a dwelling or for applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings;

(B) because the person is or has been, or to intimidate the person from participating without discrimination because of race, color, religion, sex, handicap, familial status, or national origin in an activity, service, or facility related to the business of selling or renting dwellings, affording another person opportunity or protection to so participate, or unlawfully aiding or encouraging other persons to participate without discrimination because of race, color, religion, sex, handicap, familial status, or national origin in an activity, service, organization, or facility relating to the business of selling or renting dwellings;

(C) because a person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Texas Fair Housing Act.

§339.2. Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental.

(a) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

(b) Prohibited actions under this section include, but are not limited to:

(1) failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin;

(2) refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin;

(3) imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin;

(4) using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin;

(5) evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

§339.3. Discrimination in Terms, Conditions, and Privileges and in Services and Facilities.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin to impose different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin;

(2) failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin;

(3) failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin;

(4) limiting the use of privileges, services, or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant, or a person associated with him or her;

(5) denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

§~339.4. Other Prohibited Sale and Rental Conduct.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development. Prohibited practices under this section generally refer to unlawful steering practices that include, but are not limited to:

(1) discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin or because of race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood, or development;

(2) discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood or development;

(3) communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin;

(4) assigning any person to a particular section of a community, neighborhood, or development or to a particular floor of a building because of race, color, religion, sex, handicap, familial status, or national origin.

(b) It shall be unlawful to because of race, color, religion, sex, handicap, familial status, or national origin to engage in any conduct relating to the provision of focusing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons. Prohibited sales and rental practices under this section include, but are not limited to:

(1) discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice,

(2) employing codes or other devices to segregate or reject applicants, purchasers, or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin;

(3) denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin;

(4) refusing to provide municipal services or property or hazard insurance for dwelling or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

§339.5. Discriminatory Advertisements, Statements and Notices.

(a) It shall be unlawful to make, print, or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements, and advertisements include, but are not limited to:

(1) using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin;

(2) expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons;

(3) selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin;

(4) refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

§339.6. Discriminatory Representations on the Availability of Dwellings.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

(b) Prohibited actions under this section include, but are not limited to:

(1) indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin;

(2) representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale of rental of a dwelling to a person;

(3) enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin;

(4) limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental, because of race, color, religion, sex, handicap, familial status, or national origin;

(5) providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.

§339.7. Blockbusting.

(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of

a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to:

(1) engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it or in order to encourage the person to offer a dwelling for sale or rental;

(2) encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

§339.8. Discrimination in the Provision of Brokerage Services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers, organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, or national origin;

(2) denying or limiting benefits accruing to members in a real estate brokers, organization because of race, color, religion, sex, handicap, familial status, or national origin;

(3) imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin;

(4) establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers, organization, or other service, organization, or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.

§339.9. Discriminatory Practices in Residential Real Estate-Related Transactions.

(a) This section provides the commission's interpretation of the conduct that is unlawful housing discrimination under the Texas Fair Housing Act, Article 111, §3.06.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin.

§339.10. Discrimination in the Making of Loans and in the Provision of Other Financial Assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

§339.11. Discrimination in the Purchasing of Loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair, or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities;

(2) pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin;

(3) imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(c) This section does not prevent consideration in the purchasing of loans, of factors justified by business necessity, including requirements of state or federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status,d or national origin.

§339.12. Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) using different policies, practices, or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin;

(2) determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration, or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status,

or national origin.

§339.13. Unlawful Practices in the Selling, ~Brokering or Appraising of Residential Real Property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering, or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to: using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

§339.14. General Prohibitions Against Discrimination Because of Handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(1) that buyer or renter;

(2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

(1) that buyer or renter;

(2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this section does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap.,

(4) inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

§339.15. Reasonable Modifications of Existing Premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workman-like manner and that any required building permits will be obtained.

§339.16. Reasonable Accommodations. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

§339.17. Design and Construction Requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a state, county, or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) All covered multifamily dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall be designed and constructed in such a manner that:

(1) the public and common use areas are readily accessible to and usable by handicapped persons;

(2) all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs;

(3) all premises within covered multifamily dwelling units contain the following features of adaptable design:

(A) an accessible route into and through the covered dwelling unit;

(B) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall, and shower seat, where such facilities are provided;

(D) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of subsection (b)(3) of this section.

(d) Compliance with a duly enacted law of a state or unit of general local government that includes the requirements of subsections (a) and (b) of this section satisfies the requirements of subsections (a) and (c) of this section.

(e) This section does not invalidate or limit any law of a state or political subdivision of a state that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this section.

§339.18. Prohibited Interference, Coercion, Intimidation, or Retaliation.

(a) Interference, coercion, intimidation, or retaliation shall be interpreted by the commission to be conduct that is unlawful housing discrimination under the Texas Fair Housing Act (the Act).

(b) It shall be unlawful housing discrimination to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act.

(c) Prohibited conduct made unlawful under this section includes, but is not limited to:

(1) coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin;

(2) threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons;

(3) threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential zeal estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person;

(4) intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise rights granted or protected by this part;

(5) retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the 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 March 22, 1990.

TRD-9003079 William M. Hale
Executive Director
Texas Commission on Human Rights

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For further information, please call: (512) 837-8534

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Chapter 340. Administrative Enforcement

• 40 TAC §§340.1-340.28

The Texas Commission on Human Rights adopts on an emergency basis new §§340.1-340.28 concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United State Department of Housing and Urban Development pursuant to Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The new sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§340.1. Submission of Information to File a Complaint.

(a) The executive director or his or her designee may receive information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the Act and this chapter and is furnished by an aggrieved person, a complaint will be considered filed in accordance with §340.6 of this title (relating to The Date of Filing of a Complaint). Where additional information is required for the purpose of perfecting a complaint under the Act, the executive director or his or her designee will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

(b) The information may also be made available to the federal government. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.

(c) The executive director or his or her designee may counsel with an aggrieved party about the facts and circumstances which constitute the alleged discriminatory housing practices. If the facts and circumstances do not constitute discriminatory housing practices, the executive director or his or her designee shall so advise the aggrieved party. If the facts and circumstances constitute alleged discriminatory housing practices, the executive director or his or her designee shall assist the aggrieved party in perfecting a complaint.

§340.2. Who May File Complaints. Any aggrieved person or the executive director on behalf of the commission may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated whichever is later. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

§340.3. Persons Against Whom Complaints May be Filed.

(a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

§340.4. Where to File Complaints. Ag-

grieved persons may file complaints in person, by telephone, or in writing with the executive director or his or her designee on a form furnished by the commission or at an office of the federal government.

§340.5. Form and Content of a Complaint.

(a) Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or if the complaint is signed by the executive director on behalf of the commission it must be signed and affirmed by the executive director. The signature and affirmation may be made at any time during the investigation. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."

(b) The executive director may require complaints to be made on prescribed forms. The complaint forms will be available at the commission office or at any office of the federal government.

(c) Each complaint shall include, but not be limited to, the following information:

(1) the name and address of the aggrieved person;

(2) the name and address of the respondent;

(3) a description and address of the dwelling which is involved, if appropriate;

(4) the basis for the alleged discriminatory housing practices which may include any of the following: race, color, religion, sex, familial status, national origin, handicap, or retaliation;

(5) a concise statement of the facts and circumstances that constitute alleged discriminatory housing practices under the Texas Fair Housing Act, including identification of personal harm, respondent's reason for the action taken and a discriminatory statement.

§340.6. The Date of Filing of a Complaint.

(a) Except as provided in subsection (b) of this section, a complaint is filed when it is received by the commission or dual filed with the federal government.

(b) The executive director may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone and reduced to writing by an employee of the commission) which is substantially equivalent to the information identified in §340.5(c) of this title (relating to Form and Content of a Complaint).

(c) Where a complaint alleging a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

§340.7. Amendment of Complaint. A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint and to clarify and amplify allegations made therein or to add additional or substitute respondents. Such amendment or amendments alleging additional acts which constitute an alleged discriminatory housing practice related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first received. The respondent shall receive a copy of the amended complaint. An amended complaint shall be subject to the procedures set forth in this chapter.

§340.8. Service of Notice on Aggrieved Person. Upon the filing of a complaint, the executive director or his or her designee will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

(1) acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;

(2) include a copy of the complaint;

(3) advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under the Texas Fair Housing Act and this chapter;

(4) advise the aggrieved person of his or her right to commence a civil action under the Act, Article V, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Article IV, with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under the Act, Article VI, is pending;

(5) advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Act and the rules.

§340.9. Notification of Respondent and Joinder of Additional or Substitute Respondents.

(a) Within 20 days of the filing of a complaint or the filing of an amended complaint under this chapter, the executive director or his or her designee will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under the Texas Fair Housing Act, Article IV, and this chapter, as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of the identification.

(b) The notice will include, but not be limited to, the following:

(1) the notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint;

(2) the notice will state the date that the complaint was accepted for filing;

(3) the notice will advise the respondent of the time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the respondent under the Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;

(4) the notice will advise the respondent of the aggrieved person's right to commence a civil action under the Act, Article V, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter or the Act, Article IV, with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under the Act, Article V is pending;

(5) if the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the executive director's belief that the joined person is properly joined as a respondent;

(6) the notice will advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Act and these rules;

(7) the notice will invite the respondent to enter into a conciliation

agreement for the purpose of resolving the complaint;

(8) the notice will include an initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

§340.10. Answer to Complaint.

(a) The respondent may file an answer not later than 10 days after receipt of the notice described in §340.9 of this title (relating to Notification of Respondent and Joinder of Additional or Substitute Respondents). The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."

(b) An answer may be reasonably and fairly amended at any time with the consent of the executive director.

§340.11. Investigations.

(a) Upon the filing of a complaint under this chapter, the executive director will initiate an investigation. The purposes of an investigation are:

(1) to obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint;

(2) to document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint;

(3) to develop factual data necessary for the executive director on behalf of the commission to make a determination under this chapter and the Texas Fair Housing Act, Article IV, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this chapter and the Act, Article IV.

(b) To initiate an investigation of housing practices by the executive director on behalf of the commission to determine whether a complaint should be filed under this chapter and the Act, Article IV. Such investigations will be conducted in accordance with the procedures described under this chapter.

§340.12. Systemic Processing. Where the executive director determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the executive director may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Act.

§340.13. Conduct of Investigation.

(a) In conducting investigations under this chapter, the executive director will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The executive director and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under the Texas Fair Housing Act, Article IV, except that the executive director on behalf of the commission shall have the power to issue subpoenas described under the Act, Article II, in support of the investigation.

§340.14. Cooperation with Federal Agencies. The executive director, in processing complaints under the Texas Fair Housing Act (the Act), may seek the cooperation and utilize the services of federal agencies, including any agency having regulatory or supervisory authority over financial institutions.

§340.15. Completion of Investigation.

(a) The investigation will remain open until a reasonable cause determination is made, a conciliation agreement is executed and approved, or a no reasonable cause determination is made under this chapter and the Texas Fair Housing Act, Article IV.

(b) Unless it is impracticable to do so, the executive director will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint.

(c) If the executive director is unable to complete the investigation within the 100-day period or dispose of all administrative proceedings related to the investigation within one year after the date the complaint is filed, the executive director will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§340.16. Final Investigative Report.

(a) At the end of each investigation under this chapter, the executive director or his or her designee will prepare a final investigative report. The investigative report will contain:

(1) the names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action under the Act;

(2) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) a summary description of other pertinent records;

(4) a summary of witness statements; and

(5) answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in this chapter, the executive director will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the executive director shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.

§340.17. Conciliation Process.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the executive director, the executive director or his or her designee shall, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, the executive director will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

§340.18. Conciliation Agreement.

(a) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The

types of relief that may be sought for the aggrieved person are described in this chapter and the Texas Fair Housing Act (the Act).

(b) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the executive director, who will indicate approval by signing the agreement. The executive director shall approve an agreement and, if the executive director is the complainant, will execute the agreement, only if:

(1) the complainant and the respondent agree to the relief accorded the aggrieved person;

(2) the provisions of the agreement will adequately vindicate the public interest,

(3) the executive director is the complainant, all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.

(c) The commission may issue a charge under this chapter, and the Act, if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the executive director.

§340.19. Relief Sought for Aggrieved Persons During Conciliation.

(a) The following types of relief may be sought for aggrieved persons in conciliation:

(1) monetary relief in the form of actual and punitive damages and attorney fees;

(2) other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration or other methods of resolving a dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration or other methods of dispute resolution.

§340.20. Conciliation Provisions Relating to Public Interest. The following are types of provisions that may be sought for the vindication of the public interest:

(1) elimination of discriminatory housing practices;

(2) prevention of future discriminatory housing practices;

(3) remedial affirmative activities to overcome discriminatory housing practices;

(4) reporting requirements;

(5) monitoring and enforcement activities.

§340.21. Termination of Conciliation Process.

(a) The executive director may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the executive director or his or her designee; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or the executive director finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the executive director will terminate conciliation unless the court specifically requests assistance from the commission.

§340.22. Prohibitions and Requirements for Disclosure of Information Obtained During Conciliation.

(a) Nothing that is said or done in the course of conciliation under this chapter may be made public or used as evidence in subsequent administrative hearings or in civil actions under the Texas Fair Housing Act (the Act) or this chapter without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the executive director determines that disclosure is not required to further the purposes of the Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the executive director may publish tabulated descriptions of the results of all conciliation efforts.

§340.23. Review of Compliance with Conciliation Agreements. The executive director may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the executive director has reasonable cause to believe that a respondent has breached a conciliation agreement, the executive director shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under the Texas Fair Housing Act, Article VI, for the enforcement of the terms of the conciliation agreement.

§340.24. Reasonable Cause Determination.

(a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Article IV, have not been executed by the complainant and the respondent, and approved by the executive director, the executive director on behalf of the commission, within the time limits set forth in subsection (f) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the executive director shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in state district court.

(b) If the executive director determines that reasonable cause exists, the executive director will immediately issue a charge under the Act, Article IV, and this chapter on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service, except in all cases not involving the legality of local zoning or land use laws or ordinances.

(c) If the executive director determines that no reasonable cause exists, the executive director shall issue a short and plain written statement of the facts upon which the executive director has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal, except in all cases not involving the legality of local zoning or land use laws or ordinances. Public disclosure of the dismissal shall be by issuance of a press release, except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.

(d) If the executive director determines that the matter involves the legality of local zoning or land use laws or ordinances, the executive director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Attorney General for appropriate action under the Act, Article VI, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

(e) The executive director may not issue a charge under this chapter and the Act, Article IV, regarding an alleged discriminatory housing practice if an aggrieved

person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the executive director will so notify the aggrieved person and the respondent by certified mail or personal service.

(f) The executive director shall make a reasonable cause determination within 100 days after filing of the complaint, unless it is impracticable to do so.

(g) If the executive director is unable to make the determination within the 100-day period, the executive director will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§340.25. Issuance of Charge.

(a) A charge:

(1) shall consist of a short and plain written statement of the facts upon which the executive director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) shall be based on the final investigative report;

(3) need not be limited to facts or grounds that are alleged In the complaint filed under this chapter and the Texas Fair Housing Act, Article IV. If the charge is based on grounds that are alleged in the complaint, the executive director on behalf of the commission, will not issue a charge with regard to the grounds unless the record of the investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.

(b) Not later than the 20th day after the executive director on behalf of the commission issues a charge, the executive director shall send a copy of the charge with information concerning the election of judicial determination under this chapter and the Act, Article IV, to each respondent and each aggrieved person identified in the charge by certified mail or personal service.

§340.26. Election of Civil Action or Provision of Administrative Hearing Procedure.

(a) If a charge is issued under this chapter and the Texas Fair Housing Act, Article IV, a complainant (including the executive director if the commission filed the complaint), a respondent or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative hearing, to have the claim asserted in the charge decided in a civil action under the Act, Article IV.

(b) The election must be made not later than the 20th day after the receipt of service of the charge, or in the case of the executive director not later than the 20th day after the charge is issued. The person making the election shall give notice to the commission and all other complainants and respondents to whom the charge relates. The notification will be filed and served in accordance with the procedures established under the administrative procedure and Texas Register Act.

(c) If a timely election is not made in accordance with this section and the Act, Article IV, the commission will provide an administrative hearing based on the charge.

(d) A hearing under this section may not continue regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal law or state law seeking relief with respect to that discriminatory housing practice.

(e) Except as provided by subsection (d) of this section, the administrative procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and as provided under Chapter 341 of these rules governs a hearing and appeal of a hearing under the Act.

(f) If a timely election is made under the Act, Article IV, and this section, the commission shall authorize, and not later than the 30th day after the election is made, the Attorney General shall file a civil action on behalf of the aggrieved person in a district court seeking relief under this section. Venue for an action under this section is in the county in which the alleged discriminatory housing practice occurred. An aggrieved person may intervene in the action.

(g) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under this Act, Article V.

(h) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.

(i) The executive director shall be available for consultation concerning any legal issues raised by the Attorney General as to how best to proceed in the event that a new court decision or newly discovered evidence is regarded as relevant to the reasonable cause determination.

§340.27. Administrative Penalties.

(a) If the commission determines at an administrative hearing under the Texas Fair Housing Act, Article IV, and this chapter, that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

(b) To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:

(1) $10,000, if the respondent has been adjudged by order of the federal government or a court to have committed a prior discriminatory housing practice;

(2) except as provided in subsection (c) of this section, $25,000 if the respondent has been adjudged by order of the federal government or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;

(3) except as provided in subsection (c) of this section, $50,000 if the respondent has been adjudged by order of the federal government or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in subsection (b)(2) and (3) of this section may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(d) At the request of the commission, the Attorney General shall sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the state treasurer for deposit in the state treasury to the credit of the fair housing fund.

§340.28. Effect of Commission Order. A commission order under the Texas Fair Housing Act, Article IV, and this chapter does not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued the order, and involved a bona fide purchaser, encumbrancer or tenant who did not have actual notice of the charge filed under the Act or this chapter.

Issued in Austin, Texas, on March 22, 1990.

TRD-9003078 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: March 23, 1990

Expiration date: May 22, 1990

For further information, please call: (512) 837-8534

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Chapter 341. Administrative Hearing Proceedings

• 40 TAC §§341.1-341.68

The Texas Commission on Human Rights adopts on an emergency basis new §§341.1-341.68, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The new sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§341.1. Filing Documents.

(a) All documents relating to a hearing proceeding pending or to be instituted by the commission shall be filed with the executive director or his or her designee. For the sole purpose of determining the date of filing, a document shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by the Texas Fair Housing Act (the Act), these rules or other state laws. This section does not govern the commission's determination as to the substantive adequacy or completeness of an application.

(1) If a document is sent to the executive director or his or her designee by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail two days or more before the last day for filing, it shall be deemed filed in time if received not more than five days after the last day for filing. A legible postmark affixed by the United States Postal Service is prima facie evidence of the date of mailing.

(2) For purpose of any responsive document (e.g.: a reply to exceptions, responsive brief, or reply to motion) for which the time period for filing commences with the filing of another document, the initiating document shall be deemed filed when it is actually received by the executive director or his or her designee, whether on, before, or after the last day for filing it.

(b) Unless the Act, these rules, or other state laws provide otherwise, the commission may extend the time for filing a pleading:

(1) upon its own motion; or

(2) upon a written motion which is duly filed by a party within the applicable period of time for the filing of the pleading and which shows:

(A) that there is good cause to extend the time; and

(B) that the need for an extension is not caused by the movant's neglect, indifference, or lack of diligence.

(c) Unless the commission specifies otherwise, a party filing a document relating to a hearing proceeding pending or to be instituted shall deliver a copy of the document in person or by mail to each party to the hearing proceedin~g or to his authorized representative, and shall, as required by §341.14 of this title (relating to Filing) certify to the executive director the fact and date of such service.

(d) The commission offices are located at 8100 Cameron Road, Suite 525, Austin. The mailing address of the commission is P.O. Box 13493, Austin, Texas 78711. Office hours are 8 a.m. to 5 p.m., Monday-Friday. Offices are closed on Saturdays, Sundays, and state-observed holidays.

§341.2. Computing Time. An interval of time prescribed or allowed by this chapter by decision of the commission, or by any applicable state law of the Texas Fair Housing Act, begins on the day after the act, event, or default in question and, in the case of an interval of n days, concludes on the close of business on the nth day after the act, event, or default, unless the nth day of the interval falls on a Saturday, Sunday, or state-observed holiday, in which case the interval concludes at the end of the next day after the nth day which is neither a Saturday, Sunday, nor state-observed holiday.

§341.3. Agreements to be in Writing. The executive director will not consider an agreement between or among parties or their representatives affecting any pending matter unless it is either:

(1) reduced to writing, signed by each party or his authorized representative, and filed as part of the record; or

(2) announced at the hearing in which it was reached and entered into the record of the hearing.

§341.4. Conduct and Decorum. Each party, witness, and attorney, or other representative at the hearing shall conduct himself with dignity, courtesy, and respect for the commission, the examiners, and all other participants. A party, witness, attorney, or other representative violating this section may be excluded by the commission or hearing examiner from a hearing, and is subject to such other lawful disciplinary action as the commission may prescribe.

§341.5. Procedures Not Otherwise Provided. If in connection with any hearing the hearing examiner determines that there are no other applicable state laws or other applicable chapters of these rules or the Texas Fair Housing Act, resolving a particular procedural question before it, the hearing examiner will direct the parties to follow procedures consistent with the purpose of this chapter.

§341.6. Informal Disposition. Unless precluded by the Texas Fair Housing Act, state law, or these rules, or objected to by a party, informal disposition may be made of any proceeding conducted under this chapter. Informal disposition includes disposition by stipulation, agreed settlement, consent order, and default.

§341.7. Classification of Participants.

(a) Applicants, respondents, and intervenors shall be classified as parties to hearing proceedings. A party to a hearing proceeding has the right to present a direct case, cross examine each witness, submit legal arguments, and otherwise participate fully in the hearing proceeding.

(b) All other participants are classified as nonparty participants. A nonparty participant may, subject to §341.09 of this title (relating to Party Designations and Appearances), present views and may, at the discretion of the hearing examiner and subject to the Texas Fair Housing Act or these rules, otherwise participate.

§341.8. Alignment of Parties. Each party shall be aligned according to the nature of the hearing proceeding and the party's relationship to it.

§341.9. Party Designations and Appearances.

(a) The executive director or his or her designee is always a party to a hearing proceeding.

(b) Any person having a justiciable interest in a hearing proceeding may be admitted as a party and may appear at the hearing proceeding subject to the following limitations.

(1) A person seeking to appear as a party at the hearing proceeding must

file his request to be named as party at or before the conference set for designation of parties.

(2) A request to be named a party shall clearly and specifically set out:

(A) the name and address of the person making the request;

(B) the pending matter to which it pertains;

(C) the person's interest in the hearing proceeding; and

(D) the action or outcome the person seeks.

(3) Any person seeking to appear as a party at the hearing proceeding must give notice by serving a copy of his pleadings upon each other party at the hearing proceeding, as required in §341.15 of this title (relating to Service of Pleadings).

(4) The hearing examiner may require hearing participants of a similar class to select one person to represent them in a hearing proceeding.

(c) A person not wishing to appear as a party or not entitled to be admitted as a party, but wishing to show support or opposition, may appear as a nonparty participant by giving notice to all parties in accordance with §341.21 of this title (relating to Notice of Nonparty Participation)

§341.10. Representative Appearance. Except when a party appears as a member of a class of affected persons, any party may represent himself or appear and be represented by any person of his choosing.

§341.11. Amicus Curiae. Briefs amicus curiae may be permitted at the discretion of the hearing examiner. Such participants are not parties to the proceeding.

§341.12. Classification of Pleadings. Pleadings filed with the executive director on behalf of the commission include charges, answers, exceptions, replies, and motions. Regardless of error in designation, a pleading shall be accorded its true status in the hearing proceeding in which it is filed.

§341.13. Form and Content of Pleadings.

(a) Pleadings and briefs shall be typewritten or printed in black type on 8 1/2-inch by 11-inch white paper with one inch margins. Exhibits, unless prepared according to other commission rules pertaining to maps, plats, or the like, shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double-spaced. Reproductions may be by any process, provided all copies are sharp and optically stable. The original copy of each pleading shall be signed in ink by the pleader or his authorized representative.

(b) When official forms for commission hearing proceedings are developed, the executive director will furnish them on request. A pleading for which an official form has been developed must contain the information and other matter designated in that official form and must conform substantially to that official form.

(c) A pleading for which no official form is prescribed must contain:

(1) the name of the person supporting or opposing commission action;

(2) the business phone number and the address, including the city, if any, and county, of the pleader and the phone number and address of his authorized representative, if any;

(3) the jurisdiction of the commission over the subject matter;

(4) a concise statement of the facts relied upon by the pleader;

(5) a request stating the type of action or order desired by the pleader;

(6) the name and address of each person who the pleader knows or believes would be affected if the request were granted;

(7) any other matter required by the Texas Fair Housing Act, other state law, or these rules; and

(8) a certificate of service, if required by §341.14 of this title (relating to Filing).

§341.14. Filing. An original and 10 copies of each pleading must be filed with the executive director on behalf of the commission. Each copy filed must include a certification that a copy has been served on each party of record, stating the name of each party served and the date and manner of service. If a filing fee is applicable, the filing fee must accompany the pleading.

§341.15. Service of Pleadings. The party filing a pleading shall mail or deliver a copy of it to every other party of record. If a party is being represented by an attorney or other representative authorized under this chapter to make appearance, service must be made upon that attorney or representative, instead of upon the party. The knowing failure of a party to make this service shall be grounds for the entry of an order striking the pleading from the record.

§341.16. Determination of Completeness of Initial Pleadings.

(a) The executive director or his or her designee shall determine the completeness of each pleading filed to initiate a proceeding within five days of its filing. If the executive director or his or her designee determines that the pleading is not complete in all material respects, the executive director shall within 10 days of the filing give notice of the specific deficiencies to the pleading party and each party, if any, upon whom the pleading party has served a copy of the pleading. If the pleading is determined to be complete on its face, the executive director shall within 10 days of the filing so notify the pleading party and each party, if any, upon whom the pleading party has served a copy of the pleading.

(b) No further action may be taken by the executive director on a pleading filed with the executive director to initiate a hearing proceeding, nor may any time period for action other than determination of completeness and notice of completeness or deficiency begin to run until the executive director has determined the pleading complete on its face.

§341.17. Exceptions to Pleadings. Any objection to a defect, omission, or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented no later than the prehearing conference if one is held, and no later than 15 days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file such motion or exception waives his objection.

§341.18. Amended Pleadings. A pleading may be amended at any time upon motion, if it does not unfairly surprise an opposing party. The hearing examiner may allow a pleading amendment which surprises an opposing party if the hearing examiner determines that no harm will result. A nonparty participant or intervenor may at any time adopt as his pleading, by amendment, any matter proposed in another pleading.

§341.19. Incorporation of Records by Reference. A pleading may adopt and incorporate by specific reference any party of any document or entry in the official files and records of the commission. This section does not relieve the pleader of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

§341.20. Lost Records and Papers.

(a) When a paper or record in the commission's custody is lost or destroyed, the parties may, with the approval of the executive director, agree in writing on a brief statement of the matters contained therein.

(b) The executive director on behalf of the commission may enter an order that a

copy be substituted for a lost or destroyed original paper or record if:

(1) any person makes a written, sworn motion to the commission stating the loss or destruction of such record or paper, accompanied by a certified copy of the original, if obtainable, or by a substantial copy of it, if not; and

(2) upon hearing, the executive director or his or her designee is satisfied that it is an exact or substantial copy of the original.

(c) Such a substituted copy when filed with the executive director as a part of the record has the force and effect of the original.

§341.21. Notice of Nonparty Participation.

(a) One who is not a party and who desires to support or oppose any matter pending under a hearing proceeding set forth in this chapter shall file his written statement with the executive director or his or her designee at least 15 days before the hearing date. At the time of filing, he shall serve a copy on each designated party and file proof of service with the commission. The executive director on behalf of the commission may authorize late filing on a showing of good cause and extenuating circumstances. Such a statement must:

(1) show the name and address of the nonparty participant;

(2) identify the pending matter to which it pertains;

(3) state the basis of participant's interest and allege any relevant facts and conclusions;

(4) propose any amendment or adjustment to the pleadings which, if made would result in withdrawal of the statement.

(b) A nonparty statement may be dismissed if it does not substantially comply with this section.

§341.22. Docketing and Numbering Causes. When a charge intended to institute a hearing proceeding has been initiated by the executive director on behalf of the commission and has been preliminarily determined complete, the executive director or his or her designee shall docket the matter as a pending hearing proceeding, number it in accordance with the established docket numbering system of the commission, assign a hearing examiner, issue a call for participants, and see that the commission's responsibility to give notice of the proceeding is met.

§341.23. Notice of Hearing and Call for Participants.

(a) Within five days after determining a charge (or other substantially equivalent filing intended to initiate a hearing proceeding) is complete, the executive director shall submit for publication in the *Texas Register* notice of a hearing on the application and a call for participants in the hearing.

(b) The notice of hearing and call for participants shall be given in an issue of the *Texas Register* dated not fewer than 15 days before the date of the conference at which parties are to be designated.

(c) The hearing on the merits of the complaint shall be held no sooner than 15 days after the conference at which parties are designated.

(d) The notice of hearing and call for participants shall include the following:

(1) a statement of the date, time, and place of the conference at which parties to the hearing proceeding will be designated and a statement of the date, time, and place of the hearing on the application;

(2) a short, plain statement of the matters asserted by the complainant, the geographic area to which the application pertains, the commission action which is sought, and the telephone number and address of executive director or his or her designee who may be consulted for further information about the complaint;

(3) a statement of the legal authority and jurisdiction of the commission to entertain the charge;

(4) a statement that to become a party in the hearing proceeding one must be so designated by the hearing examiner, and that a person wishing to be so designated must present a written request to that effect in the proper form to the hearing examiner at or before the conference held by the hearing examiner for that purpose;

(5) a statement that limited nonparty participation may be allowed under these rules.

(e) The commission shall maintain a mailing list of all persons who request personal notice of public hearing. The executive director shall mail notice of each hearing proceeding to each person on such list at the address provided to the commission. The annual renewal of each such request is a condition of continuing each name and address on the mailing list. This notice requirement stands in addition to any others required by the Texas Fair Housing Act, these rules, or other state laws.

§341.24. Revised Notice. If the executive director determines that a material error has been made in a notice, or that a material change has been made in an application after notice has been issued, the executive director shall issue a revised notice. If the material change or error affecting the content of the notice does not come to the attention of the executive director in sufficient time to correct notice given by newspaper publication, the executive director will adjust the time limitation provided in these rules, and will reschedule the hearing if necessary. The party who has caused the change or error requiring revised notice shall bear the expense of giving such notice.

§341.25. Written Motions. Any motion relating to a pending hearing proceeding shall, unless made during a prehearing conference or a hearing, be written and shall set forth the relief sought and the specific reasons and grounds for relief. If based upon matters which do not appear of record, it shall be supported by affidavit. Each written motion shall be filed with the hearing examiner or the executive director as appropriate.

§341.26. Prefiling Prepared Testimony and Exhibits.

(a) Prepared testimony consists of any document which is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation.

(b) A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the executive director or hearing examiner as appropriate not more than eight nor less than five days prior to the hearing for consideration and review by the hearing examiner prior to the hearing, and shall serve a copy of the prepared testimony on each other party to the hearing proceeding and each other person who has filed a nonparty statement or written request to receive such testimony. The executive director or examiner may authorize the late filing of prepared testimony upon a showing of good cause and extenuating circumstances.

(c) To receive a copy of prepared testimony submitted in compliance with this section a person who is not a party must bear the reasonable expense of the copies sought and the person must file a written statement in compliance with §341.21 of this title (relating to Notice of Nonparty Participation), or file a written request with the executive director or hearing officer not less than 15 days prior to the hearing. A person is not made a party to a proceeding by the filing of such a statement or request.

§341.27. Examiner.

(a) Hearings and prehearing proceedings may be conducted by a hearing examiner.

(b) The hearing examiner has authority to admit parties, authorize the taking of depositions, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, administer oaths, receive evidence, rule on the admissibility of evidence and

amendments to pleadings, examine witnesses, set reasonable times within which a party may present evidence and within which a witness may testify, permit and limit oral argument, issue interim orders, recess a hearing from day to day and place to place, propose findings of fact and conclusions of law, propose orders and decisions, and do all other things necessary to a fair and proper hearing.

(c) If the hearing examiner is removed or for any reason if a hearing examiner is unable to continue presiding at any time before final decision, the executive director may appoint another hearing examiner to preside and to perform any function remaining to be performed, without the necessity of repeating any previous hearing proceeding.

§341.28. Designation of Hearing Examiners.

(a) The commission delegates to the executive director authority to designate a hearing examiner.

(b) Each docketed hearing proceeding shall be routinely set for original hearing by the executive director.

(c) The executive director may designate special hearing examiners on a temporary basis to hear complex proceedings, to assist in training hearing examiners, or to expedite clearing the commission's docket.

§341.29. Qualifications of Hearing Examiners.

(a) Each hearing examiner must be an attorney licensed to practice before the Supreme Court of the State of Texas.

(b) No person who has participated in a matter in any capacity other than that of hearing examiner for the commission may serve as a hearing examiner in the same manner.

(c) No person may serve as hearing examiner in a matter in the outcome of which he has an economic interest. A person is deemed to have an economic interest in a matter if he, or any of his immediate family, dependents, business partners, or clients have an economic interest in a matter. A person is deemed to have an economic interest in matter if he or his immediate family or a dependents separately or together hold any office in or own 1.0% or more of the stock of any business or professional corporation or association having an economic interest in a matter.

§341.30. Prehearing Conference.

(a) Upon written notice, the hearing examiner assigned to a hearing proceeding may, on the examiner's own motion or on the motion of a party, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:

(1) simplifying issues;

(2) amending the pleadings;

(3) making admissions of fact or stipulations to avoid the unnecessary introduction of proof;

(4) designating parties;

(5) setting the order of procedure at a hearing;

(6) identifying and limiting the number of witnesses; and

(7) resolving other matters which may expedite or simplify the disposition of the controversy, including settling issues in dispute.

(b) The hearing examiner shall record the action taken at the conference unless the parties enter into a written agreement as to such action, as permitted in §341.3 of this title (relating to Agreements to be in Writing).

(c) The hearing examiner conducting a prehearing conference may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence, and scope of inquiry.

§341.31. Motion to Consolidate.

(a) A party may move to consolidate two or more charges or other hearing proceedings. A motion to consolidate must be in writing, signed by the movant or his representative, and filed with the executive director or hearing examiner prior to the date set for hearing.

(b) The hearing examiner may not consolidate proceedings or hear them jointly without the consent of all parties to each affected hearing proceeding, unless the hearing examiner finds both:

(1) that the proceedings involve common questions of law or fact; and

(2) that separate hearings would result in unwarranted expense, delay, or substantial injustice. The commission may hold special hearings on separate issues.

§341.32. Place and Nature of Hearings. All hearings must be open to the public. Each hearing shall be held in Austin, unless the Texas Fair Housing Act, these rules or other state laws require otherwise, or unless, or good cause stated in its minutes, the commission designates another place.

§341.33. Postponement and Continuance.

(a) A motion for postponement must be in writing, must set forth the specific grounds on which it is sought, and must be filed with the executive director or hearing examiner before the date set for hearing. If the hearing examiner grants a motion for postponement, notice of postponement must be issued.

(b) After a matter has proceeded to a hearing, the hearing examiner may grant a continuance on either an oral or a written motion, without issuing new notice, by announcing at the hearing before recessing it the date, time, and place for the hearing to reconvene. If the hearing examiner continues a hearing without publicly announcing at the recessed hearing the date, time, and place for its reconvening, the executive director must mail notice at least 10 days before the further setting to parties present at the hearing and to all other persons who the executive director or hearing examiner have reason to believe should be notified.

§341.34. Order of Procedure.

(a) The hearing examiner shall open the hearing, make a concise statement of its scope and purposes, and announce that a record of the hearing is being made.

(b) Once the hearing has begun, parties or their representatives may be off the record only when the hearing examiner permits. If a discussion off the record is pertinent, the hearing examiner will summarize the discussion for the record.

(c) All appearances by parties and their representatives and by persons who may testify must be entered on the record.

(d) The hearing examiner shall then receive motions and afford each party of record an opportunity to make an opening statement.

(e) Each party of record is entitled to present a direct case and to cross-examine opposition witnesses. The party with the burden of proof, usually the complainant, is entitled to open and close. If several hearing proceedings are heard on a consolidated record, the presiding hearing examiner shall designate who may open and close and at what stage intervenors may offer evidence.

(f) All witnesses to be called shall be sworn, and after opening statements, if any, the party with the burden of such other party as the hearing examiner has designated under the preceding paragraph may proceed with his direct case. Opposing parties may cross-examine witnesses.

(g) All other parties may then present their cases and be subjected to cross-examination. Unless the order of their presentations has already been agreed on, the hearing examiner may entertain motions from the parties on order of procedure and shall determine how best to proceed.

(h) The hearing examiner may allow nonparty participants to cross-

examine parties and witnesses when it appears this may lead to significantly fuller disclosure of facts without unduly delaying the hearing or burdening the record.

(i) At the conclusion of all evidence and cross-examination, the hearing examiner shall allow closing statements.

(j) Before writing his report and proposal for decision, the hearing examiner may call upon any party for further relevant and material evidence on any issue. The hearing examiner shall not consider such evidence or allow it into the record without giving each party an opportunity to inspect and rebut it.

(k) Upon written notice or notice stated into the record, the hearing examiner may direct the parties or their representatives to appear for a conference to consider any matter which may expedite the hearing and serve the interests of justice. The action taken at the conference must be reduced to writing, and the writing shall be signed by the parties and made part of the record in the hearing proceeding.

§341.35. Reporters and Transcripts.

(a) If necessary or requested, the executive director shall engage an official reporter to make a stenographic record of the hearing and to file it with the commission. The commission may allocate the cost of the reporter and transcript among the parties.

(b) If a transcript of the stenographic record is requested, the commission may assess costs of preparing such a transcript to the requesting party or person.

(c) A participant may challenge errors made in transcribing a hearing by noting them in writing and suggesting corrections within 10 days after the transcript is filed, or later if the hearing examiner permits. The participant claiming errors shall serve a copy of his suggested corrections upon each party of record, the official reporter, and the hearing examiner. If proposed corrections are not objected to within 12 days after being offered, the presiding examiner may direct that the suggested corrections be made and the manner of making them. If parties disagree on suggested corrections, the hearing examiner, with the aid of argument and testimony from the parties, shall determine whether to change the record, and if so, how.

§341.36. The Record. The record in an adjudicative hearing includes:

(1) all pleadings, motions, intermediate rulings, and interim orders;

(2) all evidence received or considered;

(3) a statement of all matters officially noticed;

(4) questions, offers of proof, objections, and rulings on objections;

(5) proposed findings and exceptions;

(6) any proposal for decision, opinion, or report by the hearing examiner conducting the hearing;

(7) all memoranda and data submitted by the executive director or his or her designee to the hearing examiner considered by the hearing examiner in connection with the hearing; and

(8) summaries of any conferences held before or during the hearing.

§341.37. Witnesses to be Sworn. All testimony shall be given under oath administered by the presiding hearing examiner.

§341.38. Witnesses Limited. The hearing examiner may limit the number of witnesses whose testimony is merely cumulative.

§341.39. Rules of Evidence.

(a) The hearing examiner shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(b) The hearing examiner shall follow the rules of evidence as applied in nonjury civil cases in Texas district courts. When necessary to ascertain facts not reasonably susceptible of proof under those rules, the hearing examiner may admit evidence not admissible under them (unless precluded by law) if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by Texas law shall be applied in a hearing proceeding.

(c) A party may object to an evidentiary offer and his objection shall be noted in the record.

(d) No evidence which is beyond the scope of the allegations in a hearing proceeding may be admitted.

§341.40. Formal Exceptions. Formal exceptions to rulings of the hearing examiner during a hearing are unnecessary. It is sufficient that the party, at the time a ruling is made or sought, makes known to the hearing examiner the action which he desires.

§341.41. Offer of Proof.

(a) When the hearing examiner rules to exclude evidence, the party offering it may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. That offer of proof suffices to preserve the point for review by the commission.

(b) The hearing examiner may ask a witness or offered witness those questions he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof.

(c) An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§341.42. Official Notice.

(a) The hearing examiner may take official notice of judicially cognizable facts and of facts generally recognized within the area of the commission's specialized knowledge.

(b) Parties shall be notified before final decision of the specific facts noticed, including any facts or other data in agency memoranda, and they shall he afforded an opportunity to contest the material so noticed.

(c) The special skills and knowledge of the commission and executive director or his or her designee may be utilized in evaluating the evidence.

§341.43. Documentary Evidence.

(a) The hearing examiner may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original when possible.

(b) When many similar documents are offered, the hearing examiner may limit those admitted to a number which are representative, and many require that the relevant data be abstracted from the documents and presented as an exhibit. When so requiring, the hearing examiner shall give all parties or their representatives an opportunity to examine the documents from which the abstracts are made.

§341.44. Admissibility of Prepared Testimony and Exhibits. When it will expedite a hearing without substantially prejudicing the interests of a party, the hearing examiner may receive evidence in written form. The prepared, written testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated into the record as if read or received as an exhibit, upon the witness being sworn and identifying the writing as a true and accurate record of what his testimony would be if he were to testify orally. The witness is subject to clarifying questions and to cross-examination in accordance with §341.34 of this title (relating to Order of Procedure), and his prepared testimony is subject to a motion to strike either in whole or in part.

§341.45. Exhibits.

(a) Documentary exhibits must be of a size which will not unduly encumber the records. Whenever practicable, exhibits must conform to the requirements of §341.13 of this title (relating to Form and Content of Pleadings). The first sheet of the exhibit must briefly state what the exhibit purports to show. Exhibits may include only facts material and relevant to the issues of the hearing proceeding. Maps or drawings must be so rolled or folded as not to encumber the record. Exhibits not conforming to this section may be excluded.

(b) The offering party shall tender to the hearing examiner for identification the original of each exhibit offered. The offering party shall furnish one copy to the hearing examiner and one copy to each party of record or his representative. Documents and maps received in evidence may not be withdrawn except with the approval of the hearing examiner.

(c) If an exhibit has been offered, objected to, and excluded, the hearing examiner shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be numbered for identification, endorsed by the hearing examiner with his ruling, and included in the record to preserve the exception.

(d) A Party may not file an exhibit after the hearing closes, unless the examiner specifically directs, in which event the party shall, before filing the exhibit, serve a copy of it on all other parties.

§341.46. Briefs.

(a) Briefs must conform, where practicable, to the requirements for formal pleadings set out in these sections. The points involved shall be concisely stated, the evidence in support of each point shall be summarized, and the argument and authorities shall be concisely and logically organized and directed to each point.

(b) The hearing examiner may request briefs before or after he files the examiner's report and proposal for decision required in §341.54 of this title (relating to Proposal for Decision and Examiner's Report).

§341.47. Subpoenas.

(a) Following written request by a party, or on its own motion, the executive director or hearing examiner on behalf of the commission may issue a subpoena addressed to a sheriff or any constable 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 a proceeding.

(b) A motion for a subpoena to compel the production of books, records, papers, or other objects shall be addressed to the appropriate person, shall be verified and shall specify as nearly as may be the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.

(c) The party requesting a subpoena shall deposit with the commission a sum sufficient to insure payment of the witness' reasonable and necessary travel expenses and the necessary witness fee.

§341.48. Depositions. The Administrative Procedure and Texas Register Act, §14, governs the taking and use of depositions.

§341.49. Admissions of Fact and Genuiness of Documents. Rule 169 of the Texas Rules of Civil Procedure governs for admissions of fact and genuineness of documents.

§341.50. Interim Orders. Prior to a final order of the commission, a party may seek from a hearing examiner relief by a written interim order. An interim order is not subject to exceptions or motion for rehearing, but a party aggrieved by an interim order may file an appeal from the hearing examiner's ruling to the commission within three days of the issuance of the order. The commission shall rule on the interim order at its next meeting, and pending ruling thereon, the interim order is stayed.

§341.51. Protective Orders. Upon motion of a party or a person from whom discovery is sought or in accordance with this section, the hearing examiner may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(1) the discovery may not be had;

(2) the discovery may be had only on specified terms and conditions, including a designation of time and place for discovery;

(3) the discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(4) certain irrelevant matters may not be the subject of discovery, or that the scope of discovery be limited to certain matters;

(5) discovery may be conducted with no one present other than persons designated by the hearing examiner;

(6) a trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(7) to protect privileged matters, the hearing examiner may take such other action permitted under §341.52 of this title (relating to In Camera and Protective Orders).

§341.52. In Camera and Protective Orders. The hearing examiner may limit discovery or the introduction of evidence, or may issue such protective or other orders necessary to protect privileged communications. If the hearing examiner determines that information in documents containing privileged matters should be made available to a party, the hearing examiner may order the preparation of a summary or extract of the nonprivileged matter contained in the original.

§341.53. Failure to Make or Cooperate in Discovery.

(a) If a defendant fails to answer a question propounded, or a party upon whom a request is made under §341.47 of this title (relating to Subpoenas); §341.48 of this title (relating to Depositions); or §341.49 of this title (relating to Admissions of Fact and Genuiness of Documents) fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move the hearing examiner for an order compelling a response or an inspection in accordance with the request. The motion shall:

(1) state the nature of the request;

(2) set forth the response or objection of the party upon whom the request was served;

(3) present arguments supporting the motion; and

(4) attach copies of all relevant discovery requests and responses.

(b) For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) In ruling on a motion under this section, the hearing examiner may enter an order compelling a response or an inspection in accordance with the request, may issue sanctions under subsection (d) of this section, or may enter a protective order under §341.51 of this title (relating to Protective Orders).

(d) If a party fails to comply with an order (including an order for taking a deposition, the production of evidence within the party's control, a request for admission, or the production of witnesses) the hearing examiner may:

(1) draw an inference in favor of the requesting party with regard to the information sought;

(2) prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information

sought;

(3) permit the requesting party to introduce secondary evidence concerning the information sought;

(4) strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(5) take such other action as may be appropriate.

§341.54. Proposal for Decision and Examiner's Report.

(a) If the proposed decision is not adverse to any party to the hearing proceeding, the hearing examiner may propose to the commission a decision which need not contain findings of fact or conclusions of law.

(b) The commission may not make a decision adverse to a party until a proposal for decision has been served on the parties, and an opportunity has been given each party adversely affected to file exceptions and present briefs to the commission.

(1) The proposal for decision, if adverse to a party, must be prepared by the hearing examiner or by one who has read the record, and must contain a statement of the reasons for the proposed decision and a statement of each finding of fact and conclusion of a law necessary to the proposed decision. The hearing examiner may request that any party draft and submit a proposal for decision including proposed findings of fact and conclusions of law separately stated. In making such a request, the hearing examiner will indicate to all parties the general nature of the intended proposal for final decision to be drafted. When the hearing examiner wishes to use the special skills of the executive director or his or her designee in evaluating the evidence received or record made, he may request in writing to the executive director the assignment of appropriate personnel who have not participated in the review or processing of the matter. The hearing examiner may communicate with the executive director or his or her designee assigned under this section.

(2) The proposal for decision shall be circulated among the parties. If any party files an exception or presents a brief, an opportunity must be afforded to all other parties to file replies to the exception or brief. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties.

(c) Regardless of whether subsections (a) or (b) of this section are followed, the proposal for decision must be accompanied by a hearing examiner's report. This report must contain a statement of the nature of the case and a discussion of the issues, the evidence and the applicable law.

§341.55. Countersignature by Executive Director or His or Her Designee. The executive director or his or her designee shall countersign every hearing examiner's report and proposal for decision.

§341.56. Filing of Exceptions and Replies.

(a) Unless the hearing examiner has set a different period of time, a party may file exceptions to the examiner's report or the proposal for decision or both within 15 days after the hearing examiner's report and proposal for decision are served.

(b) A party may file replies to these exceptions within 15 days after the exceptions are filed unless the hearing examiner has set a different period of time.

(c) Any request to enlarge or shorten the time for filing exceptions or replies must be filed with the hearing examiner and a copy served on all parties by the requesting party. The hearing examiner shall promptly notify the parties of his decision on the request. Additional time may be allowed only when the interests of justice require.

§341.57. Form of Exceptions and Replies. Exceptions and replies to exception shall conform as nearly as practicable to the rules for pleadings. Specific exception shall be concisely stated. The evidence relied on shall be pointed out with particularity, and that evidence and any arguments relied on shall be grouped under the exceptions to which they relate.

§341.58. Oral Argument Before the Commission. A party may request and the commission may allow oral argument before the commission before final commission determination. A request for oral argument may be incorporated in the exceptions, in a reply to exceptions, or in a separate pleading.

§341.59. Pleading Before Final Decision. The executive director may permit or request parties to file briefs and proposed findings of fact within such time after the hearing and before final decision as the executive director may specify. A party doing so shall file an original and 10 copies with the executive director and serve a copy on each other party, certifying to the executive director that such service has been made.

§341.60. Final Decision or Order. After the time for filing exceptions and replies to exceptions has expired, or when all timely exceptions and replies to exceptions have actually been filed, the commission shall consider the hearing examiner's report and the proposal for decision. The commission may adopt the proposal for decision, modify and adopt it, reject it and issue a commission decision, or remand the matter to the examiner. The commission shall render its final decision or issue its final order within 60 days after the hearing closes. The final order for the commission shall be prepared by the hearing examiner.

§341.61. Form, Content, and Service. A final decision or order of the commission adverse to one or more parties must be written and signed by at least four commission members. Such final decision must include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact must be based exclusively on the evidence and on matters officially noticed. If a party submits proposed findings of fact, the decision must include a ruling on each proposed finding. The executive director or his or her designee shall mail or deliver a copy of the decision or order the each party or his authorized representative.

§341.62. Effective Date of Decision or Order. A final decision or final order is effective on the date of commission action, unless otherwise stated in the decision or order. The date of commission action must be incorporated in the body of each final decision and order.

§341.63. Administrative Finality.

(a) Commission action is final and not appealable on the 21st day after the final order is issued when the complainant or respondent fail to file a motion for rehearing within 20 days after the order is issued.

(b) Commission action is final and appealable when:

(1) the commission denies a motion for rehearing on a final decision or order, either expressly or by operation of law; or

(2) the commission renders a final decision or issues a final order which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, or welfare requires immediate effect be given to the decision or order.

§341.64. Rehearing.

(a) A motion for rehearing is prerequisite to appeal, except as provided in §341.63 of this title (relating to Administrative Finality). A motion for rehearing must be made within 20 days after the mailing of a final decision or order. Any reply to a motion for rehearing must be filed with the commission within 30 days after the mailing of a final decision or order. A party filing a motion for rehearing

or a reply to a motion for rehearing shall serve a copy on each party concurrently with the filing.

(b) The commission shall act on the motion within 45 days after the final decision or order. If the commission does not act within this 45-day period, the motion for rehearing is overruled by operation of law 45 days after the final decision or order.

(c) The commission may by written order extend the time for filing motions and replies and for taking commission action, except that this extension may not extend the period for commission action beyond 90 days after the date of the final decision or order. In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days from the date of the final decision or order.

§341.65. Emergency Orders. If the commission finds that an imminent peril to the public health, safety, or welfare requires the immediate finality of a decision or order in a contested case, it shall recite that finding in the decision or order in addition to reciting that the decision or order is final from the date rendered, in which even the decision or order is final and appealable from the date rendered and a motion for rehearing is not prerequisite to appeal.

§341.66. Show Cause Orders and Complaints. The commission, either upon its own motion or upon receipt of written charge, may, at any time after notice to all interested persons, cite any person within its jurisdiction to appear before it in a public hearing and require that person to show cause why he should not comply with a rule, regulation, agreement, general order, or statute committed to the commission's administration which that person is allegedly violating.

§341.67. Ex Parte Communications. Except as provided in §341.51 of this title (relating to Protective Orders), and unless required for the disposition of ex parte matters authorized by law, no member of the commission and no employee of the commission assigned to propose a decision or assigned to propose or make findings of fact or conclusions of law in a case covered by these sections may communicate, directly or indirectly, in connection with any issue of fact or law with any person or party or any representative of either, except on notice and opportunity for all parties to participate.

§341.68. Appeals.

(a) A person who has exhausted all administrative remedies available under the Texas Fair Housing Act and who is aggrieved by a final decision in a contested case is entitled to judicial review under the substantial evidence rule as set forth in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19(e).

(b) Proceedings for judicial review are instituted by filing a petition within 30 days after the decision complained of is final and appealable.

(c) The party seeking judicial review shall offer, and the reviewing court shall admit, the agency records as an exhibit. The review is conducted by the court sitting without a jury and is confined to the agency record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

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For further information, please call: (512) 837-8534

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Chapter 342. Prompt Judicial Action

• 40 TAC §§342.1-342.3

The Texas Commission on Human Rights adopts on an emergency basis new §§342.1-342.3, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The new sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are adopted on an emergency basis under the Texas Fair Housing act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§342.1. Temporary and Preliminary Relief.

(a) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of the Texas Fair Housing Act (the Act), the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.

(b) On receipt of the commission's authorization, the Attorney General shall promptly file the action.

(c) A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Texas Rules of Civil Procedure.

(d) The filing of a civil action under this section does not affect the initiation or continuation of administrative proceeding under the Act.

§342.2. Enforcement by Attorney General.

(a) On request of the commission the Attorney General may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that:

(1) a person is engaged in a pattern or practice of resistance to the full enjoyment of any right granted by the Texas Fair Housing Act (the Act);

(2) a person has been denied any right granted by this Act and that denial raises an issue of general public importance.

(b) In an action under this section the court may:

(1) award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this Act as necessary to assure the full enjoyment of the rights granted by the Act;

(2) award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs;

(3) to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:

(A) $50,000 for a first violation;

(B) $100,000 for a second or subsequent violation.

(c) A person may intervene in an action under this section if the person is:

(1) an aggrieved person to the discriminatory housing practice; or

(2) a party to a conciliation agreement concerning the discriminatory housing practice.

§342.3. Subpoena Enforcement Power. The Attorney General, on behalf of the commission, or other party at whose request a subpoena is issued under the Texas Fair Housing Act, may enforce the subpoena in appropriate proceedings in district court.

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Chapter 343. Enforcement by Private Persons

• 40 TAC §§343.1-343.5

The Texas Commission on Human Rights adopts on an emergency basis new §§343.1-343.5, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. These new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. These sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§343.1. Civil Action.

(a) An aggrieved person may file a civil action in district court not later than the second year after the occurrence of the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under the Texas Fair Housing Act (the Act), Article IV, and Chapter 340 of this title (relating to Administrative Enforcement), whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

(b) The two-year period does not include any time during which an administrative hearing under the Act, Article IV, and Chapter 340 of this title (relating to Administrative Enforcement) is pending with respect to a complaint or charge under this Act based on the discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement.

(c) An aggrieved person may file an action under this chapter and the Act, Article V, whether or not a complaint has been filed under the Act, Article IV, and Chapter 340 of this title (relating to Administrative Enforcement) and without regard to the status of any complaint filed under Article IV and Chapter 340 of this title (relating to Administrative Enforcement).

(d) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under the Act, Article V, on this chapter with respect to the alleged discriminatory housing practice that forms the basis for the complaint except to enforce the terms of the agreement.

(e) An aggrieved person may not file an action under the Act, Article IV, and this chapter with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the commission if the commission has begun an administrative hearing on the record under the Act, Article IV, and Chapter 340 of this title (relating to Administrative Enforcement) with respect to the charge.

§343.2. Court Appointed Attorney. On application by a person alleging a discriminatory housing practice or by a person against whom such a practice is alleged, the court may appoint an attorney for the person.

§343.3. Relief Granted. In an action under the Texas Fair Housing Act (the Act), Article V, and this chapter, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff:

(1) actual and punitive damages;

(2) reasonable attorney's fees;

(3) court costs; and

(4) subject to the Act, Article V, and this chapter, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

§343.4. Effect of Relief Granted. Relief granted under the Texas Fair Housing Act (the Act), Article V, and this chapter, does not affect a contract, sale, encumbrance, or lease that:

(1) was consummated before the granting of the relief; and

(2) involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under the Act, Article IV, or a civil action under the Act, Article V.

§343.5. Intervention by Attorney General.

(a) On request of the commission the attorney general may intervene in an action under the Texas Fair Housing Act (the Act), Article V, and this chapter, if the commission certifies that the case is of general public importance.

(b) The attorney general may obtain the same relief available to the attorney general under the Act, Article VI.

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Chapter 344. Other Action by the Commission

• 40 TAC §§344.1-344.3

The Texas Commission on Human Rights adopts on an emergency basis new §§344.1-344.3, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. These new sections cover the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these sections cover the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. These sections may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new sections are being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§344.1. Licensed or Regulated Businesses. If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission shall not later than the 30th day after the issuing of the order send copies of the findings and the order to the governmental agency and recommend the governmental agency take appropriate disciplinary action.

§344.2. Order in Preceding Five Years. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under the Texas Fair Housing Act, Article IV, the commission shall send a copy of each order issued under this section to the attorney general.

§344.3. Criminal Penalties.

(a) The commission shall refer an offense under the Texas Fair Housing Act (the Act), Article IX, to appropriate law enforcement agencies, including, but not limited to, the attorney general.

(b) The commission shall treat any offense under the Act, Article IX, as an alleged discriminatory housing practice as interpreted under Chapter 339 of this title (relating to Discriminatory Housing Practices), and subject to the proceedings set forth under Chapter 340 of this title (relating to Administrative Enforcement).

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Chapter 345. Prevailing Party

• 40 TAC §345.1

The Texas Commission on Human Rights adopts on an emergency basis new §345.1, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The section covers the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the section covers the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. The section may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new section is adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§345.1. Prevailing Party. A court in a civil action brought under the Texas Fair Housing Act (the Act) or the commission in an administrative hearing under the Act, Article IV, may award reasonable attorney fees to the prevailing party and assess court costs against the nonprevailing party.

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Chapter 346. Fair Housing Fund

• 40 TAC §346.1

The Texas Commission on Human Rights adopts on an emergency basis new §346.1, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new section covers the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section covers the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. This section may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new section is being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§346.1. Fair Housing Fund.

(a) A fair housing fund is to be created in the state treasury.

(b) Monies deposited to the credit of the fair housing fund may be used by the commission for the administration of the Texas Fair Housing Act (the Act).

(c) Gifts and grants received as authorized by the Act, Article II, shall be deposited to the credit of the fair housing fund.

(d) Civil penalties assessed against a respondent under the Act, Article IV and Article VI, shall be deposited to the credit of the fair housing fund.

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Chapter 347. Statutory Authority

• 40 TAC §347.1

The Texas Commission on Human Rights adopts on an emergency basis new §347.1, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new section covers the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section covers the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. This section may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new section is being adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§347.1. Statutory Authority. The statutory civil remedies or theories of recovery created by a statute continued in effect under

the Texas Fair Housing Act or created by a statute added or amended by the Texas Fair Housing Act or created by a statute added or amended by the Texas Fair Housing Act may not be expanded beyond their express statutory terms.

Issued in Austin, Texas, on March 22, 1990.

TRD-9003072 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: March 23, 1990

Expiration date: May 22, 1990

For further information, please call: (512) 837-8534

Chapter 348. Effective Date

• 40 TAC §348.1

The Texas Commission on Human Rights adopts on an emergency basis new §348.1, concerning procedures for processing complaints alleging discriminatory housing practices and exercising its powers pursuant to the Texas Fair Housing Act. The new section covers the procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section covers the Texas Commission on Human Rights interpretation of what constitutes discriminatory housing practices. This section may be subject to emergency adoption because no public comments were received and because of the urgency of complying with time limitations for receiving fair housing assistance/capacity building funds from the United States Department of Housing and Urban Development.

The new section is adopted on an emergency basis under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

§348.1. Effective Date.

(a) The Texas Fair Housing Act (the Act) takes effect January 1, 1990.

(b) On or after January 1, 1990, the enforcement of the Act by the commission will be determined by the date on which the federal government determines the Act to be substantially equivalent to federal law, and the Rules and Regulations of the Federal Government, §115.11, issued January 23, 1989.

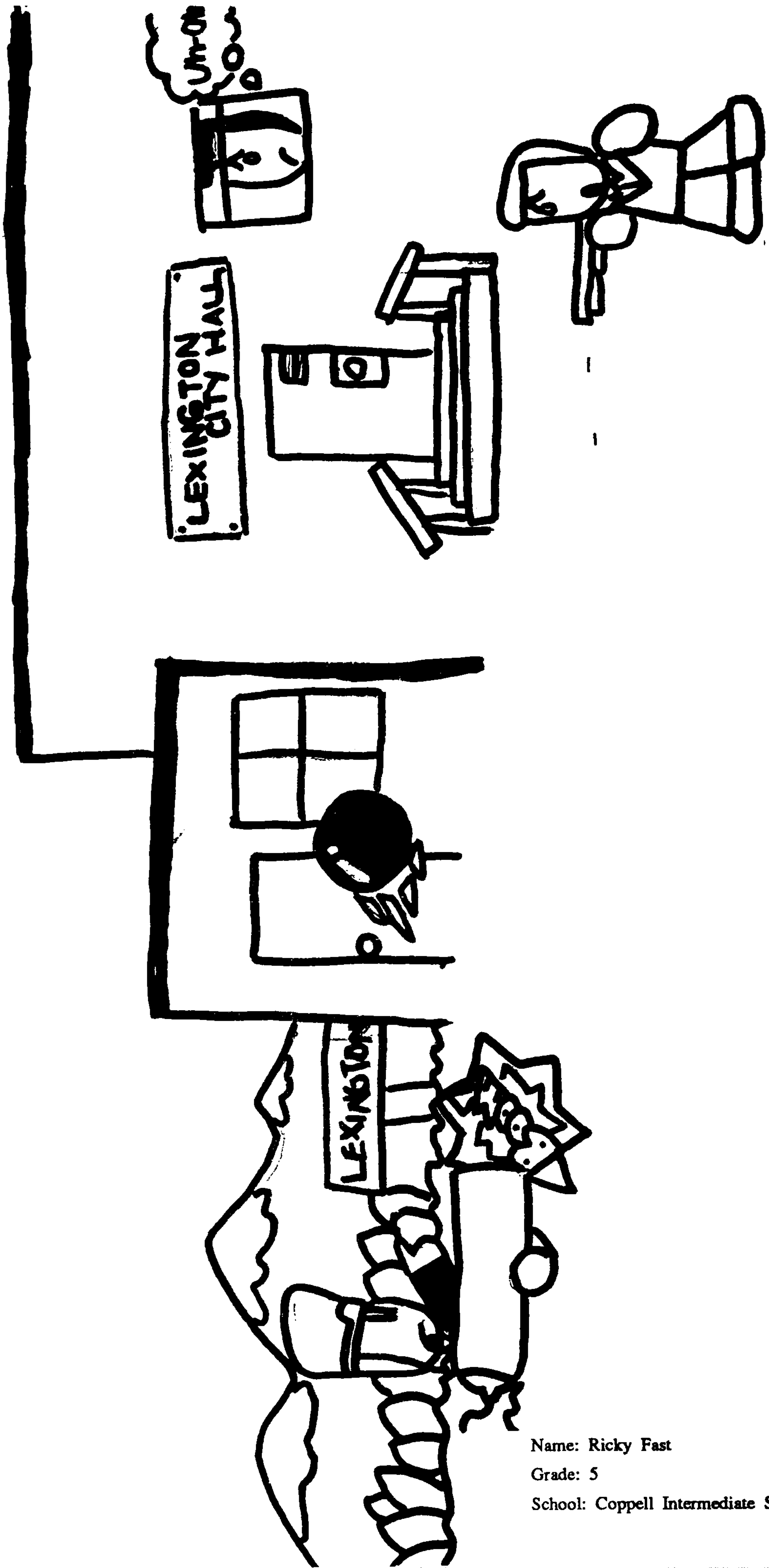
Issued in Austin, Texas, on March 22, 1990.

TRD-9003070 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: March 23, 1990

Expiration date: May 22, 1990

For further information, please call: (512) 837-8534



Name: Ricky Fast

Grade: 5

School: Coppell Intermediate School, Coppell

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 I. Texas Department of Agriculture

Chapter 6. Boll Weevil Control

• 4 TAC §6.4

The Texas Department of Agriculture proposes an amendment to §6.4, concerning regulated areas of boll weevil pest management zones. The Texas Department of Agriculture is authorized, under authority of the Texas Agriculture Code, Chapter 74, Subchapter A, to establish and enforce cotton planting and destruction dates set with the advice of a pest management zone advisory committee. The Lower Rio Grande Valley Pest Management Zone has requested that the cotton plow up date for that area be changed to September 1.

David Davis, 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. Davis 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 benefit to cotton producers in the Lower Rio Grande Valley by setting back the destruction date in that TDA, would be able to complete the inspections, and bring all fields into compliance earlier, giving the boll weevil less time to multiply. There will be no effect on small businesses as a result of enforcing the section. 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 Dolores Alvarado Hibbs, Director of Hearings, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §74.004, which provides the Texas Department of Agriculture with the authority to establish, with the advice of the advisory committee for the affected area, regulated areas, dates, and appropriate methods of destruction of cotton for boll weevil management.

§6.4. Authorized Planting and Cotton Destruction Dates.

(a) Except as provided in subsection (c) of this section, all cotton in the regulated areas of the boll weevil pest management zones must be destroyed by the following cotton destruction deadlines.

(1) Lower Rio Grande Valley pest management zone.

(A) (No change.)

(B) Cotton destruction date: By September **1** [15].

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

(b)-(d) (No change.)

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

Issued in Austin, Texas, on March 26, 1990.

TRD-9003166 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Earliest possible date of adoption: April 30, 1990

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

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

Docketing and Notice

• 16 TAC §21.22

The Public Utility Commission of Texas proposes an amendment to §21.22, concerning notice given for interim fuel proceedings. The amendment would require two publications of the notice within 14 days of filing, setting forth the level and effective date of the proposed refund and recovery factors and the classes of customers affected. Schedules containing the proposed fuel factors should be mailed or hand-delivered to affected municipalities and the Office of Public Utility Counsel on the day of filing.

Raymond Orozco, executive director and Evan C. Rowe, fuel analyst, Electric Division, have 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. Orozco and Mr. Rowe have 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 changes in notice requirements of filing for proposed interim fuel factors thereby facilitating an expedited hearing process. There will be effect on small business. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§21.22. Contents of Notice for Rate Setting and Fuel Proceedings.

(a) (No change.)

(b) Applicant notice. In all rate proceedings involving the commission's original jurisdiction, the applicant shall give notice in the following ways:

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

(4) **Except as set forth in paragraph (5) of this subsection, for** [For] purposes of any proceeding which may involve only one element of cost of service[, such as fuel expense], notices shall be given in the same manner as set forth in this subsection.

(5) **For applications to establish or revise a fuel factor, to determine refund factors or recovery factors, or to refund an over-recovery of fuel costs, the applicant shall give notice of the application by means of publication of a notice of the application by means of publication of a notice once each week for two consecutive weeks in the manner described in paragraph (1) of this subsection within 14 days after the filing and by mailing or hand delivering a copy of the notice to the Office of Public Utility Counsel and an authorized representative of each affected municipality on the date of the filing. The notice shall set forth the level and effective date of the proposed fuel factors, refund or recovery factor, or refund amounts by**

rate class, and the classes of customers affected.

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 March 21, 1990.

TRD-9003119 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 458-0100

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Evidence

• 16 TAC §21.129

The Public Utility Commission of Texas proposes new §21.129, concerning the rules of evidence in determining the expenses of public utilities in prosecuting rate cases and the expenses of municipalities in regulating the rates of pubic utilities, participating in rate proceedings before the commission, and in participating in actions for the judicial review of rate decisions of the commission. The new section is intended to facilitate the commission's review of rate-case expenses by permitting a party to introduce summaries of voluminous evidence concerning rate-case expenses, and permitting a party to introduce evidence of rate-case expenses by affidavit, where the other parties forgo the opportunity to cross-examine the affiants.

Jess Totten, assistant general counsel, has determined that for the first five-year period the section is in effect the section will not affect the budget requirements of the Public Utility Commission or the Office of Public Counsel. Mr. Totten has determined that this section will not affect the budget requirements of local government.

Mr. Totten 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 include permitting a more orderly review of rate-case expenses. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with this section.

Mr. Totten also has determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical areas affected by the adoption of this section.

Comments on the proposal may be submitted to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

The new section is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §24, which requires public utilities to reimburse municipalities for certain expenses associated with regulating the rates of public utilities and participating in the rate cases of public utilities at the commission and in court.

§21.129. Evidence Concerning Rate-Case Expenses.

(a) Summaries of voluminous records. A party may introduce in evidence, in accordance with the Texas Rules of Evidence, a summary of voluminous records concerning rate-case expenses. A party shall give reasonable notice of the intention to introduce such a summary of evidence.

(b) Affidavits or sworn statements. The hearings examiner may permit a party that is seeking rate-case expenses to introduce evidence concerning rate-case expenses by means of affidavits or sworn statements. If affidavits or sworn statements are permitted, the hearings examiner shall establish a date for the filing of such affidavits or statements, in advance of the date that they will be offered in evidence. If any party requests the opportunity to cross-examine the person who gave an affidavit or statement, the affidavit or statement shall not be admitted, unless the person is made available for cross-examination.

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 March 26, 1990.

TRD-9003168 Mary Ross McDonald
Secretary
Public Utility Commission

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 458-0100

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Chapter 23. Substantive Rules

Rates

• 16 TAC §23.21

The Public Utility Commission of Texas proposes an amendment to §23.21, concerning the determination and allowance of the expenses of public utilities in prosecuting rate cases and the expenses of municipalities in regulating the rates of public utilities, participating in rate proceedings before the commission, and in participating in actions for the judicial review of rate decisions of the commission. The amendment is intended to facilitate the commission's review of rate-case expenses by prescribing the standards for allowing rate-case expenses, requiring utilities and municipalities to make information concerning these expenses available to other parties in commission proceedings, and requiring audits of rate-case expenses in certain circumstances.

The commission is particularly interested in receiving comments on proposed §23.21(d)(5). As proposed, the amendment would require municipalities to pay their rate-case expenses before the commission could approve them for reimbursement by the public utility. The commission is interested in comments on: whether this requirement would impede the participation of municipalities in the rate cases of public utilities, and whether this requirement is mandatory. The Public Utility Regulatory Act, §24 requires public utilities to reimburse municipalities for their rate-case expenses, and the question posed is whether the use of the term "reimburse" requires that a municipality pay its expenses before the commission can order the utility to reimburse the municipality.

Jess Totten, assistant general counsel, has determined that for the first five-year period that the proposed section is in effect, the section will not affect the budget requirements of the Public Utility Commission or the Office of Public Counsel. Mr. Totten has determined that local government will need to spend an additional $100,000 annually, on a state-wide basis, as a result of the enforcement of this section. The reasonable costs to a municipality of complying with this section, like other rate-case expenses of a municipality, are subject to reimbursement by the public utility.

Mr. Totten 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 include: permitting a more orderly review of rate-case expense, and permitting municipalities to obtain partial reimbursement of rate-case expenses earlier than would otherwise be possible. There will be no effect on small businesses as a result of enforcing this section. The anticipated economic cost to persons who are required to comply with this section is: no economic cost to municipalities, and about $50,000 annually for public utilities.

Mr. Totten also has determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical areas affected by the adoption of this section.

Comments on the proposed amendment may be submitted to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas, 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §24, which requires public utilities to reimburse municipalities for certain expenses associated with regulating the rates of public utilities and participating in the rate cases of public utilities at the Commission and in court; and §37, which provides the commission with the authority to regulate the rates of public utilities and to adopt rules concerning rates.

§23.21. Cost of Service.

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

(d) Rate-case expenses for public utilities and municipalities. The purpose of this section is to establish rules for the orderly determination of rate-case expenses for public utilities and municipalities.

(1) Scope. This subsection applies to public utilities and municipalities in the manner set forth in subparagraphs (A)-(C) of this paragraph.

(A) In the case of the expenses incurred by a public utility, this subsection applies to the prosecution of a major rate case, to participation in a prudence inquiry concerning an electric generating unit that it owns, in whole or in part, and to participation in an inquiry into its rates, if the inquiry results in the commission's consideration of its total revenue requirements.

(B) In the case of the expenses incurred by a municipality, this section applies to the setting of the rates of a public utility by a municipality that retains original ratemaking jurisdiction, to participating in a proceeding in which the commission determines the rates of a public utility that provides service within the municipal limits of the municipality, and to any action for judicial review of a commission decision in such a proceeding in which the municipality is a party.

(C) For the purpose of this subsection, a major rate case is an application or petition in which the utility seeks a change in its rates that would change the aggregate revenues of the applicant more than the greater of $100,000 or 2 1/2%.

(2) Relation of rate-case expenses to other expenses. This rule governs the determination of a utility's allowable rate-case expenses, as set forth in paragraph (1) of this subsection, except that this section does not apply to the payroll expenses of a utility. The expenses of a utility's participation in other commission proceedings and its payroll expenses shall be considered a part of the cost of providing utility service and shall be determined in the same manner as expenses other than rate-case expenses.

(3) Documentation requirements. A public utility and a municipality shall make available to the other parties to a rate case information that is relevant to their requests for recovery of rate-case expenses.

(A) The information specified in clauses (i)-(iii) of this subparagraph shall be updated, as required, if information that was previously made available is no longer accurate and complete, and the information specified in clauses (iv)-(vi) shall be updated from time to time, as the hearings examiner directs. A public utility and a municipality shall make the following information available:

(i) statements of policy concerning the payment or reimbursement of travel expenses (including lodging) incurred by the utility or municipality;

(ii) statements of policy concerning the review and payment of invoices of attorneys and consultants hired to represent the party or testify in a rate case:

(iii) a list of the professional employees of any consultant or attorney for whose services the utility or municipality is seeking recovery of rate-case expenses, including the name, the hourly fee charged, and the employee's position or title;

(iv) copies of invoices reflecting the fees and expenses of attorneys and consultants in connection with the rate case, including a description of the tasks for which specific attorneys and consultants are hired, the time spent on each task, and copies of invoices paid by the attorneys or consultants for travel and lodging expenses;

(v) copies of invoices reflecting the travel expenses (including lodging) of employees of the utility or municipality in connection with the rate case; and

(vi) monthly summaries of the amount incurred for rate-case expenses.

(B) The documents that are made available under this paragraph shall be in sufficient detail to permit other parties to adequately review the party's rate-case expenses. This paragraph shall not be construed to require a utility or a municipality to provide information that is privileged or otherwise exempt from discovery under the Texas Rules of Civil Procedure, as determined by the examiner or the commission.

(C) This paragraph shall not be construed to preclude any party from conducting discovery in accordance with the commission's rules of practice and procedure.

(D) If a municipality is claiming salaries or wages of an employee of the municipality as rate-case expenses, it shall provide information to support any claimed fringe benefits or overhead expenses associated with the employee.

(4) Standard for recovery. A public utility has the burden of showing that its rate-case expenses are reasonable and necessary, and a municipality has the burden of showing that its rate-case expenses are reasonable.

(A) Matters that the commission may consider in determining the reasonableness of such expenses include the following:

(i) the rates charged for professional services;

(ii) the time spent by employees, attorneys, and consultants working on various tasks related to a rate case;

(iii) whether there was unnecessary duplication of effort;

(iv) whether the work done by an employee, attorney, or consultant was relevant and reasonably necessary, in the context of the proceeding; and

(v) whether the work done by an employee, attorney, or consultant was commensurate with the complexity of the issues and the relief sought in the proceeding.

(B) The following expenses may not be recovered as rate-case expenses:

(i) travel expenses in excess of standard or coach fares on common air carriers;

(ii) excessive amounts for luxury lodging accommodations;

(iii) entertainment expenses;

(iv) projected expenses for activities that have not yet occurred; and

(v) in connection with the services of an employee of a municipality, amounts that exceed the costs actually incurred by the municipality for the employee's services. A municipality may recover appropriate fringe benefits and overheads associated with an employee's service.

(5) Recovery of rate-case expenses. The rate-case expenses of a municipality that have been paid by the municipality and that are approved by the commission shall be reimbursed by the public utility. The rates that are approved by the commission shall be fixed at a level that will permit the utility a reasonable opportunity to recover its authorized rate-case expenses and any authorized rate-case expenses of a municipality. These expenses shall be included in rates in the manner that the commission determines is appropriate.

(6) Audit of rate-case ex-

penses. An investor-owned utility, a river authority, or a dominant interexchange carrier that is seeking to recover rate-case expenses under this subsection shall cause its request for rate-case expenses to be reviewed by an independent auditor to assure that the expenses are adequately documented and properly recorded. A municipality that is seeking rate-case expenses for participating in the rate proceedings of a utility that is required to have its request for rate-case expenses audited shall also cause its request for rate-case expenses to be reviewed by an independent auditor. The reasonable cost of such an audit shall be considered a rate-case expense.

(A) This review shall be conducted by a certified public accountant in accordance with generally accepted auditing standards, generally accepted accounting principles, paragraph (4) of this subsection, and any other standards that the commission may prescribe.

(B) A local-exchange carrier or a municipality that is seeking rate-case expenses for participating in the rate case of such a local-exchange carrier may be granted a waiver of this paragraph by filing a motion addressed to the examiner.

(7) Interim approval of expenses for municipalities. A municipality may request that a portion of its request for rate-case expenses be approved before the completion of the hearing in a rate case, and such interim approval may be granted either with or without a hearing on issues related to rate-case expenses, in accordance with this paragraph.

(A) If the parties reach an agreement as to the amount and reasonableness of a municipality's interim rate-case expenses, the hearings examiner may grant interim approval of such expenses without a hearing. Interim approval under this subparagraph shall be conditioned on the final approval of the municipality's rate-case expenses, in accordance with paragraph (10) of this subsection. The examiner may adopt procedures intended to assure that the utility's liability to a municipality for interim rate-case expenses does not exceed the amount that is ultimately approved by the commission.

(B) If the parties are unable to reach an agreement on the amount and reasonableness of a municipality's interim expenses, the commission may approve a municipality's interim rate-case expenses following a hearing on this issue. The hearing may be conducted by a hearings examiner or by the commission. If the hearing is conducted by a hearings examiner, the examiner shall issue a proposal for decision on this matter for consideration by the commission. The parties may file exceptions to such a proposal for decision, and replies to exceptions, in accordance with §21.142 of this title (relating to Exceptions and Replies).

(C) If the commission or an examiner approves a request for interim rate-case expenses, in accordance with this paragraph, the utility shall reimburse the municipality for such expenses.

(8) Final approval of rate-case expenses. The rate-case expenses of an investor-owned utility, a river authority, or a dominant interexchange carrier shall be determined in a separate, ancillary proceeding following the completion of the rate case for which the expenses are sought.

(A) The utility's rates shall be increased, in the ancillary proceeding, in accordance with paragraph (5) of this subsection. The total amount of the rate increases approved by the commission in the rate case and the ancillary proceeding shall not exceed the amount set forth in the statement of intent that the utility filed in connection with the rate case.

(B) In such an ancillary proceeding, the utility need not provide additional notice of the proceeding but the commission shall provide notice in accordance with §21.22(a) of this title (relating to Contents of Notice for Rate Setting Proceedings). The utility need not file an additional statement of intent to change its rates or the rate-filing package that is required by §21. 69(a) of this title (relating to Applications, Testimony and Exhibits) but shall file a proposed tariff for recovery of the rate-case expenses.

(9) Final approval of rate-case expenses for a cooperative. The rate-case expenses of a cooperative shall be considered in the rate case for which the expenses are sought. A local-exchange carrier may be authorized to have its rate-case expenses determined in accordance with this paragraph by filing a motion addressed to the examiner.

(10) Final approval of rate-case expenses for a municipality. The rate-case expenses of a municipality shall be approved in the same manner as the rate-case expenses of the utility, in accordance with paragraph (8) or (9) of this subsection.

(11) Additional expenses of a municipality. The decision of the commission concerning the final approval of the rate-case expenses of a municipality under paragraph (10) of this subsection may include approval of an estimate of the expenses that the municipality expects that it will thereafter incur in connection with the rate case or an action for judicial review of the commission's decision in the rate case.

(A) If a municipality incurs additional rate-case expenses after its rate-case expenses have been approved under paragraph (10) of this subsection, the municipality may request the utility to reimburse such expenses.

(B) The public utility shall reimburse the municipality for such additional rate-case expenses, if the municipality shows that:

(i) the municipality's request for rate-case expenses relates to activities for which the utility has not previously reimbursed the municipality;

(ii) the municipality's request does not exceed the amount of any estimate for additional expenses that has been approved by the commission;

(iii) the municipality has provided to the staff of the commission copies of the invoices reflecting the amount that it is requesting; and

(iv) the municipality has paid the rate-case expenses that it is requesting reimbursement for.

(C) The utility may be granted surcharge for any a additional rate-case expenses of a municipality that it reimburses under this paragraph, by filing an application with the commission. In connection with such an application, the utility shall provide notice of the proceeding in accordance with §21.25 of this title (relating to Contents of Notice for Proceedings Other Than Rate Setting, Licensing, or Rulemaking Proceedings) and shall file a statement of intent to change its rates and a proposed tariff for recovery of the rate-case expenses. The utility need not file the rate-filing package that is required by §21.69(a) of this title (relating to Applications, Testimony, and Exhibits).

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 March 26, 1990.

TRD-9003167 Mary Ross McDonald
Secretary
Public Utility Commission of Texas

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 458-0100

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• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23.23, concerning fuel cost recovery. This amendment would affect the fuel cost recovery provisions of the commission's rules. Three major changes are included in this amendment. First, reconciliation of fuel costs would occur at least every three years. Second, fuel factors would be set on a regular, periodic schedule. Finally, the commission will develop and implement filing and reporting guidelines for utilities' fuel practices and proceedings.

Raymond Orozco, executive director, and Evan C. Rowe, fuel analyst-Electric Division, have determined that there will be fiscal implications as a result of enforcing or administering the section. Effect on state government will be an estimated additional cost of $170,000 for the years 1990-1994. Effect on local government will be an estimated additional cost of $465,000 for the years 1990-1994.

Mr. Orzco, and Mr. Rowe have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more frequent and more thorough review of fuel costs experienced and anticipated by electric utilities (approximately $4 billion annually in Texas); improved matching of costs with customers; and improved matching of fuel revenues with fuel expenses. There will be no local employment impact. There will be no effect on small businesses as a result of enforcing the section. The anticipated economic cost to persons who are required to comply with the section as proposed will be the cost of electric utilities. The amount estimated for the years 1990-1994 is $420,000. The electric utilities will be required to set fuel factors annually and to reconcile their fuel costs at least every three years.

Comments on the proposal may be submitted to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.23. Rate Design.

(a) **Definitions** [General]. In fixing the rates of a public utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its capital investment used and useful in rendering service to the public over and above its reasonable and necessary operating expenses. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and in the case of rates for electric utilities, shall take into consideration the need to conserve energy and resources. **The following words and terms, when used in this section in connection with electric utilities, shall have the following meanings, unless the context clearly indicates otherwise.**

(1) Fuel cost over-recovery–The amount in any period by which a utility's revenues from the fuel factor exceed its non-base-rate fuel costs, as determined under subsections (d) or (e) of this section.

(2) Fuel cost under-recovery–The amount in any period by which a utility's non-base-rate fuel costs, as determined under subsections (d) or (e) of this section, exceed its revenues from the fuel factor.

(3) Fuel factor–An element in an electric utility's tariff that is designed to produce revenues equal to the utility's known or reasonably predictable fuel costs. Except as provided in subsections (c)(1) or (f)(3) of this section or as otherwise ordered by the commission, a fuel factor shall be effective for a period of 12 months or until a superseding fuel factor is authorized by the commission.

(4) Fuel proceeding–A proceeding under this section to:

(A) determine a fuel factor and establish provisional over- or under-recoveries: or

(B) reconcile known or reasonably predictable fuel costs incurred since the utility's most recent reconciliation.

(5) Fuel reconciliation–A proceeding to determine whether a utility has over- or under-recovered its reasonable, necessary, and prudently incurred non- base-rate fuel costs in the period since its last fuel reconciliation. A utility's fuel costs will be determined in accordance with subsections (d) or (e) of this section.

(6) Generating utility. An electric utility that generates electricity for sales that are under the jurisdiction of the commission.

(7) Known or reasonably predictable fuel costs A utility's fuel costs, determined in accordance with subsections (d) or (e) of this section. These costs are included in a fuel factor and are subject to reconciliation, in accordance with this section. Costs that are not subject to reconciliation are fixed in a rate case on the basis of adjusted test-year information.

(A) Known or reasonably predictable fuel costs include:

***(i)* the energy component of purchased power, less the revenues generated by off-system sales:**

***(ii)* the cost of fuel, as determined under subsections (d) or (e) of this section; and**

***(iii)* certain fuel-related costs incurred by affiliates of the utility, in accordance with subsections (d)(2) or (e)(1) of this section.**

(B) Known or reasonably predictable fuel costs do not include:

***(i)* the cost of capacity purchased from another utility or a qualifying facility;**

***(ii)* fuel handling costs;**

***(iii)* costs associated with the disposal of fuel combustion residuals;**

***(iv)* railcar maintenance costs;**

***(v)* railcar lease costs;**

***(vi)* railcar taxes;**

***(vii)* coal brokerage fees; and**

***(viii)* any other fuel-related costs of the utility that do not vary significantly in response to short-term changes in electricity production.**

(8) Material under- or over-recovery of fuel costs–The cumulative amount of over- or under-recovery of fuel costs, including interest, is the lesser of $40 million or 4.0% of the annual known or reasonably predictable fuel cost figure most recently adopted by the commission, as shown by the utility's fuel filings with the commission.

(9) Nongenerating utility–An electric utility that is not a generating utility.

(10) Qualifying facility–Shall have the meaning ascribed to it in §23.66 of this title (relating to Arrangements Between Qualifying Facilities and Electric Utilities).

(11) Rate class–All customers taking service under the same rate schedule in a commission-approved tariff, or a qrouo of seasonal agricultural customers, as identified by the utility.

(12) Reconcilable fuel costs–Fuel costs which consist of known and reasonably predictable fuel costs, as defined in paragraph (7) of this subsection, the costs of wheeling power, and any other costs that the commission determines. Reconcilable fuel revenues include revenues from off-system sales, revenues from wheeling power, and any other revenues which the commission determines.

(b) Fuel factor and over- and under-recoveries.

(1) A fuel factor for a utility is established in a proceeding under this section for a 12-month period, or such other period that the commission directs. A fuel factor is determined, for any such period, by dividing the utility's known or reasonably predictable fuel costs, as defined in subsection (a)(7) of this section, for generating power that is to be sold in transactions that are under the jurisdiction of the commission by the number of kilowatt-hours of sales projected for such period. A utility's fuel factor may be designed to account for seasonal differences in fuel costs. A utility's fuel factor shall be designed to account for system losses, and for differences in line losses corresponding to the voltage level of service. If, due to unique circumstances, such a calculation is not appropriate for a particular utility, a different method of calculation may be used.

(2) If it is provisionally determined, in a proceeding to fix a utility's fuel factor, that the utility's fuel factor (applicable to the most recent period for which a fuel factor has been fixed) has resulted in an over- recovery of fuel costs, the amount of the provisional over-recovery, plus interest, may be refunded to consumers in the manner prescribed in paragraph (81 of this subsection.

(3) If it is provisionally determined, in a proceeding to fix a utility's fuel factor, that the utility's fuel factor (applicable to the most recent period for which a fuel factor has been fixed) has resulted in an under-recovery of fuel costs, the amount of the provisional under-recovery, plus interest, may be recovered by the utility in the manner prescribed in paragraph (8) of this subsection.

(4) If it is determined in a reconciliation proceeding that the utility's fuel factor has resulted in an over-recovery of fuel costs in the period since the utility's last reconciliation, the amount of the over- recovery, plus interest, may be refunded to consumers in the manner prescribed in paragraph (8) of this subsection.

(5) If it is determined in a reconciliation proceeding that the utility's fuel factor has resulted in an under-recovery of fuel costs in the period since the utility's last reconciliation, and that the under-recovery resulted from events that were beyond the utility's control, the amount of the under-recovery, plus interest, may be recovered from consumers in the manner prescribed in paragraph (8) of this subsection.

(6) A provisional determination that a utility has over- or under-recovered its fuel costs is not a final decision, but is subject to final reconciliation in the utility's next reconciliation proceeding.

(7) A determination by the commission in a reconciliation proceeding that a utility has under- or over-recovered its fuel costs is a final decision, subject to any party's right to judicial review.

(8) Any refund of an over-recovery or recovery by the utility of a previous under-recovery, including associated interest, shall be allocated as follows.

(A) Interclass allocations shall be made on a month- by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month for the period in which the cumulative over- or under-recovery occurred, adjusted for line losses by using the same commission-approved loss factors that were used during the period in which the cumulative over- or under-recovery occurred.

(B) Intraclass allocations shall depend on the voltage level at which the customer receives service from the utility. Over- or under- recoveries for retail customers who receive service at transmission voltage levels, all wholesale customers, and any urouos of seasonal agricultural customers identified by the utility shall be allocated on the basis of their individual historical usage recorded during each month of the period in which the cumulative over- or under-recovery occurred, adjusted for line losses if necessary. Allocations for all other customers shall be based on the projected kilowatt-hour usage of the customers within their rate class for the period during which the over-recovery will be refunded or the under- recovery will be recouped.

(C) All refunds of over-recoveries or recoveries of previous under-recoveries shall be made through a one-time bill adjustment unless it can be shown that this method would provide an incentive for customers to benefit from abnormal usage of electricity. However, refunds may be made by check to municipally-owned utility systems if so requested by the municipally-owned utility system. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump sum bill adjustment. All other customers shall be given a bill adjustment based on a factor that will be applied to their kilowatt-hour usage over a one-month period. This factor will be determined by dividing the amount of the refund or recovery allocated to each rate class by the forecasted kilowatt-hour usage for the class during the month in which the bill adjustment will be made. Any difference in the actual refund or recovery arising from a difference between projected and actual sales in the month of the refund or recovery shall be carried forward as an under- or over-recovery for the rate classes involved.

(D) Notwithstanding subparagraph (C) of this paragraph, the commission may order over- or under-recoveries to be refunded or recovered over a period of more than one month, if good cause is shown for doing so.

(9) If the amount determined under paragraphs (2)-(5) of this subsection would not result in an appreciable refund to, or recovery from, a rate class, the commission may direct that the balance be carried forward, without an immediate refund to that rate class or recoupment by the utility from that rate class. The administrative cost of making a refund or recoupment may be considered in determining whether an amount is appreciable.

(10) A petition to lower a utility's fuel factor may be approved by the commission without an evidentiary hearing, unless a party to the proceeding requests a hearing.

(11) A utility may petition for interim refunds at any time. Such refund petitions may be approved by the commission without a hearing. Any refund shall be allocated in accordance with paragraph (8) of this subsection.

(12) A utility shall petition for an interim refund at such time that the utility has materially over-recovered its non-base-rate fuel costs. Such refund petitions may be approved by the commission without a hearing. Any refund shall be allocated in accordance with paragraph (8) of this subsection.

(13) A fuel proceeding to lower a utility's fixed fuel factor shall be conducted when either:

(A) the utility has materially over-recovered and is projected to continue to materially over-recover its known or reasonably predictable fuel costs. In such instance, the utility shall file a petition with the commission to lower its fuel factor. The petition shall clearly state all of the reasons for lowering the utility's existing fuel factor, and provide support for the new interim fuel factor. The commission may establish standards for the information and format that shall be contained in such petitions; or

(B) upon information and belief, the commission's general counsel, or any affected person, ayers that the utility has materially over-recovered and it is projected that the utility will continue to materially over-recover its known or reasonably predictable fuel costs, and files a petition with the commission to lower the utility's fuel factor.

(14) Interest shall be calculated on the monthly ending over- or under-recovery balance, at the applicable rate. The ending over- or under-recovery balance shall include accrued interest. The applicable rate for each month shall be the average monthly rate on dealer-placed, three-month commercial pager, as reported in "Moody's Bond Survey". In the event Moody's discontinues publication of this rate, a similar rate published in another authoritative source may be used. The applicable rate shall be divided by 12 for purposes of performing the monthly interest calculation. Interest shall be paid on this balance through the end of the month that precedes the month in which the over-recovery is refunded or the under- recovery is recouped by the utility.

(c) Filing.

(1) The commission will conduct fuel proceedings to establish fuel factors for generating utilities at regular intervals, and such fuel factors shall be effective for 12 months. In each such proceeding, the commission will provisionally determine whether the utility has over- or under-recovered its fuel costs for the most-recent period for which information is available.

(2) An application to establish or revise a fuel factor must be filed by the utility not later than 120 days before the beginning of the period in which the fuel factor will apply.

(3) The commission will conduct a fuel proceeding to reconcile a generating utility's known or reasonably predictable fuel costs during a utility's general rate case.

(4) Any affected party, or the commission's general counsel, may file a petition for a reconciliation proceeding, except that such a petition may be filed only if it has been over one year since that utility's prior final reconciliation. The general counsel of the commission shall file an application to reconcile a utility's fuel costs if more than three years have elapsed since the utility's most recent reconciliation.

(5) In a proceeding to establish or revise a fuel factor. the utility must file with its initial application, testimony in support of its petition and the information required in the fuel factor filing guidelines prescribed by the commission.

(6) In a proceeding to reconcile its known or reasonably predictable fuel costs, the utility must file with its initial application, testimony in support of its petition and the information required in the fuel reconciliation filing guidelines prescribed by the commission.

(7) In any fuel proceeding under this section, the utility shall file such other information as the commission may direct.

(d) Establishing or revising fuel factors.

(1) In determining a utility's known or reasonably predictable fuel costs in any proceeding under this section, the commission shall consider all conditions or events that may affect a utility's fuel-related cost of supplying electricity to consumers during the period that the fuel factor will be in effect. The standard for determining a utility's known or reasonably predictable fuel costs shall be that the utility has planned and operated its facilities and fuel-procurement programs prudently, with the objective of providing reliable power at the lowest reasonable total cost. In a fuel factor proceeding, the utility shall have the burden of proving that it meets this standard.

(2) In determining the fuel cost associated with the owner generated by a generating plant that is in commercial operation but is not recognized by the commission as plant-in-service for ratemaking purposes, the utility may request the cost of fuel not be included in the fuel factor. Inlead, the cost of generating the power that the generating plant is projected to provide may be based on the cost of the same amount of power, generaled by the most economical alternative. Unless the commission authorizes the utility to use displacement fuel costs in place of the actual fuel costs of the new generating plant in the fuel factor calculation, the known and reasonable predictable fuel costs shall be based on projections of the actual fuel costs. When the generating plant is recognized as plant-in-service for ratemaking purposes, the revenue requirements associated with the generating plant shall be adjusted in the following manner, unless otherwise ordered by the commission.

(A) For plants subject to deferred accounting order, the deferred expenses shall be reduced by the cost of generating the power that the generating plant is projected to provide or has provided, as if it were produced by the most economical alternative, less the projected or actual cost of the fuel.

(B) For plants not subject to deferred accounting order, the capital cost of the plant shall be reduced by the cost of generating the power that the generating plant is projected to provide or has provided, as if it were produced by the most economical alternative, less the projected or actual cost of the fuel.

(3) In determining a utility's known or reasonably predictable fuel costs in any proceeding under this section, the utility has the burden of showing that:

(A) it is capable of generating electricity efficiently;

(B) it has effective cost controls in place;

(C) for all fuel and fuel-related contracts with nonaffiliated entities, it has obtained the lowest reasonable costs for its consumers; and

(D) for all fuel and fuel-related acquisitions from affiliated entities, all expenses charged by affiliates are reasonable and-necessary, and the prices charged to the utility are projected to be no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons for the same item or class of item. If the supplying affiliate does not sell the item to other entities, the commission may evaluate the reasonableness of the price on such other basis as it deems appropriate.

(i) The projected price of fuel acquired from an affiliate shall not be considered reasonable if it exceeds the affiliate's cost of acquiring the fuel, and the price to the utility may not include profit or a return on equity. The commission may, in its discretion, include the affiliate's equity and return on equity in determining the rate base and return of the utility in a general rate case.

(ii) The commission may investigate the operations of any affiliate of a utility that provides fuel or fuel-related services to the utility. The commission's use of information gathered in such an investigation is not limited to fuel proceedings.

(e) Reconciliation of known or reasonably predictable fuel costs.

(1) In reconciling a utility's known or reasonably predictable fuel costs in any proceeding under this section, the utility has the burden of showing that:

(A) it has generated electricity efficiently;

(B) it has maintained effective cost controls;

(C) for all fuel and fuel-related contracts with nonaffiliated entities, it has obtained the lowest reasonable costs for its consumers; and

(D) for all fuel and fuel-related acquisitions from affiliated entities, all expenses incurred by affiliates have been reasonable and necessary, and the prices charged to the utility are no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons for the same item or class of item. If the supplying affiliate does not sell the item to other entities, the commission may evaluate the reasonableness of the price on such other basis as it deems appropriate.

(i) The price of fuel acquired from an affiliate shall not be considered reasonable if it exceeds the affiliate's cost of acquiring the fuel, and the price to the utility may not include profit or a return on equity.

(ii) The commission may investigate the operations of any affiliate of a utility that provides fuel or fuel-related services to the utility. The commission's use of information gathered in such an investigation is not limited to fuel proceedings.

(2) To the extent that the utility does not meet its burden of proof set forth in paragraph (1) of this subsection, the commission shall disallow the portion of fuel costs that it finds to be unreasonable.

(3) A reconciliation of fuel costs shall cover the period from the utility's last reconciliation to the most recent month for which records are available at the time of filing its reconciliation case.

(4) In a fuel reconciliation proceeding a utility's reconcilable fuel costs shall be determined in accordance with subsections (a)-(e) of this section, except to the extent that a prior decision of the commission specifically included in a utility's fuel factor costs that are nonreconcilable under subsection (a)(7) of this section.

(f) Expedited proceedings.

(1) The commission may after a hearing grant interim relief for fuel cost increases that are the result of unusual and emergency circumstances or conditions.

(2) If a party requests an expedited proceeding to determine a fuel factor the hearing examiner shall as a preliminary matter, determine whether there is good cause for expediting the proceeding in accordance with paragraph (1) of this subsection. If the hearing examiner concludes that there is good cause for expediting the proceeding the examiner shall adopt a procedural schedule and conduct the proceeding so as to permit the commission to issue a final order in the case within 90 days. This time limit shall begin to run when the examiner determines that there is good cause for an expedited proceeding and in a case filed by the utility that the utility has met all of the filing requirements for a proceeding to determine a fuel factor. In an expedited proceeding a utility may not propose performance standards (net capacity factor or net heat rates) for generating units that are poorer than the performance standards that were used in fixing the existing fuel factor.

(3) In an expedited proceeding the order fixing a utility's fuel factor shall be effective for such period as the commission may determine.

(g) Purchased-power cost recovery factor (PCRF).

(1) A nongenerating utility or a generating cooperative may adjust its customers, bills to reflect variations in the cost of purchased power by means of purchased- power cost-recovery factor in accordance with paragraphs (2) -(8) of this subsection if a PCRF clause is included in its tariff.

(2) A purchased-power cost-recovery factor or PCRF is a billing factor that permits the utility to charge or credit its customers for the cost of capacity and energy purchased by the utility to the extent that such costs differ from the cost of purchased power used to fix the base rates of the utility.

(3) The costs of the following purchases may be included in a PCRF:

(A) purchases of electricity at wholesale pursuant to contracts or rate schedules approved, promulgated or accepted by a federal or state authority;

(B) purchases of economy energy at rates that are lower than the purchasing utility's projected marginal cost of obtaining power from other sources, provided that the purchase is made pursuant to a contract approved by a federal regulatory authority or the commission, and is consistent with paragraph (8) of this subsection; and

(C) purchases of electricity from qualifying facilities at a price equal to or less than the avoided cost.

(4) The costs of purchased power include all amounts chargeable for electricity under the wholesale tariffs or approved contract pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and energy.

(5) A PCRF clause may include a description of the method by which any refund or surcharge from the utility's wholesale supplier will be passed on to its customers. The terms and conditions of a PCRF clause are subject to approval by the commission.

(6) Any difference between the utility's actual purchased power costs and its PCRF revenues shall be credited or charged to the utility's ratesavers in the second succeeding billing month unless otherwise directed by the commission.

(7) If the utility purchases power from an unregulated entity such as a municipally-owned utility or an agency of the State of Texas or the United States government the utility may submit the purchased power contract to the commission for approval of the terms conditions and price. If the commission approves the terms of the purchase the costs of such power may be included in the utility's PCRF.

(8) A utility may include the cost of economy energy in a PCRF only if it is able to demonstrate that the purchase of economy energy is a lower cost alternative than its other options.

(9) A generating utility may adjust its customers' bills to reflect variations in the cost of capacity power in accordance with this section for power purchased from a qualifying facility at a price equal to or less than the utility's avoided costs. Capacity costs recovered by a generating utility through a PCRF shall be allocated in the same manner that the embedded cost of the utility's generation facilities were allocated in the utility's most recent rate case. The PCRF shall be adjusted in the manner prescribed in paragraph (6) of this subsection.

(h) Reporting requirements.

(1) The commission shall monitor the utility's actual and projected fuel-related costs and revenues on a monthly basis. The utility shall maintain and provide to the commission in a format specified by the commission. monthly reports containing all information required to monitor monthly fuel-related costs and revenues. This information includes but is not limited to, generation mix, fuel consumption, fuel costs purchased-power quantities and costs, and off-system sales revenues.

(2) All utilities for which a purchased-power cost- recovery factor has been approved shall record and report to the commission monthly information concerning purchased-power

costs and PCRF revenues. Such reports and records shall be filed and maintained in such form as the commission may direct.

(i) Penalties.

(1) A penalty shall be imposed on any excessive PCRF collections by an investor-owned utility. An excessive PCRF collection is the amount by which any PCRF revenue exceeds a utility's actual purchased- power costs by more than 10% for any month or by more than 5.0% for any 12-month period.

(2) Any penalty imposed pursuant to this subsection shall be refunded to consumers in the manner prescribed in subsection (b)(9) of this section.

(3) If, at the conclusion of a general rate case, reconciliation proceeding, or interim fuel proceeding the commission determines that sometime since the utility's last general rate case, reconciliation proceeding or interim fuel proceeding, a material over-recovery of known or reasonably predictable fuel costs had occurred and was concurrently projected to continue to occur, and the utility failed to file a petition pursuant to subsection (b)(13) of this section the refunds to be made may include a penalty of up to 10% of the amount that should have been refunded at that time.

(j) Transition provisions.

(1) Except as provided in paragraphs (2) and (3) of this subsection the 1990 amendments to this section are effective immediately upon promulgation.

(2) The provisions of the 1990 amendments of this section that require utilities to file a proceeding to establish or revise a fuel factor every 12 months shall be effective for each utility when it files a general rate case a fuel reconciliation proceeding or an application to establish or revise a fuel factor after the promulgation of the 1990 amendments of this section.

(3) For a reconciliation or fuel factor proceeding, or a general rate case that is pending on the date the 1990 amendments are effective the pending case shall be adjudicated under the rule in effect when the case was filed.

(4) Notwithstanding any other provisions of this section the commission may establish a schedule for individual utilities for the filing of proceedings to establish or revise a fuel factor and for the filing of an initial proceeding to establish or revise a fuel factor under the 1990 amendments of this section.

[(b) Electric.

[(1) Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, taking into consideration the need to conserve energy and resources.

[(2) The provisions of this paragraph apply to all generating electric utilities.

[(A) The commission shall monitor the utility's actual and projected fuel-related costs and revenues on a monthly basis. The utility shall maintain and provide to the commission in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues. This information includes, but is not limited to, generation mix, fuel consumption, fuel costs, purchased power quantities and costs and off-system sales revenues.

[(B) Known or reasonably predictable fuel costs shall be determined at the time of the utility's general rate case, fuel reconciliation proceeding, or interim fuel proceeding under subparagraphs (D) and (E) of this paragraph.

[(i) In determining known or reasonably predictable fuel costs, the commission shall consider all conditions or events which will impact the utility's fuel-related cost of supplying electricity to its ratepayers during the period that the rates will be in effect. These conditions or events include generation mix and efficiency, the cost of fuel used to produce the utility's generation, purchased power costs, wheeling costs, hydro generation and other costs or revenues associated with generated or purchased power as approved by the commission.

[(ii) Purchased power capacity costs, fuel handling costs, costs associated with the disposal of fuel combustion residuals, railcar maintenance costs, railcar taxes, and coal brokerage fees will not be included as known or reasonably predictable fuel costs to be recovered through the fixed fuel factor as defined in subparagraph (C) of this paragraph, unless the utility demonstrates that such treatment is justified by special circumstances.

[(C) The utility shall recover its known and reasonably predictable fuel costs through a fixed fuel factor. The utility's fixed fuel factor shall be established during a general rate case, fuel reconciliation proceeding or interim fuel proceeding as designated in subparagraphs (D) and (E) of this paragraph, and shall be determined by dividing the utility's known or reasonably predictable fuel cost, as defined in subparagraph (B) of this paragraph, by the corresponding kilowatt-hour sales during the period in which the factor will be in effect. If, due to unique circumstances, such a calculation is not appropriate for a particular utility, a different method of calculation may be used. When approved by the commission, the utility's fixed fuel factor:

[(i) may be designed to account for seasonal differentiation of fuel costs; and

[(ii) shall be designed to account for system losses and for differences in line losses corresponding to the voltage level of service.

[(D) Unless requested by a party to the proceeding, petitions to lower a utility's fuel factor may be approved by the commission without an evidentiary hearing. A lower interim fuel factor may be established and placed in effect in the first full billing cycle beginning no earlier than five days after the tariff is approved. An initial prehearing conference shall be conducted in all such proceedings no later than the 21st day following the filing of the petition and any person who fails to attend such prehearing conference may be dismissed as a party or refused party status.

[(i) An interim fuel proceeding, to lower a utility's fixed fuel factor shall be conducted when either:

[(I) the utility has materially over-recovered and projects to materially over-recover its known or reasonably predictable fuel costs. In such instance, the utility shall file a petition with the commission to lower its existing fuel factor and establish a new interim fuel factor. The petition shall clearly state all of the reasons for lowering the utility's existing fuel factor, and provide support for the new interim fuel factor. The commission may establish standards for the information and format that shall be contained in such petitions; or

[(II) upon information and belief, the commission's general counsel, or any affected person, avers that the utility has materially over-recovered and projects that the utility will materially over-recover its known or reasonably predictable fuel costs, and files a petition with the commission to lower the utility's existing fuel factor and establish a new interim fuel factor.

[(ii) For the purposes of determining whether a utility has materially over-recovered or projects that the utility will materially over-recover its known or reasonably predictable fuel costs, fuel costs associated with a nuclear generation plant subject to a deferred accounting order of the commission, or which is not recognized as plant-in-service in rates by the commission, are not considered known or reasonably predictable fuel costs, and the recovery of fuel costs incurred in connection with such generation plant shall not be included in the utility's fuel factors, but shall be treated

separately as the commission may order.

[(iii) Materially or material, as used in this paragraph, shall mean that the cumulative amount of over- or under-recovery, including interest, is the lesser of $40 million or 4.0% of the annual known or reasonably predictable fuel cost figure most recently adopted by the commission, as shown by the utility's fuel filings with the commission.

[(E) If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have resulted in a material under-recovery of known or reasonably predictable fuel costs, the utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections with interest at the utility's composite cost of capital as established in the utility's most recent rate proceeding before the commission. Such interest shall be calculated on the cumulative monthly over-recovery balance. If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned utilities.

[(F) All refunds shall be made by the utility pursuant to the methods outlined in subparagraph (G) of this paragraph.

[(i) A utility may petition for interim refunds at any time. Such refund petitions may be approved by the commission without a hearing.

[(ii) Any petition filed under subparagraph (D)(i)(II) of this paragraph may include a petition for interim refunds. Such refund petitions may be approved by the commission without a hearing, upon agreement of the parties.

[(iii) If, at the conclusion of a general rate case, reconciliation proceeding, or interim fuel proceeding, the commission determines that, sometime since the utility's last general rate case, reconciliation proceeding, or interim fuel proceeding, a material over-recovery of known or reasonably predictable fuel costs had occurred and was concurrently projected to continue to occur, and the utility failed to file a petition pursuant to subparagraph (F) (i) of this paragraph, the refunds to be made may include a penalty of up to 10% of the amount that should have been refunded at that time.

[(G) All refunds shall be made using the following methods.

[(i) Interest shall be paid by the utility at its composite cost of capital, as established by the commission, during the period the rates were in effect. Such interest shall be calculated on the cumulative monthly over- or under-recovery balance.

[(ii) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the utility.

[(iii) Interclass allocations of refunds including associated interest shall be developed on a month-by-month basis and shall be based on the historical kilowatt- hour usage of each rate class for each month during the period in which the cumulative over-recovery occurred, adjusted for line losses using the same commission approved loss factors that were used in the utility's applicable fixed or interim fuel factor.

[(iv) Intraclass allocations of refunds shall depend on the voltage level at which the customer receives service from the utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given refunds based on their individual actual historical usage recorded during each month of the period in which the cumulative over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds based on the historical kilowatt-hour usage of their rate class.

[(v) All refunds shall be made through a one-time bill credit unless it can be shown that this method would provide an incentive for customers to benefit from excessive usage of electricity. However, refunds may be made by check to municipally-owned utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump sum credit. All other customers shall be given a credit based on a refund factor which will be applied to their kilowatt-hour usage over a one-month period. This refund factor will be determined by dividing the amount of refund allocated to each rate class, by forecasted kilowatt-hour usage for the class during the month in which the refund will be made.

[(H) Final reconciliation of fuel costs shall be made at the time of the utility's general rate case or reconciliation proceeding, and shall cover all months following the utility's last final reconciliation through the most current month for which records are available. Any affected person, or the commission's general counsel, may file a petition for a reconciliation proceeding, provided such petition may only be filed if it has either been over one year since that utility's last final reconciliation or the utility has materially under-recovered its known or reasonably predictable fuel costs. In reconciliation of fuel costs the utility shall have the burden of proving that:

[(i) it has generated electricity efficiently;

[(ii) it has maintained effective cost controls;

[(iii) for all nonaffiliated fuel and fuel-related contracts, its contract negotiations have produced the lowest reasonable cost of fuel to ratepayers. To the extent that the utility does not meet its burden of proof, the commission shall disallow the portion of fuel costs that it finds to be unreasonable;

[(iv) for all fuels acquired from or provided by affiliates of the utility, all fuel- related affiliate expenses are reasonable and necessary, and that the prices charged to the utility are no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items.

[(I) The affiliate fuel price shall be at cost; no return on equity or equity profit may be included in the affiliate fuel price. The commission may consider the inclusion of affiliate equity return in rate of return and rate base during the utility's general rate case; however, affiliate equity return or profit shall not be considered part of fuel cost.

[(II) Operational investigations of all affiliate fuel suppliers and fuel supply services shall be performed at the discretion of the commission. The commission may use the results of such investigations during succeeding general rate cases, fuel cost reconciliation proceedings, emergency request proceedings, and elsewhere as it deems appropriate.

[(III) The affiliated companies shall establish, maintain, and provide for commission audit, all books and records related to the cost of fuel. These records shall explicitly identify all salaries, contract expenses, or other expenses paid or received among any affiliated companies, their employees, or contract employees. Under-recovery reconciliation shall be granted only for that portion of fuel costs

increased by conditions or events beyond the control of the utility.

[(IV) Upon final reconciliation, in determining the final over- or under-recovery amount, interest shall be paid by the utility or to the utility in reconciliation of any over- or under-recovery of fuel costs at the utility's composite cost of capital as established by the commission in connection with the utility's base rates in effect during the periods the over- or under-recovery occurred. Such interest shall be calculated on the cumulative monthly over- or under-recovery balance. Upon final reconciliation, if refunds are owed to the utility's ratepayers, they shall be made in accordance with the provisions of subparagraph (G)(ii)-(v) of this paragraph.

[(3) The provisions of this paragraph apply to all investor-owned electric distribution utilities, river authorities, and cooperative-owned electric utilities.

[(A) An electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority, or from qualifying facilities may be allowed to include within its tariff a purchased power cost recovery factor (PCRF) clause which authorizes the utility to charge or credit its customer for the cost of power and energy purchased to the extent that such costs varies from the purchased power cost utilized to fix the base rates of the utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and/or energy. The terms and conditions of such PCRF clause, which may include the method in which any refund or surcharge from the utility's wholesale supplier will be passed on to its customers, shall be approved by an order of the commission.

[(B) Any difference between the actual costs to be recovered through the PCRF and the actual PCRF revenues recovered shall be credited or charged to the utility's ratepayers in the second succeeding billing month unless otherwise approved by the commission.

[(C) If the utility purchases power from an unregulated entity, such as a political subdivision of the State of Texas, the utility shall submit the purchased power contract to the commission for approval of the terms, conditions, and price. If the commission issues an order approving the purchase, a PCRF may be applied to such purchases.

[(D) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period:

[(i) investor-owned electric distribution utilities shall be subject to a 10% penalty on excess collection;

[(ii) cooperative-owned electric utilities shall report to the commission the justification for excess collection.

[(E) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor the costs recovered through the PCRF clause. This information includes, but is not limited to, the total estimated PCRF cost for the month, the actual PCRF cost on a cumulative basis, total revenues resulting from the PCRF, and the calculation of the PCRF.

[(4) The provisions of this paragraph apply to all investor-owned generating electric utilities and river authorities.

[(A) An electric utility which purchases electricity from qualifying facilities may be allowed to include within its tariff a PCRF clause which authorizes the utility to charge or credit its customers for the costs of capacity purchased from cogenerators and small power producers. These costs shall be included in the PCRF only to the extent that such costs vary from the costs utilized to fix the base rates of the utility and to the extent that they comply with §23.66(h) of this title (relating to Arrangements between Qualifying Facilities and Electric Utilities). The terms and conditions of such PCRF shall be approved by an order of the commission.

[(B) Purchased power costs that are recovered through the PCRF shall be excluded in calculating the utility's fixed fuel factor as defined in paragraph (2)(C) of this subsection.

[(C) Costs recovered through a PCRF shall be allocated to the various rate classes in the same manner as the embedded costs of the utility's generation facilities allocated in the utility's last rate case, unless otherwise ordered by the commission. Once allocated, these costs shall be collected from ratepayers through a demand or energy charge.

[(D) Any difference between the actual costs to be recovered through the PCRF and the PCRF revenues recovered shall be credited or charged to the customers in the second succeeding billing month.

[(E) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period, the electric utility shall be subject to a 10% penalty on excess collections.

[(F) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor costs recovered through the PCRF. This information includes, but is not limited to, total estimated PCRF cost for the month, the actual PCRF cost, total revenue resulting from the PCRF, and the calculation of the PCRF clause.]

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 March 21, 1990.

TRD-9003120

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 458-0100

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Customer Service and Protection

• 16 TAC §23.41

The Public Utility Commission of Texas proposes an amendment to §23.41, concerning customer complaints. The proposed amendment defines "complaint," identifies the division of the commission to which complaints shall be referred, and clarifies a utility's record-keeping requirements with respect to customer complaints.

Susan M. Hafeli, assistant general counsel, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for the state or for local governments as a result of enforcing or administering this section.

Ms. Hafeli 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 an improvement in the ability of the commission to monitor the level and nature of customer complaints directed to each utility, as well as to track each utility's handling and disposition of those complaints. The economic cost to utilities required to comply with the proposed section is expected to be minimal. It is anticipated that public comments will provide estimates of the costs, if any, of maintaining a complaint file as required by the proposed section.

Comments on the proposed amendment may be submitted to Mary Ross McDonald, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed under Texas Civil Statute, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and to enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.41. Customer Relations.

(a) (No change.)

(b) Customer complaints.

(1) **For the purposes of this subsection, a complaint is defined as any oral or written contact from a customer received by a utility relating to any dissatisfaction with any service provided by the utility that is not resolved to the customer's satisfaction at the time of the customer's initial contact. When several items are reported by one customer at the same time, each item constitutes a separate complaint unless the group of items so reported is clearly related to a common cause.**

(2)[(1)] Upon complaint to the utility by a customer either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof.

(3)[(2)] In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant of the Public Utility Commission of Texas complaint process, giving the customer the address and telephone number of the **Public Information Division** [Consumer Affairs Division] of the commission. If applicable, the utility shall also give the customer the commission's TTY number for the deaf and hearing impaired.

(4)[(3)] The utility shall make suitable investigation of all complaints forwarded from the commission on behalf of a customer. The utility shall advise the commission of the results of the investigation in writing. Initial response to the commission must be made within 30 days after the complaint is forwarded by the commission. The commission encourages all customer complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(5)[(4)] The utility shall keep **in its main business office** a separate record of all complaints [which] made to **it by its customers, including both those complaints made directly to it and resolved to the customer's satisfaction after a suitable investigation, as well as those complaints made or referred to the commission complaint process. That record shall include, but is not limited to,** [show] the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof, **and shall include all complaints** for a period of two years subsequent to the final settlement of **each** [for the] complaint. Complaints with reference to rates or charges which require no further action by the utility need not be recorded.

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 March 23, 1990.

TRD-9003118 Mary Ross McDonald
Secretary
Public Utility Commission of Texas

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 458-0100

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TITLE 22. EXAMINING BOARDS

Part II. State Board of Barber Examiners

Chapter 51. Practice and Procedure

Barber Colleges, Schools, and Students

• 22 TAC §51.28

The State Board of Barber Examiners proposes an amendment to §51.28, concerning the mandatory curriculum for a teacher course. The section defines the curriculum for a 1,000-hour course of instruction to prepare a student for the examination for a teacher license, in accordance with Texas Civil Statutes, Article 8407a, §9(j)(3), as amended by Acts of the 71st Legislature.

Jo King McCrorey, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McCrorey 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 consumers' health and welfare will be protected by the requirement that applicants for a teacher license must complete a standardized comprehensive course of instruction. There will be no effect on small businesses as a result of enforcing the section. 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 King McCrorey, Executive Director, 9101 Burnet Road, Suite 103, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 8407a, §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§51.28. [Student] Teacher Course [Requirements].

(a) Full-time student teacher. A person enrolled in the six-month postgraduate course as a student teacher in an approved barber school or college shall complete a total of 26 consecutive weeks of training in such barber school or college. The full-time course shall consist of not less than:

(1) seven hours, 45 minutes per day for a five-day week; or

(2) six hours, 30 minutes per day for a six-day week.

(b) Part-time student teacher. A part-time student teacher at three-fourths time shall be required to attend school either:

(1) six hours per day for a five-day week for 33 weeks, plus an additional two days; or

(2) five hours per day for a six-day week for 33 weeks, plus an additional two days.

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

(e) The curriculum to prepare a student for the examination for the teacher license will consist of 1,000 hours, to include:

(1) eight hours of orientation, consisting of:

(A) rules and regulations of the school;

(B) introductions to school personnel and students; and

(C) layout of school facilities;

(2) 125 hours of instruction in theory, consisting of:

(A) principles of teaching–10;

(B) personality and professional conduct–15;

(C) development of a barber course–15;

(D) student learning principles–10;

(E) lesson planning–15;

(F) basic teaching methods–10;

(G) teaching aids–10;

(H) testing–10;

(I) classroom management–five;

(J) teaching adults–10;

(K) classroom problems–five;

(L) self evaluation–10;

(3) 86.7 hours of instruction in practical work, consisting of:

(A) theory class (assisting teacher, observing, teaching)–125;

(B) grading test papers (assisting teacher, observing, grading)–25;

(C) learning office procedures and state laws–50;

(D) assisting with junior students–321;

(E) assisting with senior students–346;

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 March 20, 1990.

TRD-9003128 Jo King McCrorey
Executive Director
State Board of Barber Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 835-2040

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• 22 TAC §51.31

The State Board of Barber Examiners proposes an amendment to §51.31, concerning the mandatory curriculum for a manicurist course. The section defines the curriculum for a 300-hour course of instruction to prepare a student for the examination for a manicurist license, in accordance with Texas Civil Statutes, Article 8407a, §15(b), as amended by Acts of the 71st Legislature.

Jo King McCrorey, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McCrorey 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 consumers' health and welfare will be protected by the requirement that applicants for a manicurist license must complete a standardized comprehensive course of instruction. There will be no effect on small businesses as a result of enforcing the section. 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 King McCrorey, Executive Director, 9101 Burnet Road, Suite 103, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 8407a, §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§51.31. Manicurist Course. The curriculum to prepare a student for the examination for the manicurist license will consist of 300 [150] hours, to include: [.] [Ten hours of instruction shall be devoted to the study of attaching false nails. One hundred and forty hours of the instruction shall be devoted to the study of:]

(1) 8 hours of orientation, consisting of:

(A) rules and regulations of the school;

(B) introductions to school personnel and students; and

(C) layout of school facilities. [[(1)] cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person; and]

(2) 37 hours of instruction in theory, consisting of: [[(2)] massaging, cleansing, treating, or beautifying the hands of any person.]

(A) Texas barber laws–four;

(B) professional ethics–three;

(C) hygiene and good grooming–three;

(D) bacteriology, sterilization, and sanitation–eight;

(E) the nail and disorders–four;

(F) manicuring, equipment, and procedures–four;

(G) anatomy and physiology–four;

(H) skin–four;

(I) advanced nail techniques–three;

(3) 255 hours of instruction in practical work consisting of:

(A) preparation of manicure table–18;

(B) removal of polish–26;

(C) shaping nails–44;

(D) softening cuticle–17;

(E) applying cuticle remover and loosening–18;

(F) cleaning under free edge–eight;

(G) trimming cuticle–27;

(H) bleaching under free edge–eight;

(I) applying cuticle oil or cream–nine;

(J) hand and arm massage–26;

(K) applying polish–34;

(L) application of artificial and gel nails–20.

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 March 20, 1990.

TRD-9003130 Jo King McCrorey
Executive Director
State Board of Barber Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 835-2040

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• 22 TAC §51.34

The State Board of Barber Examiners proposes an amendment to §51.34, concerning the course of study for a barber technician. The section defines the curriculum for a 300-hour course of instruction to prepare a student for the examination for a barber technician license, in accordance with Texas Civil Statutes, Article 8407a, §14(b), as amended by Acts of the 71st Legislature.

Jo King McCrorey, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McCrorey 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 consumers' health and welfare will be protected by the requirement that applicants for a barber technician license must complete a standardized comprehensive course of instruction. There will be no effect on small businesses as a result of enforcing the section. 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 King McCrorey, Executive Director, 9101 Burnet Road, Suite 103, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 8407a, §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§51.34. Barber [Barber's] Technician Course. **The curriculum to prepare a student for the examination for the barber technician license will consist of 300 hours, to include:**

(1) 8 hours of orientation, consisting of:

(A) rules and regulations of the school;

(B) introduction to school personnel and students; and

(C) layout of school facilities.

(2) 37 hours of instruction in theory, consisting of:

(A) Texas barber laws–four;

(B) professional ethics–three;

(C) good grooming; preparing patron and making appointments–three;

(D) hygiene, bacteriology, sterilization, and sanitation–10;

(E) shampooing, equipment, and procedures–four;

(F) rinsing, types and procedures–two;

(G) scalp and hair treatment–two;

(H) theory of massage, and structure of head, neck and face–two;

(I) common disorders of the skin; facial treatments–four;

(J) cosmetic applications and massage–three;

(3) 255 hours of instruction in practical work, consisting of:

(A) preparation of work area for shampooing–seven;

(B) draping and scalp examination–11;

(C) patron protection–five;

(D) brushing and drying–18;

(E) scalp manipulations–20;

(F) application of shampoo and shampooing–45;

(G) application of conditioner and rinsing–20;

(H) application of rinses and removal–35;

(I) sanitation and sterilization–15;

(J) set-up for facial–eight;

(K) application and removal of creams–10;

(L) facial manipulations–20;

(M) application and removal of packs–eight;

(N) makeup application–33.

[Any person who has at least 30 working days study as a barber's technician including the study of shampooing, shampoos, manipulations, making appointments, preparing patrons, drying hair, and sterilizing tools, and at least 30 hours' study of sterilization and the barber laws may be licensed to practice as a barber's technician.]

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 March 20, 1990.

TRD-9003127 Jo King McCrorey
Executive Director
State Board of Barber Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 835-2040

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Part V. State Board of Dental Examiners

Chapter 107. Dental Board Procedures

Procedures Governing Grievances, Hearings, and Appeal

• 22 TAC §107.65

The Texas State Board of Dental Examiners proposes new §107.65, concerning time limits on board orders. The board proposes the new section to ensure the efficient conduct of the business and the administration of the board.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better protection of the public. There will be no effect on small businesses as a result of enforcing the section. 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 Crockett Camp, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The new section is proposed under Texas Civil Statutes, Articled 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§107.65. Time Limits. Unless a specific time limit is imposed by board order, a licensee shall complete the community service, continuing education, and other requirements imposed by a board order in regular increments over the period of probation imposed, and shall report compliance in accordance with §107.65.

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 March 22, 1990.

TRD-9003139 Crockett Camp
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 834-6021

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• 22 TAC §107.66

The Texas State Board of Dental Examiners proposes new §107.66, concerning modification of a board order. The board is proposing the new section to ensure the efficient conduct of the business and the administration of the board.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better protection for the public. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Crockett Camp, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The new section is proposed under Texas Civil Statutes, Article 4551d, which provides the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§107.66. Modification to Order. A person requesting a modification of a board order shall submit a written request prior to a board meeting. These shall be submitted by the requesting party to the board, along with three copies of the request. The application shall include but not be limited to:

(1) date of order, nature of violation;

(2) specific punishment on which modification is requested;

(3) sections on which the applicant does not request modification;

(4) summary of reasons for request;

(5) benefit to the public if granted;

(6) separately numbered and indexed exhibits or testimonials tending to support the request;

(7) notice to any patient or other party involved in the original action with an invitation to respond;

(8) acknowledgment that the applicant understands that he or she is not entitled to modification of the board order.

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

Issued in Austin, Texas on March 22, 1990.

TRD-9003138 Crockett Camp
Executive Director
Texas State Board of Dental Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 834-6021

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• 22 TAC §107.67

The Texas State Board of Dental Examiners proposes new §107.67, concerning requests for modification of board orders. The board is proposing the new section to ensure the efficient conduct of the business and the administration of the board.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better protection of the public. There will be no effect on small businesses as a result of enforcing the section. 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 Crockett Camp, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The new section is proposed under Texas Civil Statutes, Articled 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§107.67. Review of Modification. Requests for modification of a board order shall be reviewed by a designee of the board who will determined whether it should be placed on the board's agenda. The designee may make a recommendation to the board concerning the requests.

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 March 22, 1990.

TRD-9003137 Crockett Camp
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 834-6021

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• 22 TAC §107.68

The Texas State Board of Dental Examiners proposes new §107.68, concerning appearances before the board. The board is proposing the new section to ensure the efficient conduct of the business and the administration of the board.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better protection of the public. There will be no effect on small businesses as a result of enforcing the section. 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 Crockett Camp, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The new section is proposed under Texas Civil Statutes, Articled 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§107.68. Appearances. Nothing in these rules shall be construed to prevent any licensee of the agency or any other person from appearing before the board for consideration of any matter. Prior to an appearance the person shall submit a request to appear stating the substance of the matter to be discussed. The board may limit the time within which any party may address the board and may limit the appearance to consideration of written materials.

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 March 22, 1990.

TRD-9003135 Crockett Camp
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 834-6021

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Chapter 109. Conduct

Definitions

• 22 TAC §109.211

The Texas State Board of Dental Examiners proposes an amendment §109.211, concerning unprofessional, dishonorable, and immoral conduct. The board is proposing this amendment to more clearly define the scope of unprofessional conduct.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better protection of the public. There will be no effect on small businesses as a result of enforcing the section. 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 Crockett Camp, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The amendment is proposed under Texas Civil Statutes, Articled 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§190.211. Unprofessional, Dishonorable, and Immoral Conduct. Unprofessional conduct, dishonorable conduct, and immoral conduct are synonymous terms when applied to the conduct of a dental licensee and include the following.

(1)-(10) (No change.)

(11) **violation of the terms of a board order;**

(12) **committing any violation during a period of probation;**

(13) **failing to submit a report to the board required by statute, rule, or board order.**

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

Issued in Austin, Texas, on March 22, 1990.

TRD-9003140 Crockett Camp
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 834-6021

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Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

General Practice and Procedure

• 22 TAC §231.41

The Board of Vocational Nurse Examiners proposes an amendment to §231.41, concerning fees. Paragraphs (1), (2), and (11) are being simultaneously adopted on an emergency basis in order to be effective by May 1, 1990, to comply with the increase imposed by the National Council Licensure Examination (NCLEX) fee which is effective immediately following the April licensure examination. Furthermore, in accordance with the Appropriations Act, the fee the board charges for the examination must be increased by an amount equal to NCLEX. The penalty fees are increased to comply with the Vocational Nurse Act, §8 (c).

The Texas Peer Assistance Program for Impaired Nurses (TPAPIN) surcharge is established by House Bill 900, which allows the board the authority to implement a surcharge for establishing a peer assistance program to which impaired nurses may be referred in lieu of the board taking disciplinary against their license.

The proposed increase in renewal fees and the reactivation fee is necessary to cover costs necessary to complete these processes. Rising computer costs and other associated expenses make the increase a necessity.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mrs. Bronk also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. However, the TPAPIN surcharge will benefit those impaired nurses who take advantage of the Rehabilitation Program offered by TPAPIN and allow them the opportunity to return to safe nursing practice without disciplinary action.

The additional costs to persons who are required to comply with the section as proposed are: in paragraph (1) $10 per examination; in paragraph (2) $10 per examination; in paragraph (3) $3.00 per two-year renewal period; in paragraph (4) $10 for reactivating from inactive status; in paragraph (10) penalty fees dependent upon length of time from the expiration date of a license until date renewed; and in paragraph (11) $4.00 per two-year renewal period.

Comments on the proposal may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§231.41. Fees. The board shall establish reasonable and necessary fees for the administration of the Act in the following amounts:

(1) examination and application fee: **$80** [$70] **(Effective May 1, 1990)**;

(2) reexamination fee: **$80** [$70] **(effective May 1, 1990)** ;

(3) renewal fee: **$10/year** [$8.50] **(effective September 1, 1990)**;

(4)-(8) (No change.)

(9) reactivating from inactive status fee: **$30** [$20] plus renewal fee **(effective September 1, 1990)**;

(10) penalty fees: **$40** [$35] before 90 days; **$80** [$70] after 90 days **(effective May 1, 1990); and**

(11) the Texas Peer Assistance Program for Impaired Nurses (TPAPIN) Surcharge: $4.00 (effective July 1, 1990).

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 March 22, 1990.

TRD-9003066 Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 835-2071

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Disciplinary Action

• 22 TAC §231.103

The Board of Vocational Nurse Examiners proposes an amendment to §231.103, concerning peer assistance programs. The amendment is being made to include assistance for mental health impairment that is not associated with chemical abuse and to parallel House Bill 900.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mrs. Bronk also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that it will allow individuals with mental health impairment to participate in the Peer Assistance Program

approved by the board. There will no effect on small businesses. There is no additional economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

§231.103. Peer Assistance Programs. A peer assistance program for licensed vocational nurses will identify, assist, and monitor colleagues with job-impairing alcohol or drug problems, and/or mental health impairment [associated with chemical abuse].

(1) Additional criteria.

(A) The program will provide statewide peer advocacy services available to all licensed vocational nurses impaired by alcohol or drug abuse and/or mental illness [only to the extent that it manifests itself in conjunction with chemical impairment].

(B)-(L) (No change.)

(2) (No change.)

Issued in Austin, Texas, on March 22, 1990.

TRD-9003065 Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 835-2071

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Chapter 233. Education

General Provisions

• 22 TAC §233.1

The Board of Vocational Nurse Examiners proposes an amendment to §233.1, concerning the definition of challenge student. The amendment is being made to encourage entry into vocational nursing programs to meet nursing shortages in Texas

Marjorie A. Bronk, 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.

Mrs. Bronk 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 it will offer greater opportunity for individuals to enter vocational nursing programs. There will be effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§233.1. Definitions.

Challenge/**advanced placement** student–A student who is allowed credit for previous nursing courses **and/or comparable performance** by demonstrating through writing and/or performing that he/she possess the knowledge, skills, and **competencies** of one of more courses **in the Vocational Nursing Program.**

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 March 22, 1990.

TRD-9003064 Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 835-2071

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuels Tax

• 34 TAC §3.199

The Comptroller of Public Accounts proposes new §3.199, concerning unregulated mixtures. The new section lists the types of fuel which the Comptroller has determined are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation.

House Bill 504, adopted in the recent legislative session, requires the Comptroller to administer and enforce a program of labelling pumps through which fuel containing ethanol or methanol is sold. Fuel not sold as a mixture in sufficient quantities to warrant regulation may be exempted. The new section lists fuel types which fall in that category.

Ben Lock, director of the Comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. The new section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to reflect new regulations imposed by House Bill 504. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the new section may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under House Bill 504, §9, Acts of the 71st Legislature, 1989, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of that Act.

§3.199. Unregulated Mixtures. In compliance with House Bill 504, §4(e), Acts of the 71st Legislature, 1989, the Comptroller has determined on a preliminary basis that the following types of fuel are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation:

(1) diesel fuel;

(2) liquified petroleum gas; and

(3) aviation gasoline sold to an aviation fuel dealer for delivery exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment.

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 March 21, 1990.

TRD-9003013 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 463-4004

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Chapter 5. Funds Management (Fiscal Affairs)

Funds Accounting-Accounting Policy Statements

• 34 TAC §5.160

The Comptroller of Public Accounts proposes to incorporate by reference an amendment to §5.160, concerning accounting policy statements 1988. The accounting policy statements are issued to provide procedures and guidelines to state agencies processing

documents through the Financial Accounting and Control for Texas System (FACTS). Each accounting policy statement contains legal references, a background section, comptroller requirements and state agency requirements, and divisions to contract if more information is needed.

Ben Lock, director of the comptroller's economic analysis center, 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. Lock 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 from the orderly accounting of state funds pursuant to the guidelines set forth in the accounting policy statements. There will be no effect on small businesses as a result of enforcing the section. 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 Larry Zeplin, Deputy Comptroller for State Accounting Operations, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under the Texas Government Code, §403.011, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the fiscal concerns of the state.

*§5.160. Incorporations by Reference: "Accounting Policy Statements **1990-1991** [1988]."*

The "Accounting Policy Statements **1990-1991** [1988]," issued by the Fund Accounting Division of the Comptroller of Public Accounts on **February 1, 1990,** [May 1, 1989,] is **incorporated by reference** [amended by the revision of Accounting Policy Statement 012] and filed with the secretary of state. [The amendment is incorporated by reference to this section.] All statements are published by the comptroller in Austin, and copies may be obtained from the comptroller upon request.

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 March 22, 1990.

TRD-9003044 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 463-4004

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 16. Commercial Driver's License

Licensing Requirements, Qualifications, Restrictions, and Endorsements

• 37 TAC §§16.1-16.12

The Texas Department of Public Safety proposes new §§16.1-16.12, concerning the licensing requirements which must be met in order to obtain a commercial driver's license. The new sections will conform with new legislation that requires drivers of commercial motor vehicles to obtain certain types of licenses to drive these vehicles. The new sections will explain the classes of commercial driver's licenses which will be issued by the department and the qualifications which must be met in order to obtain such licenses. The new sections will also explain the restrictions which may be placed on these licenses as well as what endorsements are available to the applicant.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Maurice Beckham, chief of administration, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting only qualified individuals to hold licenses to drive these vehicles and ensuring that applicants are properly tested and approved. There will be no effect on small businesses as a result of enforcing the sections. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78733-0001, (512) 465-2000.

The new sections are proposed under Texas Civil Statutes, Article 6687b-2, §29, which provide the Texas Department of Public Safety with authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's License Act and the Federal Commercial Motor Vehicle Safety Act of 1986.

§16.1. Who Must Be Licensed. On or after April 1, 1992, all persons domiciled in Texas, except those expressly exempt by law, who operate a commercial motor vehicle (CMV), must have a valid commercial driver's license (CDL) issued by the department.

(1) The holder of a valid CDL may drive all vehicles in the class in which he is licensed and all lesser classes of vehicles except for motorcycles and mopeds.

(2) Unless prohibited by the Commercial Driver's License Act (Texas Civil Statutes, Article 6687b-2), the holder of a valid driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except for motorcycles and mopeds until April 1, 1992.

(3) On or after April 1, 1992, a driver may not operate a CMV with a noncommercial driver's license unless specifically exempt from the Commercial Driver's License Act.

(4) After the department starts issuing commercial driver's licenses, a noncommercial Texas Class A or Class B driver's license will only be issued as an original license or renewal to drivers who certify in writing on a form prescribed by the department that they are exempt from the Commercial Driver's License Act. The holder of a valid Class A or Class B driver's license may obtain a duplicate of that license until such time that it is renewed.

§16.2. Commercial Motor Vehicles. Commercial motor vehicles (CMV) means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

(1) has a gross combination weight rating (GCWR) of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds. In determining the GVWR of the towed unit, the weight of all vehicles being towed will be added together;

(2) has a GVWR of 26,001 or more pounds;

(3) is designed to transport 16 or more passengers, including the driver; or

(4) is transporting hazardous materials and is required to be placarded in accordance with 49 Code of Federal Regulations, Part 172, Subpart F.

§16.3. Persons Exempted. Persons exempted from commercial driver's license requirements are:

(1) a person operating a vehicle that is controlled and operated by a farmer which is used to transport agricultural products, farm machinery, or farm supplies to or from a farm and which is not used in the operations of a common or contract carrier and used within 150 miles of the person's farm.

(A) under this exemption, a rancher is considered a farmer;

(B) a farmer and his farmhands are equally exempt when the farmhands are in the employ of the farmer;

(C) one who purchases a crop in a field and only harvests and transports the produce, but takes no part in the planting and cultivating of the product, is

not considered a farmer;

(D) one who purchases acres of growing timber and cultivates and harvests it over a period of months or years is considered a farmer;

(2) a person operating a fire fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter;

(A) for purposes of this exemption drivers of authorized emergency vehicles defined in Texas Civil Statutes, Article 6701d, §2 are exempt;

(B) electric company employees repairing downed power lines are not exempt;

(3) a person operating a military vehicle, when operated for military purposes by military personnel, members of the reserves and national guard on active duty (including personnel on full-time national guard duty), personnel on part-time training duty, and national guard military technicians. This exemption includes the operation of vehicles leased by the United States government for use by the military branches of government;

(4) a person operating a vehicle that is a recreational vehicle that is driven for personal use;

(A) for purposes of this exemption recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own motive power or is mounted on or towed by another vehicle;

(B) this exemption includes travel trailers, camping trailers, truck campers, and motor homes.

§16.4. Classes of Commercial Driver's Licenses.

(a) Class A commercial drivers license (CDL) authorizes the driving of any combination of vehicles with a GCWR of 26,001 pounds or more, providing the GVWR of the vehicle or vehicles being towed exceeds 10,000 pounds. If multiple vehicles are being towed, the weight of each towed vehicle will be added together to determine whether the towed vehicles exceed 10,000 pounds, even though no one vehicle being towed exceeds 10,000 pounds.

(b) Class B CDL authorizes the driving of any single vehicle with a GVWR of 26,001 pounds or more, any one of those vehicles towing a vehicle that does not exceed 10,000 pounds GVWR, and any vehicle designed to transport 24 passengers or more, including the driver.

(c) Class C CDL authorizes the driving of any single vehicle with a GVWR of less than 26,001 pounds and any one of those vehicles towing another vehicle with a GVWR that does not exceed 10,000 pounds when either is:

(1) designed to transport 16 or more passengers, including the driver; or

(2) used in transportation of hazardous materials that require the vehicle to be placarded under 49 Code of Federal Regulations, Part 172, Subpart F. Hazardous materials has the meaning assigned by the Hazardous Materials Transportation Act (49 United States Code, §1801 et seq.). In general, vehicles transporting hazardous materials require placarding when carrying 1,000 pounds or more of these materials. The following commodities require placarding regardless of the amount of materials: Class A and Class B explosives, poison A (gas), flammable solids, and radioactive materials.

(d) Persons who operate motorcycles which carry hazardous materials that require a placard must hold a Class M license in conjunction with a Class A, B, or C CDL.

§16.5. Tow Truck Operators. Tow truck operators are treated the same as other drivers of commercial motor vehicle (CMV). When a tow truck operator's vehicle plus its load meets the 26,001 pounds or more standard, or any condition which makes a motor vehicle a CMV, the operator is required to have a commercial driver's license (CDL). Tow truck operators are required to have appropriated endorsements for the vehicles that they tow except for passenger carrying and except when the operator is an emergency operator only and only moves the towed vehicle from the site of a malfunction or accident to the nearest appropriate repair facility.

§16.6. Vehicle Inspection Inspectors and Mechanics. Inspectors for motor vehicle inspection certificates and mechanics who test drive vehicles must have the proper commercial driver's license (CDL) with appropriate endorsements if the vehicle meets the criteria for a commercial motor vehicle (CMV).

§16.7. Manufactured Housing. Drivers who transport manufactured housing on highways must have the proper commercial driver's license (CDL) if the vehicle meets the weight criteria for a commercial motor vehicle (CMV). In determining whether the towed unit exceeds 10,000 pounds and whether the gross combination vehicle rating (GCVR) totals 26,001 or more pounds, the manufactured housing being drawn and trailers carrying the manufactured housing are motor vehicles for purposes of the Texas Commercial Driver's License Act.

§16.8. Qualifications to Drive in Interstate Commerce.

(a) Interstate commerce is transportation of persons or property (a commodity) which crosses state or international boundaries. The bill of lading will be an indicator as to whether a shipment or commodity is interstate or intrastate. If there is no bill of lading, the origin and destination of the shipment will be an indicator.

(b) A person applying for a commercial driver's license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in interstate commerce, must meet the following requirements.

(1) The applicant must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

(2) The applicant must be at least 21 years of age.

(3) The applicant must read and speak the English language. For purposes of this requirement, a person who has the ability in English to communicate to department personnel the need for a CDL will have complied.

(4) The applicant must meet the federal vision requirements set out in 49 Code of Federal Regulations, Part 391. 41. The applicant must have distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(5) The applicant must meet the federal physical requirements set out in 49 Code of Federal Regulations, Part 391.41. The applicant must:

(A) have no loss of a foot, a leg, a hand, or an arm, or have been granted a waiver;

(B) have no impairment of hand or finger which interferes with prehension or power grasping, or impairment of an arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle, or any other significant limb defect or limitation which

interferes with the ability to perform normal tasks associated with operating a motor vehicle, or have been granted a waiver;

(C) have no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(D) have no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(E) have no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with the ability to control and drive a motor vehicle safely;

(F) have no current clinical diagnosis of high blood pressure likely to interfere with the ability to operate a motor vehicle safely;

(G) have no established medical history or clinical diagnosis of pneumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with the ability to control and operate a motor vehicle safely;

(H) have no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(I) have no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with the ability to drive a motor vehicle safely;

(J) first perceive a forced whispered voice in the better ear at not less than five feet with or without the use of a hearing aid or, if tested by use of an audiometric device, do not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA standard) Z24.5-1951;

(K) not use a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit forming drug; and

(L) have no current clinical diagnosis of alcoholism.

(6) The applicant must not be disqualified from driving a motor vehicle.

(c) The physical waivers for missing or impaired limbs which are acceptable in lieu of the physical requirements stated in subsection (b)(5)(A) and (B) of this section are issued by the Federal Highway Administration and the Motor Carrier Safety Bureau of the department. Waivers issued by the department are valid for intrastate operation only. Drivers who wish to operate in interstate commerce must obtain a waiver from the Federal Highway Administration. An applicant must present the physical waiver document at the time of application.

§16.9. Qualifications to Drive in Intrastate Commerce.

(a) Persons who do not qualify to drive in interstate commerce may still qualify to drive in intrastate commerce. In such cases the commercial drivers license (CDL) will contain an M restriction which will indicate that the holder of the license is restricted to travel in intrastate commerce.

(b) Intrastate commerce is the transportation of persons or property (a commodity) within the State of Texas where both the point of origin and the destination point are within the state and where no state line or international boundary is crossed. The bill of lading will be an indicator as to whether a shipment or commodity is interstate or intrastate.

(c) A person applying for a CDL which authorizes operation of a commercial motor vehicle (CMV) in intrastate commerce, must meet the same requirements as those for interstate driving, except for the following.

(1) The applicant must be at least 18 years of age.

(2) There is no English language requirement.

(3) An applicant may present a vision waiver certificate (Medical Examiner's Certificate, Form MCS-5) in lieu of meeting the vision requirement. These are the certificates issued by the department during the two year period ending December 31, 1989. Waivers issued by the department prior to December 31, 1989, may be renewed through the Motor Carrier Safety Bureau of the department in Austin.

(4) A driver who operates a motor vehicle in intrastate commerce only, and does not transport property requiring a hazardous material placard, and was regularly employed prior to August 28, 1989, is not required to meet the physical and vision standards.

§16.10. Exemptions and Qualifications.

(a) The requirements relating to age, language, vision, and physical condition do not apply to the following operators of commercial vehicles, even though these operators will still be required to hold a commercial driver's license (CDL):

(1) school bus drivers transporting school children and/or school personnel from home to school and from school to home. This does not include a nongovernment carrier transporting school children;

(2) employees of the federal government, a state, or a political subdivision of a state while operating a vehicle for the governmental entity. This includes school districts. This does not include contract carriers or for-hire carriers;

(3) persons occasionally transporting personal property, not for compensation or in the furtherance of a commercial enterprise;

(4) persons transporting human corpses or sick or injured persons;

(5) the private transportation of passengers;

(b) The exemption to the age requirements relates only to the 21 years of age minimum for interstate driving. All applicants for a CDL must still be at least 18 years of age, even if otherwise exempt under this section.

§16.11. Restrictions.

(a) M–CDL intrastate commerce only. The licensee is restricted to operating a commercial motor vehicle (CMV) in intrastate commerce only and may not drive in interstate commerce.

(b) L–vehicles without air brakes. This restriction applies only to vehicles requiring a CDL. The licensee is restricted to operating a CMV which does not have air brakes.

(c) X–licensed CDL operator in the front seat: all classes of commercial motor vehicles. The licensee is the holder of any class CDL but is restricted to operating the class of CMV authorized only while accompanied by a holder of a CDL which is valid for the vehicle being operated. The purpose of this restriction is to give the person an opportunity to practice driving the vehicle and obtain experience before taking the skills test.

(d) Y–licensed CDL operator in the front seat: commercial motor vehicles above Class B. The licensee has a Class A CDL but is restricted to operating a Class A CMV while accompanied by a holder of a CDL which is valid for a Class A vehicle. The purpose of this restriction is to give the person an opportunity to practice driving the Class A vehicle and obtain experience before taking the skills test. This person may legally operate a Class B or Class C CMV alone.

(e) Z–licensed CDL operator in the front seat: commercial motor vehicles above Class C. The licensee has a Class A CDL or Class B CDL but is restricted to operating a Class A or Class B CMV while accompanied by a holder of a CDL which is valid for the class of vehicle being operated. The purpose of this restriction is to give the person an opportunity to practice driving the Class A or Class B CMV and obtain experience before taking the skills test. This person may legally operate a Class C CMV alone.

(f) A CDL with restriction X, Y, or Z is considered a commercial driver learner's permit.

§16.12. Endorsements.

(a) T–double/triple trailer (CDL and Non-CDL). This endorsement authorizes the holder to tow more than one trailer.

(b) P–passenger vehicles (CDL only). This endorsement authorizes the holder to operate a vehicle which is designed to transport 16 or more passengers, including the driver.

(c) N–tank vehicle (CDL only). This endorsement authorizes the holder to operate a vehicle or combination of vehicles which carry liquids or gaseous materials in a tank which is attached to the chassis of the vehicle or trailer.

(d) H–hazardous materials (CDL only). This endorsement authorizes the holder to operate vehicles which are carrying hazardous materials which are required to be placarded under federal regulations.

(e) X–combination of N and H (CDL only). This endorsement is used to combine the endorsements N and H.

(f) G–authorized to tow a trailer exceeding 10,000 pounds GVWR if the GCWR is less than 26,001 pounds (CDL and Non-CDL). This endorsement authorizes the holder of a Class C license to tow a trailer which is over 10,000 pounds gross weight but which does not meet the requirement for a Class A vehicle by having a GCWR of 26,001 pounds or more.

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 March 15, 1990.

TRD-9003006 Joe E. Milner
Director
Texas Department of Public Safety

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 465-2000

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Application Requirements and Examinations

• 37 TAC §§16.31-16.54

The Texas Department of Public Safety proposes new §§16.31-16.54, concerning the applications and forms which an applicant for a commercial license will be required to submit before a license is issued. The new sections also explain the various written examinations and skills tests which must be passed in order to obtain these licenses. The sections also provide a method for cancellation of an application or license. These new sections will conform to new legislation that requires the department to issue and administer tests for commercial driver's licenses.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Maurice Beckham, chief of administration, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the reduction or prevention of commercial motor vehicle accidents, fatalities, and injuries by permitting only qualified individuals to hold licenses to drive these vehicles, and the assurance that applicants are properly tested and approved. There will be no effect on small businesses as a result of enforcing the sections. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new sections are proposed under Texas Civil Statutes, Article 6687b-2, §29, which provide the Texas Department of Public Safety with the authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's License Act and the Federal Commercial Motor Vehicle Safety Act of 1986.

§16.31. DL-14A Application for Texas Driver License. This application is required for all original applicants for a Texas driver license, including applicants for a CDL. Persons with a valid Texas driver license will not be required to complete a new DL-14A when applying for a CDL.

§16.32. CDL-1 Supplement Application for Texas Driver License– Certifications and Record of CDL Examination. This supplement application must be completed by all applicants for a CDL. If the applicant is applying for an original Texas license, this supplemental application will be in addition to the DL-14A. This supplemental application will also be used any time the holder of a CDL desires to advance in grade, to add an endorsement, remove a restriction, or take a voluntary reexamination or a comprehensive examination.

§16.33. CDL-2 Exemption Certificate. This certification must be completed if the applicant is claiming an exemption from the Commercial Driver's License Act and if the vehicle being operated meets the definition of a CMV.

§16.34. CDL-3 Substitute for CDL Driving Skills Test.

(a) This certificate must be completed if the applicant for a CDL is claiming waiver from the CDL driving skills test.

(b) The waiver applies to all skills tests including those skills tests required for endorsements.

(c) This waiver may only be claimed one time. This waiver certification may only be completed when converting from a non-commercial driver's license to a CDL or when applying for an original Texas CDL when coming from another state. Any later transaction including advance in grade, removal of restrictions, or addition of an endorsement (other than the issuance of a duplicate license) will necessitate a skills test if required by law or regulation.

(d) The CDL-3 form must be accompanied by a CDL-3A form.

§16.35. CDL-3A Certification of Employment. This certification must accompany the Form CDL-3 as evidence that the applicant is employed as a CMV operator at the time of application. The signatures on this form must be original signatures. A notarized letter from the employer on letterhead stationery, will be accepted in lieu of the CDL-3A form. The letter must contain the elements in the Form CDL-3A. If the applicant has been employed by more than one employer during the last two years, the applicant may present more than one CDL-3A to certify employment as a CMV operator for the two-year period required.

§16.36. CDL-4 Qualifications of Interstate Driver Certification. This certificate must be completed if the applicant will be operating a CMV in interstate or foreign commerce. An applicant for a CDL must complete either a CDL-4 or the CDL-5 form unless a CDL-10 is applicable.

§16.37. CDL-5 Qualifications of Intrastate Driver Certification and Exemption. This certificate must be completed if the applicant will be operating a CMV in intrastate commerce only. An applicant for a CDL must complete either the CDL-4 or CDL-5 form unless a CDL-10 is applicable.

§16.38. DL-2 Receipt of Surrendered License/Affidavit. Either the front or back of this receipt/affidavit must be completed

if the applicant is currently or was previously licensed in any state, including Texas.

§16.39. CDL-10 Certification of Part 391 Exemption. This certificate is required for an applicant who claims an exemption from the age, language, vision, or physical requirements pursuant to §16.10 of this title (relating to Exemptions to Qualifications). Persons meeting the criteria of this form need not complete a CDL-4 or CDL-5 form.

§16.40. Completion of Application.

(a) All spaces must be completed and all questions must be answered on all forms required in order for the application to be accepted.

(b) It is the responsibility of the applicant to assure that forms requiring notarization are properly verified before persons authorized to administer oaths.

(c) The applicant must provide proof of his social security number. Social security cards issued by the United States Government, W-2 tax forms, and payroll or employer records will be acceptable as documentation.

§16.41. Nonresident Commercial Driver Licenses.

(a) A nonresident CDL may be issued to an individual who resides in a foreign jurisdiction. Foreign jurisdiction means any jurisdiction other than a state of the United States. Mexico is a foreign jurisdiction.

(b) The nonresident CDL will be identified with the word "nonresident" immediately above the name of the license holder on the driver's license.

(c) Persons applying for a nonresident CDL must meet all the requirements and qualifications that a resident applicant must meet except that they need not have Texas as their state of domicile, and they need not provide a social security number on the application.

§16.42. Falsification.

(a) Any person who knowingly falsifies information or certifications on an application for a CDL is subject to a 60-day cancellation of the person's CDL, commercial driver learner's permit, or application.

(b) Within 30 days after discovering that the applicant has provided false information, the director of the department or his designee will notify the person that his CDL, commercial driver learner's permit, or application will be canceled for 60 days beginning on the 20th calendar day after notification. Date of notification is the date appearing at the top of the cancellation order issued to the person. Proper notification is presumed if the notification is mailed by first-class mail to the applicant or licensee at the last mailing address on file with the department. The department may, alternatively, personally serve the notification and order. If the cancellation order is personally served, the person may choose to have the 60-day cancellation period effective immediately upon service.

(c) A person may appeal the cancellation order by timely requesting a hearing in writing. The request for hearing must be received by the department before the effective date of cancellation for the appeal to be timely. If a timely request for a hearing is made, the director will appoint a hearing officer from within the department. The hearing will be held in the county where application was made, in the Texas county where the applicant or licensee resides, or in a county adjoining either the county of residence or county of application, as determined by the director.

(d) Notification of the hearing will be sent to the person by first-class mail at the last mailing address on file with the department or to an address specifically referred to in the written appeal. Notice of the hearing will be sent at least 10 calendar days prior to the date of hearing. The cancellation action will not be held in abeyance pending a hearing of final determination of the hearing officer.

(e) The only issue at the administrative hearing is whether the person did or did not falsify application or certification information. The hearing officer has only authority to make an affirmative or a negative finding on this issue. The hearing officer will report the finding to the director. If an affirmative finding is reported, the license or application will remain canceled for the duration of the 60-day cancellation period. If a negative finding is reported, the license or application will be immediately reinstated by the department.

(f) If the falsification is discovered at the field office during the application process, the applicant will not be permitted to continue with the application and testing procedures. The department employee who discovers the falsification will immediately notify the Driver Improvement and Control Bureau at the department headquarters in Austin so that formal cancellation action may be initiated. A person may not submit a new application for a CDL or commercial driver learner's permit pending formal action by the department.

(g) A person may not submit a new application for a CDL or commercial driver learner's permit during the 60-day cancellation period or while an appeal is pending after the cancellation period has expired, the person must reapply as an original applicant.

§16.43. Written Tests Required.

(a) An original applicant for a Texas CDL must take the signs, rules, and the appropriate Class A or Class B tests as well as any required and necessary CDL tests. A holder of a valid CDL from another state need not take the CDL tests if the out-of-state license indicates those tests were administered in that other state.

(b) Current Texas license holders will be required to take only required and necessary CDL tests, unless advancing in grade, in which case the appropriate Class A or Class B tests will be required.

(c) All CDL applicants must take and pass the CDL general knowledge exam, except those persons who currently hold a CDL from another state.

(d) Class A CDL applicants must take and pass the combination vehicle test even though there will be no endorsement for combination vehicles. Those persons currently holding a CDL issued by another state will not be required to take this test unless they wish to advance in grade.

(e) For applicants who already hold a CDL issued by another state and for all applicants for renewals of commercial driver's licenses, the hazardous materials examination will be required to maintain the endorsement, unless the hazardous materials test has been taken during the past two years immediately preceding the renewal as shown in the person's driver's license record.

(f) Persons who do not take and pass the air brake exam will be restricted to driving vehicles without air brakes. Applicants holding an out-of-state CDL will be exempt from this test unless that license indicates they are restricted to driving vehicles not equipped with air brakes.

(g) In order to obtain a "G" endorsement, an applicant will be required to have passed a Class A and Class B written test. Holders of Class A and Class B driver's licenses will be exempt from this written test.

§16.44. Passing Rates for Written Tests.

(a) Signs, rules, Class A and Class B, and motorcycle tests will require correct answers of 70% or more of the questions for the applicant to pass.

(b) CDL examinations will require correct answers on 80 or more of the questions for the applicant to pass.

(c) All required tests must be passed in order to obtain a CDL and the appropriate endorsements.

(d) Number of questions and correct answers on CDL driver license tests:

Exam	Questions Asked	Minimum Correct Answers Required
1. CDL General Knowledge Exam	50	40
2. Hazardous Materials	30	24
3. Air Brake Exam	25	20
4. Combination Vehicle	20	16
5. Double/Triple Trailers	20	16
6. Tank Type Vehicles	20	16
7. Passenger Carrying	20	16

§16.45. Skills Tests Required.

(a) Applicants will be required to take the skills test if they:

(1) apply as original applicants for a driver's license; or

(2) are unable to present both the Form CDL-3 and Form CDL-3A certifications.

(b) Applicants who hold a CDL from another state will not be required to take a skills test when making an application for an original Texas CDL of the same class and with the same restrictions and endorsements.

§16.46. Waivers from Skills Test.

(a) An applicant may be exempted from the skills test if:

(1) currently licensed (in Texas or in another state);

(2) for the two years preceding application:

(A) has not had more than one license at any one time;

(B) has not had any license suspended, revoked, or canceled;

(C) has not had a conviction for any disqualifying offense, such as driving while intoxicated, driving under the influence of drugs, failure to stop and render aid, leaving the scene of an accident, blood or breath test refusal, a felony involving the use of a CMV, or use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance; and

(D) has not been convicted for a serious traffic violation, which means speeding 15 miles per hour or more over the speed limit, reckless driving, following too closely, unsafe lane change, or any violation of a state or local law relating to motor vehicle traffic control arising in connection with any traffic accident in which the applicant was at fault. These convictions may result from the operation of any vehicle; and

(3) regularly employed in a job requiring the operation of a CMV:

(A) has previously taken and passed a skills test given by a state with a classified licensing system and the test was behind-the-wheel in a representative vehicle for the driver's license classification; or

(B) has operated for at least two years immediately preceding the application of the CMV the applicant operates or expects to operate.

(b) Waivers for the skills test only apply to original applicants for a CDL. Those who subsequently apply for an advance in grade after receiving a CDL will not be given a second waiver of the required skills tests.

§16.47. Road Test.

(a) Skills tests are required in a vehicle that is representative of the CMV that the applicant is being licensed to drive.

(b) Any applicant required to take a skills test to obtain a passenger endorsement "P" must take the skills test in a bus. Bus means any vehicle designed to carry 16 or more passengers, including the driver.

(c) Any applicant required to take a skills test to obtain a "G" endorsement must take the skills test in a Class C vehicle with a trailer with a gross vehicle weight rate exceeding 10,000 pounds.

§16.48. Safety Inspection.

(a) Before the driver begins the skills test the examiner will conduct a safety inspection of the vehicle. This will include equipment and registration requirement. If the vehicle does not pass inspection, the skills test will be postponed.

(b) The vehicle will be inspected for the following:

(1) current liability insurance;

(2) headlamps (for bright and dim);

(3) two tail lamps (one for 1959 models or earlier);

(4) two stop lamps (one for 1959 models or earlier);

(5) turn signals (1960 or later models);

(6) horn;

(7) inspection certificate(s);

(8) exhaust system;

(9) license plate (current) (2);

(10) windshield wiper;

(11) rearview mirror;

(12) safety belts;

(13) approved glass coating material (if applicable);

(14) clearance lamps;

(15) side marker lamps;

(16) side reflectors;

(17) turn signals (all models);

(18) mud flaps (if required);

(19) hazard warning lamps;

(20) fire extinguisher (if required);

(21) flashing lights (school buses-two red alternately flashing lamps to the front and rear);

(22) "School Bus" sign eight inches in height on front and rear of bus (when in use as school bus);

(23) reflective triangles (if required);

(24) full service brakes;

(25) hydraulic brake; and

(26) parking brake.

§16.49. Pre-Trip Inspection. The first part of the skills test is the pre-trip inspection. This inspection will be required for drivers who are applying for a CDL and will be operating vehicles equipped with air brakes. This is a pass/fail test. If the driver is unable to pass this part of the skills test he will not be allowed to continue and take the road test.

§16.50. Road Test Maneuvers.

(a) The road test will consist of the following maneuvers:

(1) start;

(2) quick smooth stop;

(3) backing;

(4) upshifting;

(5) downshifting;

(6) lane change;

(7) merge;

(8) use of lanes;

(9) right-of-way;

(10) posture;

(11) approach to corner;

(12) traffic signals;

(13) traffic signs;

(14) left turns;

(15) right turns; and

(16) parallel parking (if applicable).

(b) Rejection standards for road test are.

(1) Accident. Any contact with another vehicle, object, or pedestrian which applicant could have prevented, regardless of who was responsible, resulting in any damage or injury.

(2) Dangerous action:

(A) accident is prevented only by defensive driving on the part of another or dodging by a pedestrian;

(B) any loss of control creating a hazard;

(C) driver stalls vehicle in middle of busy intersection so as to obstruct traffic;

(D) drives one or more wheels over the curb or onto the sidewalk;

(E) accident prevented only by warning given by the examining officer; or

(F) runs over parking standards on the parallel parking test.

(3) Violation of law. Unless otherwise stipulated in scoring standards, a driver is disqualified for:

(A) any act for which the driver might be arrested; or

(B) any act which might make the driver liable for damages in case of accident.

(4) Deductions. Various or repeated minor mistakes totaling more than 30 points deducted on the on-street test for any vehicle.

(5) Lack of cooperation or refusal to perform:

(A) refusal to try any maneuver in good faith;

(B) repeated failure to follow instructions;

(C) offer a bribe or gratuity;

(D) argument concerning scoring, not just a discussion of scoring; or

(E) refusal to wear a seat belt when required and has no physician's statement for waiver.

§16.51. Testing of Residents.

(a) The department will not administer CDL tests, whether written or skills tests, to a person who is domiciled in another state. This does not preclude the department from administering tests to a resident of a foreign jurisdiction for the purpose of obtaining a nonresident CDL.

(b) The department will neither approve nor accept CDL tests administered by other states to a person domiciled in Texas when that person applies for a CDL and has not already been issued a CDL from another state.

§16.52. Check of Applicant. Upon acceptance of the sworn application and documents, the department will conduct a commercial driver license information system/national driver register (CDLIS/NDR) inquiry on the CDL applicant. No license will be issued if a match indicates possible multiple licenses. If necessary, independent inquiries to other states will be made to confirm the identity of the match and to verify the existence of suspension, revocation, denial, and cancellation actions taken by other states. No license will be issued until it is confirmed that the match is another person or the cause for the action has been cleared up.

§16.53. Oral Tests. The department will offer oral knowledge tests to persons unable to read a written test who apply for a CDL for both intrastate and interstate operation. The only reading requirement in the knowledge test will be to show an understanding of traffic signs which are written in English.

§16.54. Spanish Language Tests.

(a) The CDL knowledge test will be offered in the Spanish language for both intrastate and interstate operation. The applicant must be able to show an understanding of traffic signs which are written in English.

(b) The department will not administer exams or tests relating to an applicant's proficiency in the English language. However, if an applicant is unable to speak English sufficiently to communicate to department personnel the applicant's need for a CDL, then such license will be restricted to operation in intrastate commerce.

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 March 15, 1990.

TRD-9003007

Joe E. Milner
Director
Texas Department of Public Safety

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 465-2000

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Change of License Status, Renewals, Surrender of License, Fees

• 37 TAC §§16.71-16.78

The Texas Department of Public Safety proposed new §§16.71-16.78, concerning the fees and procedures required for obtaining a commercial driver's license, renewing these licenses, and changing the classification, restrictions, and endorsements on licenses. The new sections will conform with new legislation that requires the department to issue commercial driver's licenses and collect statutory fees for issuance and testing.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Maurice Beckham, chief of administration, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the section as proposed will be to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting only qualified individuals to hold licenses to drive these vehicles and ensuring that applicants are properly tested and approved.

The anticipated economic cost to individuals who are required to comply with the sections as proposed will be for the commercial driver's license fee, $40, in 1990-1994; fee for each examination resulting in change of license status, $10, in 1990-1994; and credit for each year remaining on current Texas Driver's License, $4, in 1990-1994.

Comments on the proposals may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new sections are proposed under Texas Civil Statutes, Article 6687b-2, §29, which provide the Texas Department of Public Safety with authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's License Act and the Federal Commercial Motor Vehicle Safety Act of 1986.

§16.71. Change in Class or Type.

(a) The holder of a Texas commercial driver's license (CDL), who desires to advance in grade, remove restrictions, or add endorsements will be required to take the applicable tests, including knowledge tests and skills tests in a representative vehicle if required.

(b) A driver desiring to remove the "No Air Brakes" restriction "L" from a previously obtained CDL must take the knowledge, pre-trip, and skills test.

(c) Upon request for change in class or type of license, a new CDL-1 Supplement Application must be completed.

(d) Upon passing the required exams, the old license must be surrendered, and the exam fees collected unless the change is made in conjunction with a renewal before the new license is issued.

§16.72. Renewals.

(a) When a valid commercial driver's license (CDL), is renewed after the original issuance and there is no change in status, the applicant will be given the vision exam. If the licensee has a hazardous materials endorsement he must take and pass the hazardous materials knowledge test to keep the endorsement unless the exam was successfully completed within the past two years immediately preceding the applicant's request for renewal.

(b) When a CDL is renewed after the original issuance and there is a change in status (advance in grade, endorsement added, or restriction removed), the applicant will be given the vision test, as well as the appropriate knowledge and skills tests if these are required for the requested changes. If the licensee has a hazardous materials endorsement he must take and pass the hazardous materials knowledge test to keep the endorsement unless the exam was successfully completed within the past two years immediately preceding the applicant's request for renewal.

(c) Licenses can be renewed within 12 months of the expiration date.

(d) A commercial driver learner's permit may not be renewed. These are licenses containing restrictions X, Y, or Z.

(e) All applications for CDL renewals must be made in person.

§16.73. Surrender of License. Any and all valid driver's licenses issued by Texas or any other state must be surrendered to the department before a new license will be issued. Licenses issued by another state will be returned to that state. Upon surrender, the department may invalidate a Texas license by completely removing the header (color) bar from the documents. When an applicant with a Texas license obtains a commercial driver's license commercial driver's license, (CDL), advances in grade, renews a license, or obtains a duplicate and more than 30 days validity remains on the old license, this license will be invalidated and the invalid document returned to the applicant for identification purposes only. The invalidated document is not a license to drive.

§16.74. Fees. The fee for a commercial driver's license (CDL) or commercial driver learner's permit is $40 for four years. Each applicant holding a valid Texas driver's license will have his license renewed for four years from the applicant's next birthday unless the license is expired, in which case it will be renewed from the last birthday. The fee for renewals is also $40.

§16.75. Credits.

(a) On the date the original CDL is issued the applicant will be given $4.00 for each whole year that remains on his current Texas license. If the original commercial driver's license (CDL) is issued on the applicant's birthday and the current license does not expire until the next year, the applicant will be given $4.00 credit, in which case the fee to be collected will be $36.

(b) Credit will not be given for an instruction permit or a CDL held by an applicant.

§16.76. Motorcycle Education Fees. If an applicant has a Class M license in conjunction with a commercial driver's license (CDL), the motorcycle fee of $5.00 will no be charged.

§16.77. Duplicates. The fee for a duplicate commercial driver's license (CDL) is $5.00. Duplicate licenses will be issued for change of name, or address, or for lost licenses.

§16.78. Exam Fees. If an applicant makes any change in his commercial driver's license (CDL) which requires any test including vision, knowledge, and skills tests, at any time other than the original issuance or on renewal, the exam fee for each change requiring an exam is $10. For example, if an applicant desires four changes on the license, each requiring a test, the exam fee is $40. There is no additional charge for the new license 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 March 15, 1990.

TRD-9003008 Joe E. Milner
Director
Texas Department of Public Safety

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For further information, please call: (512) 465-2000

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Chapter 19. Breath Alcohol Testing Regulations

Texas Ignition Interlock Device Regulations

• 37 TAC §§19.21-19.26

The Texas Department of Public Safety proposes new §§19.21-19.26, concerning Texas ignition interlock device regulations. The new sections will promulgate regulations for the approval of models and classes of these devices, standards for the calibration and maintenance, and responsibility of manufacturer's of these devices. Written notice from the department to a manufacturer approving a device is admissible in any civil or criminal proceeding in this state. The manufacturer shall reimburse the department for any cost incurred by the department in approving such device. The department may not be held liable in any civil or criminal proceeding arising out of the use of a device approved under these sections.

Melvin C. Peeples, assistant chief of fiscal affairs, 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. Effect on state government for the years 1990-1994 will be an estimated increase in revenue of $100. There will be no effect on local government.

George E. Browne, scientific director, has determined that for the first five-year period the sections are in effect the public benefit anticipated as a result of enforcing the sections will be: assurance of the public that Texas ignition interlock devices conform to and meet basic scientific parameters and standards in accordance with legislative intent. There will be no effect on small businesses as a result of enforcing the sections. The department is unable to determine cost to an individual required to use an ignition interlock device due to the many variables involved with court administration and terms of each individual case.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new sections are proposed under Texas Civil Statutes, Article 6687b, §25(a) which provide the Texas Department of Public Safety with the authority to promulgate rules and regulations for administration of this Act.

§19.21. Explanation of Terms and Actions. The following words and terms when used in this undesignated head, shall have the following meanings, unless indicated otherwise.

Alcohol–Ethyl alcohol.

Alcohol concentration–The weight amount of alcohol contained in a unit volume of breath or air, measured in grams of Ethanol/210 liters of breath or air and expressed as grams/210 liters. Breath alcohol concentration in these regulations shall be designated as "alcohol concentration."

Alveolar air–Also called "deep lung air" or "alveolar breath." Air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

Approval–Meeting and maintaining the requirements of these regulations and placement on the scientific director's list of approved devices. Approval may be denied, cancelled, withdrawn, and/or suspended at any time, for cause by the scientific director.

Bogus–Any gas sample other than the unaltered, undiluted, or filtered alveolar air sample coming from the individual required to have an ignition interlock device installed in his/her vehicle.

Breath alcohol analysis–Analysis of a sample of person's expired alveolar breath to determine the concentration of alcohol in the person's breath.

Costs–The nonrefundable original administrative fees plus any and all costs incurred by the department for testimony and/or approval or withdrawal of approval of any device. Any and all incurred costs and expenses shall be the responsibility of the manufacturer and shall be reimbursed to the department within 30 days. Failure to pay or reimburse the department for all costs shall result in the denial or withdrawal of approval of the device.

Designated manufacturer's representative–An individual and/or agency designated by the manufacturer to act on behalf of or represent the manufacturer of a device.

Designated service representative–An individual designated by the manufacturer or designated manufacturer's representative to calibrate, maintain, and repair the interlock device.

Device–An ignition interlock device.

False negative result–An analysis result indicating an alcohol concentration less than the midpoint value when the actual alcohol concentration exceeds the midpoint value.

False positive result–A test result indicating an alcohol concentration exceeding the midpoint value when the actual alcohol concentration is less than the midpoint value.

Filtered air samples–Any mechanism by which there is an attempt to remove alcohol from the human breath sample. Filters would include but are not limited to silica gel, drierite, cat litter, cigarette filters, water filters, cotton, etc.

Ignition interlock device (IID)–A device that is a breath alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must blow an alveolar breath sample into the analyzer which measures the alcohol concentration. If the alcohol concentration exceeds the calibrated setting on the interlock device, the motor vehicle engine will not start.

Interlock–The mechanism which prevents a motor vehicle from starting when the alcohol concentration of a person exceeds a preset value.

Manufacturer–The actual producer of the device.

Midpoint value–A pre-set or predetermined alcohol concentration setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.

Negative result–A test result indicating that the alcohol concentration is less than the mid-point value.

Office of the scientific director–The individual responsible for the implementation, administration, and enforcement of the Texas Ignition Interlock Device Regulations or his staff.

Positive result–A test result indicating that the alcohol concentration exceeds the midpoint value.

Purge–Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

Reference sample device–A device which generates a headspace gas above a water/alcohol solution that is maintained at a thermostatically controlled temperature. This headspace gas can be used to simulate the breath alcohol concentration of an individual who has been drinking alcoholic beverages and whose alcohol concentration is reflected in an analysis of a breath sample. The results of this analysis are expressed as grams of alcohol/210 liters of breath.

Restart–The condition in which a test is successfully completed and the motor vehicle is started, and then at some point the engine stops for any reason (including stalling). A restart is the ability to start the engine again, within one minute, without completion of another breath alcohol analysis.

Security–Protection and safeguards incorporated into ignition interlock devices to ensure proper performance and ensure against failure caused either by inherent defects or human tampering which causes the device not to operate as designated.

Withdrawal of approval–Cancellation of approval of a device; to wit, not meeting or maintaining these regulations.

§19.22. Procedures for Approval. All ignition interlock devices to be used in the state pursuant to Texas Civil Statutes, Article 6687b, §23A(f) and §25(a) must be approved by model and/or class by the office of the scientific director, Alcohol Testing Program, Texas Department of Public

Safety (hereinafter referred to as the scientific director).

(1) The scientific director will establish and maintain a list of approved devices by model and/or class for use in the state.

(2) If application is made for approval of a device by model and/or class not on the approved list, the following procedures and standards shall apply.

(A) A manufacturer or designated manufacturer's representative requesting approval of a device must submit a production model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or the designated manufacturer's representative to incur costs of mailing or shipping of the device to and from the department. It shall also be the responsibility of the manufacturer or the designated manufacturer's representative to submit a certified check or money order in the amount of $50 payable to the Texas Department of Public Safety (This is an administrative approval processing fee and is nonrefundable).

(B) Accompanying each device shall be a notarized letter and/or affidavit from a testing laboratory certifying that the submitted device by model and/or class meets or exceeds all requirements set forth in §19.23 of this title (relating to Technical Requirements) and §19.24 (a)-(b) of this title (relating to Miscellaneous Requirements) and/or other requirements as determined by the scientific director. This affidavit shall also include:

(i) name and location of the testing laboratory;

(ii) address and phone number of the testing laboratory;

(iii) description of the tests performed;

(iv) copies of the data and results of the testing procedures; and

(v) names and qualifications of the individuals performing the tests.

(3) Prior to approval of the device, the manufacturer or the designated manufacturer's representative shall complete and submit an application approval affidavit available from the scientific director. The notarized application approval affidavit shall be signed by the manufacturer or the designated manufacturer's representative. This approval affidavit shall state that the device by model and/or class will be calibrated and maintained pursuant to these regulations and as designated by the scientific director. This form shall serve as an agreement that if the device is not calibrated, maintained, or does not meet or exceed all standards set forth in these regulations, and designated by the scientific director, approval of the device shall be denied or withdrawn.

(A) If a device is submitted for approval by a party other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized and designated manufacturer's representative and that it is agreed and understood that any action taken by the scientific director or any cost incurred in accordance with the provisions of these regulations shall ultimately be the responsibility of the manufacturer.

(B) The manufacturer and/or manufacturer's representative shall submit, with the application for approval, the names, addresses, phone numbers, and qualifications of individuals designated as the service representatives responsible for periodically maintaining, calibrating, and repairing the device in accordance with §19.25 of this title (relating to Maintenance and Calibration Requirements).

(i) It is recommended that the designated service representative meet the minimum requirements as set forth in §19.5a)(1)-(4) of this title (relating to Technical Supervisor Certification).

(ii) In lieu of meeting the minimum requirements set forth in §19.5(a)(1)-(4) of this title (relating to Technical Supervisor Certification), the scientific director shall determine if the designated service representative possesses the necessary qualifications to maintain, calibrate, and repair the device pursuant to these regulations based upon the documentation submitted in compliance with this paragraph.

§19.23. Technical Requirements.

(a) Accuracy. The midpoint value for the interlock device shall be 0.03 g/210 liters alcohol concentration. The accuracy of the device shall be 0.030 g/210 liters plus or minus 0.005 g/210 liters. The accuracy will be determined by analysis of an external standard generated by a reference sample device.

(b) Precision. The device shall correlate with a known alcohol concentration of 0.03 g/210 liters with accuracy set forth in subsection (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has an alcohol concentration of 0.03 g/.210 liters or greater or any other limits as set by the scientific director.

(1) The proportions of false positive results shall not exceed 5.0%.

(2) The proportion of false negative and uncertain results shall not exceed 5.0%.

(c) Specificity. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to positive results.

(d) Temperature. The device shall meet the requirements of subsections (a) and (b) of this section when used at ambient temperatures of -20=C to 83=C or other limits as set by the scientific director.

(e) Barometric pressure. The device shall meet the requirements of subsections (a) and (b) of this section irrespective of atmospheric pressure or, as a minimum, operate according to said requirements at altitudes from 0 to 8,000 feet above sea level.

(f) Vibrational stability. The device shall meet the requirements of subsections (a) and (b) of this section when subjected to simple harmonic motion having an amplitude of 0. 38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 minutes, then decreased at a uniform rate to 10 Hz in 2 minutes The device shall also meet the requirement of subsections (a)-(b) of this section when subjected to simple harmonic motion having an amplitude of 0. 19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 minutes, then decreased at a uniform rate to 30 Hz in 2 minutes.

§19.24. Miscellaneous Requirements.

(a) Security. The device shall be designed so that security features will be difficult to circumvent.

(1) Security provisions shall include, but not be limited to prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or circumvention of the device electronically.

(2) The device may use special seals or other methods that record attempts to circumvent security provisions.

(3) The device shall be checked for evidence of tampering at least once every other month or more frequently if the need arises.

(4) When evidence of tampering is discovered, the manufacturer's designated service representative shall notify, in writing, the court authorizing installation and the scientific director.

(b) Operational features. The device shall be designed to permit a restart of a motor vehicle's ignition within one minute after the ignition has been shut off, without requiring a further alcohol analysis.

The restart function shall be checked during each routine inspection. The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these regulations, the scientific director may impose additional requirements as needed depending upon design and functional changes in device technology.

(c) Product liability. The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Texas with a minimum policy limit of $1 million.

(d) Product warranty. The manufacturer shall provide a warranty of performance to ensure responsibility for support for service within a maximum of 48 hours after notification of a complaint. This support shall be in effect during the period the device is required to be installed in a motor vehicle.

(e) Modifications. Once a device by model and/or class has been approved no modification in design or operational concept may be made without prior written consent of the scientific director (This does not include replacement or substitution of repair parts to maintain the device).

(f) Warning label. A warning label containing the following language shall be affixed to each device: "Any individual tampering, circumventing, or misusing this device shall be subject to prosecution and/or civil liability."

(g) Safety. The device shall be designed to comply with generally recognized safety requirements.

(h) Specification and operating instructions. Manufacturers shall provide with each device a precise set of specifications which describe the features of the device concerned in the evaluation of its performance. A set of detailed operating instructions shall be supplied with each device. Operating instructions shall be compatible with performance standards and with performance evaluation requirement.

(i) General. Any other requirements as may be determined necessary by the scientific director to ensure that the device functions properly and reliably.

§19.25. Maintenance and Calibration Requirements.

(a) The device shall be inspected, maintained, and calibrated for accuracy and operational performance at least once every other month and more frequently, if necessary, as specified by the scientific director. This maintenance and calibration check will be performed by the designated service representative approved in accordance with §19.22(3)(B) of this title (relating to Procedures for Approval).

(b) The maintenance and calibration check will consist of but not be limited to a check of the device to determine that the device is properly functioning in accordance with the following sections:

(1) accuracy-§19.23(a) of this title (relating to Technical Requirements);

(2) security-§19.24(a) of this title (relating to Miscellaneous Requirements); and

(3) operational features-§19.24(b) of this title (relating to Miscellaneous Requirements).

(c) Documentation and records of periodic checks shall be maintained by the manufacturer and/or the manufacturer's designated representative and shall be provided by the manufacturer and/or the manufacturer's designated representative upon request to the office of the scientific director and/or any court adjudicating civil or criminal liability, or supervising a probationer.

(d) If, at any time of routine inspection, or at any other time, the device fails to meet the provisions of this section, the device shall be removed from service or calibrated and/or repaired, and the manufacturer's designated service representative shall notify, in writing, the court ordering and/or authorizing installation and the scientific director.

§19.26. Approval, Denial, and Withdrawal of Approval.

(a) Upon proof of compliance with these regulations, an ignition interlock device will be approved by brand and/or model and will be placed on a list of approved devices. Notification of approval shall be made in writing to the manufacturer. It will be the responsibility of the manufacturer to provide proof that each individual device installed in any motor vehicle meets or exceeds the minimum standards of these regulations and is the same model and/or class approved by the scientific director. It will further be the responsibility of the manufacturer to provide expert or other required testimony in any civil or criminal proceedings as to the method of manufacture of the device, how said device functions, and the testing protocol by which the device was approved. In the event it should become necessary for the scientific director to provide testimony in any civil or criminal procedures involving the approval or use of the device, the manufacturer shall reimburse the department for any costs incurred in providing such testimony. Failure to provide this reimbursement shall result in withdrawal of approval for the device.

(b) The approval of a device, or the approval of a manufacturer, manufacturer's representative, or designated service representative may be denied or withdrawn by the scientific director if:

(1) the device, entity, or person fails to meet the requirement for approval under the Texas Ignition Interlock Device Regulations; or

(2) the entity or person fails to comply with the Texas Ignition Interlock Device Regulations, or with any law relating to the approval or operation of the device.

(c) The denial or withdrawal of an approval may be appealed to the director, Texas Department of Public Safety. Such appeals shall be governed by the provisions of Texas Civil Statutes, Article 6252-13a (Texas Administrative Procedure and Texas Register Act).

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 March 15, 1990.

TRD-9003009 Joe E. Milner
Director
Texas Department of Public Safety

Earliest possible date of adoption: April 30, 1990

For further information, please call: (512) 465-2000

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TITLE 40. SOCIAL SERVICE AND ASSISTANCE

Part I. Texas Department Human Service

Chapter 29. Purchased Health Services

Subchapter W. Chemical Dependency Treatment Facility Services

• 40 TAC §§29.2201-29.2203

The Texas Department of Human Services (DHS) proposes new §§29.2201-29. 2203, concerning chemical dependency treatment facility services, for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program eligible individuals. The new sections are proposed in new Subchapter W, Chemical Dependency Treatment Facility Services, in its Purchased Health Services chapter. The proposal specifies that the Texas Medical Assistance Program will cover residential facility and outpatient counseling chemical dependency treatment services.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect is an estimated additional cost of $774,377 for fiscal year 1990; $2,913,750 for fiscal year 1991; $3,028,447 for fiscal year

1992; $3, 077,295 for fiscal year 1993; and $3,282,867 for fiscal year 1994. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be expanded services to EPSDT-eligible clients to cover residential treatment and outpatient individual and group counseling for chemical dependency. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Questions about the content of this proposal may be directed to Joe Branton at (512) 338-6505 in DHS's Purchased Health Services Section. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services-184, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. DHS will hold a public hearing to accept comments on the proposal. The hearing will be held at 9 a.m., April 18, 1990, in the public hearing room, 701 West 51st Street, Austin.

The purpose of the public hearing will also be to consider comments on the proposed payment rates which are based on the reimbursement methodology in this proposal. Copies of the proposed rates may be obtained from Joe Branton, Purchased Health Services-611-S, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

The new sections are 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.

§29.2201. Benefits and Limitations.

(a) Subject to the specifications, conditions, limitations, and requirements established by the department or its designee, chemical dependency treatment facility services are those facility services determined by a qualified credentialed professional, as defined by the Texas Commission on Alcohol and Drug Abuse (TCADA) in its Chemical Dependency Treatment Facility Licensure Standards, to be reasonable and necessary for the care of a person under 21 years of age who is chemically dependent.

(b) Chemical dependency is defined as meeting at least three of the diagnostic criteria for psychoactive substance dependence in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders.*

(c) Covered chemical dependency treatment facility services include, but are not necessarily limited to:

(1) residential treatment services;

(2) outpatient individual counseling services; and

(3) outpatient group counseling services.

(d) Covered chemical dependency treatment facility services are limited as follows.

(1) Residential chemical dependency treatment facility services are limited to a maximum of 30 days per person per calendar year.

(2) Outpatient individual chemical dependency treatment counseling services are limited to a maximum of 26 hours per person per calendar year.

(3) Outpatient group chemical dependency treatment counseling services are limited to a maximum of 135 hours per person per calendar year.

§29.2202. Conditions for Participation. Subject to the specifications, conditions, limitations, and requirements established by the department or its designee, a chemical dependency treatment facility must:

(1) be a facility that is licensed by the Texas Commission on Alcohol and Drug Abuse (TCADA), the state licensure authority, as a chemical dependency treatment facility;

(2) provide, at a minimum, the standard services required by TCADA for licensure (as determined by the type of chemical dependency service(s) it provides);

(3) comply with all applicable federal, state, and local laws and regulations;

(4) be enrolled and approved for participation in the Texas Medical Assistance Program;

(5) sign a written provider agreement with the department or its designee. By signing the agreement, the chemical dependency treatment facility agrees to comply with the terms of the agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by the department or its designee; and

(6) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by the department or its designee.

§29.2203. Reimbursement.

(a) Subject to the specifications, conditions, limitations, and requirements established by the department or its designee, payment for covered chemical dependency treatment facility services provided by a participating treatment facility is limited to the lesser of the actual charge or the maximum allowable rates established by the department or its designee.

(b) The department adopts the maximum rates established for treatment used by the Texas Commission on Alcohol and Drug Abuse (TCADA). The department will modify its maximum allowable rates upon changes in TCADA's maximum rates for treatment.

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 March 26, 1990.

TRD-9003157 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: June 1, 1990

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

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Name: Amanda Pattison

Grade: 5

School: Coppell Intermediate School, Coppell

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 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Experience Requirements

- **22 TAC §511.122**

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed repeal to §511.122, submitted by the Texas State Board of Public Accountancy has been automatically withdrawn, effective March 27, 1990. The repeal as proposed appeared in the September 26, 1989, issue of the *Texas Register* (14 TexReg 4978).

TRD-9003202

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed new §511.122, submitted by the Texas State Board of Public Accountancy has been automatically withdrawn, effective March 27, 1990. The new section as proposed appeared in the September 26, 1989, issue of the *Texas Register* (14 TexReg 4978).

TRD-9003201

Name: Russell Holmes

Grade: 8

School: Burnet Jr. High, Burnet

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 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 70. Industrialized Housing and Buildings

Subchapter A. Legislative Intent, Purpose, Scope, and Definitions

• 16 TAC §§70.1-70.4

The Texas Department of Licensing and Regulation adopts the repeal of §§70.1-70.4, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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 March 1, 1990.

TRD-9003059 Larry Kosta
Executive Director
Texas Department of Licensing and Regulation

Effective date: April 13, 1990

Proposal publication date: January 12, 1990

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

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• 16 TAC §§70.1, 70.10, 70.20-70.23, 70.30, 70.40, 70.50, 70.51, 70.60-70.67, 70.70-70.77, 70.80, 70.100-70.103, 70.120

The Texas Department of Licensing and Regulation adopts new §§70.1, 70.10, 70.20-23, 70.30, 70.40, 70.50, 70.51, 70.60-70.67, 70.70-70.77, 70.80, and 70.100-70.103. Sections 70.1, 70.10, 70.20-70.23, 70.40, 70.50, 70.60-70.67, 70.70-70.77, and 70.100 are adopted with changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176). Sections 70.30, 70.51, 70.80, and 70.101-70.103 are adopted without changes and will not be republished.

The agency determined a need for a standard numbering system; therefore, these numbered, reorganized sections are being adopted. Also, the new sections are being adopted in order to comply with statute changes passed by the 71st Legislature.

The new sections have been reorganized, renumbered, edited, and amended to improve clarity and consistency.

A representative of the International Conference of Building Officials pointed out the code groups requirements for certification as a combination inspector had changed October 1, 1989. After reviewing the new requirements, the department revised the criteria to require the combination dwelling inspector certification which more closely meets the previously established council criteria.

A representative of the Texas State Board of Registration for Professional Engineers noted that an incorrect reference had been utilized concerning the Texas Engineering Practice Act. The department agreed with the respondent and corrected the reference.

The following groups and associations commented in favor of adoption of the new sections: International Conference of Building Officials and Texas State Board of Registration for Professional Engineers.

The new sections are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the Act.

§70.1. Authority. The sections in this chapter are promulgated under the authority of the provisions of Texas Civil Statutes, Article 5221f-1 (the Act), relating to industrialized housing and buildings and Texas Civil Statutes, Article 9100, to conform to the legislative mandate in the Act, to assure compliance and to provide for uniform enforcement. In addition, it is the intent of these sections to recognize the vital role of municipalities in this state in the regulation of on-site construction and erection of industrialized housing and buildings within their jurisdictions and in coordinating properly the public interests of both the local political subdivisions and the state.

§70.10. Definitions.

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

(1) Act–Texas Civil Statutes, Article 5221f-1.

(2) Building site–A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(3) Building system–The design and/or method of assembly of modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(4) CABO–Council of American Building Officials composed of ICBO, SBCCI, and Building Officials and Code Administrators International, Incorporated (BOCA).

(5) Closed construction–That condition where any industrialized housing or building, modular component, or portion thereof is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(6) Commercial structure–An industrialized building classified by the applicable model code for occupancy and use groups other than residential for one or more families.

(7) Commission–The Texas Commission of Licensing and Regulation.

(8) Commissioner–Commissioner of the Texas Department of Licensing and Regulation.

(9) Commissioner's designee–A person appointed by the commissioner to act in a capacity of authority.

(10) Compliance control program–The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with the Industrialized Housing and Buildings Act (the Act) and this chapter.

(11) Component–A subassembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(12) Council–The Texas Industrialized Building Code Council.

(13) Decal–The approved form of certification issued by the department to the manufacturer to be permanently affixed to the module indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(14) Department–Texas Department of Licensing and Regulation.

(15) Design package–The aggregate of all plans, designs, specifications, and documentation required by the sections in this chapter to be submitted to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package except as expressly set forth in §70.74 of this title (relating to Alterations and Deviations).

(16) Design review agency–An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to the sections in this chapter evidenced by affixing the council's stamp. The Act designates the department as a design review agency.

(17) ICBO–International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(18) Industrialized builder–A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer for sale or lease to the public; a subcontractor of an industrialized builder is not a builder for purposes of the sections in this chapter.

(19) Industrialized building–A commercial structure that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent commercial site, and that is designed to be used as a commercial building when the modules or modular components are transported to the permanent commercial site and are erected on or affixed to a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems.

(20) Industrialized housing–A residential structure that is designed for the use and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected on or affixed to a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems.

(21) Insignia–The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(22) Installation–On-site construction (see paragraph (31) of this section).

(23) Lease, or offer to lease–A contract or other instrument by which a person grants to another the right to possess and use for a specified period of time in exchange for payment of a stipulated price.

(24) Local building official–The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(25) Manufacturer–A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(26) Manufacturing facility–The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(27) Model–A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(28) Modular component–A structural portion of any dwelling or building that is constructed at a location other than the site in such a manner that its construction cannot be adequately inspected for code compliance at the site without damage or without removal of a part thereof and reconstruction.

(29) Module–A three-dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(30) NFPA–National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(31) Nonsite specific building–An industrialized house or building for which the permanent site location is unknown at the time of construction.

(32) On-site construction–Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(33) Open construction–That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(34) Permanent foundation system–A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §70.100 of this title (relating to Mandatory State Codes) and §70.102 of this title (relating to Use and Construction of Codes).

(35) Person–An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(36) Price–The quantity of an item that is exchanged or demanded in the sale or lease for another.

(37) Public–The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(38) Registrant–A person who, or which, is registered with the department

pursuant to the rules of this chapter as a manufacturer, builder, design review agency, third party inspection agency, or third party inspector.

(39) Residential structure–Industrialized housing designed for occupancy and use as a residence by one or more families.

(40) Sale, sell, offer to sell, or offer for sale–Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property for an established price.

(41) SBCCI–Southern Building Code Congress International, Incorporated, 900 Montclair Road, Birmingham, Alabama 35213.

(42) Site or building site–A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(43) Special conditions and/or limitations–On-site construction documentation which alerts the local building official of items, such as handicapped accessibility or placement of the building on the property, which may need to be verified by the local building official for conformance to the mandatory state codes.

(44) Structure–An industrialized house or building which results from the complete assemblage of the modules, modular components, or components designed to be used together to form a completed unit.

(45) Third party inspector–An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgement to inspect industrialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural, and the plural means the singular.

§70.20. Manufacturers and Industrialized Builders. Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the chief executive or chief operating officer of a corporation. The application must be accompanied by the fee set forth in §70.80 of this title (relating to Commission Fees).

(2) The registration shall be valid for 12 months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property which is contiguous to a registered manufacturing facility. An industrialized builder must register each separate sales office but is not required to register each job location.

(3) A registered manufacturer or industrialized builder shall notify the department in writing within 10 days if:

(A) the corporate or firm name is changed;

(B) the main address of the registrant is changed;

(C) there is a change in 25% or more of the ownership interest of the company within a 12-month period;

(D) the location of any manufacturing facility is changed;

(E) a new manufacturing facility is established; or

(F) there are changes in principal officers of the firm.

(4) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended for any violation of the Act, violation of the rules and regulations in this chapter or administrative orders of the department, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Civil Penalties and Injunctions) and §70.91 of this title (relating to Refusal, Revocation, and Suspension of Registration).

§70.21. Approval of Design Review Agencies and Third Party Inspection Agencies and Inspectors.

(a) Pursuant to the criteria established by the council as set forth in §70.22 and §70.23 of this title (relating to Criteria for Approval of Design Review Agencies and Criteria for Approval of Third Party Inspection Agencies and Inspectors) the commissioner will recommend design review agencies, third party inspection agencies, and third party inspectors to the council for approval. An application for approval shall be submitted in writing to the commissioner for consideration and recommendation to the council. The application shall be on the form, and contain such information, as may be required by the council.

(b) If the application is approved by the council, it shall be filed with the department as the registration of the applicant as a design review agency, a third party inspection agency, or a third party inspector to perform specific functions. This registration shall be a continuous registration so long as the information required by this section is updated in accordance with subsection (c) of this section and the annual fee is paid. The department shall issue a certificate of registration which shall state the specific functions which the registrant is approved to perform. The certificate of registration shall be valid for a 12-month period on receipt of the application and the registration fee by the department.

(c) Design review agencies, third party inspection agencies, and third party inspectors shall notify the department in writing within 10 days if:

(1) the name of the registrant is changed;

(2) the address of the registrant is changed;

(3) a partnership or corporation is created or exists or there is a change in 25% or more of the ownership of the business entity within a 12-month period;

(4) there are changes in principal officers or key supervisory personnel of the business entity; or

(5) there are changes in the key technical personnel of the agency or changes in the certifications of the technical personnel of the agency.

(d) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended for any violation of the Industrialized Housing and Buildings Act (the Act), violation of the rules and regulations in this chapter or administrative orders of the commissioner, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Civil Penalties and Injunctions) and §70.91 of this title (relating to Refusal, Revocation, and Suspension of Registration).

(e) If a third party inspector, third party inspection agency, or design review agency is not approved, the department shall forward a written explanation to the applicant setting forth the council's reasons for the disapproval.

§70.22. Criteria for Approval of Design Review Agencies. An agency seeking council approval as a design review agency (DRA) shall submit a written application to the commissioner. The application will indicate the agency's name, address, and the telephone number of each office in which design review services are to be performed. The application will include the following information:

(1) an organizational chart indicating the names of managerial and technical personnel responsible for design review functions within the agency. The chart must indicate the area or areas of review for which the technical personnel are responsible;

(2) a resume for each person listed in the organizational chart indicating academic and professional qualifications, experience in related areas, and specific duties within the agency. The minimum personnel requirements and qualifications shall be as follows.

(A) The manager or chief executive officer shall have a minimum of four years of plans examination, design, construction, or manufacturing experience in the building industry, or any combination thereof, and registration as a professional engineer or architect in the State of Texas (note: the applicant's registration number must be included on the resume).

(B) Technical staff members may qualify for more than one discipline. Therefore, the agency need not have an individual staff member for each discipline. Required certifications need not be from the same code agency for the different disciplines. For example, a DRA may have a structural reviewer, a mechanical reviewer, and an electrical reviewer with the required certifications through the International Conference of Building Officials, Incorporated (ICBO) while the plumbing reviewer, building planning reviewer, and fire safety reviewer have the required certifications through the Southern Building Code Congress International, Incorporated (SBCCI). The DRA is not limited to one code group when filling positions in the different disciplines. The technical staff shall consist of the following positions.

(i) The structural reviewer shall have a bachelor's degree with specialized course work in structures in civil, structural, or architectural engineering or service equivalent in accordance with subparagraph (C) of this paragraph, a minimum of one year structural engineering experience related to buildings, and certification as either a building plan examiner as granted by SBCCI or as a plans examiner as granted by ICBO. Any certification expiration dates must also be submitted.

(ii) The mechanical reviewer shall have a bachelor's degree in engineering with specialized course work in HVAC systems or service equivalent in accordance with subparagraph (C) of this paragraph, a minimum of one year mechanical engineering experience related to buildings, and certification as a mechanical inspector as granted by either SBCCI or as granted by ICBO. Any certification expiration dates must also be submitted.

(iii) The electrical reviewer shall have a bachelor's degree in engineering with specialized course work in electrical engineering or service equivalent in accordance with subparagraph (C) of this paragraph, a minimum of one year electrical engineering experience related to buildings, and certification as either a commercial electrical inspector as granted by SBCCI or as an electrical inspector as granted by ICBO. Any certification expiration dates must also be submitted.

(iv) The plumbing reviewer shall have a bachelor's degree in engineering with specialized course work in hydraulics or service equivalent in accordance with subparagraph (C) of this paragraph, a minimum of one year plumbing experience related to buildings, and certification as a plumbing inspector as granted by either SBCCI or as granted by ICBO. Any certification expiration dates must also be submitted.

(v) The building planning reviewer shall have a bachelor's degree in engineering or architecture or service equivalent in accordance with subparagraph (C) of this paragraph, a minimum of one year experience related to building planning, and certification as either a building plan examiner as granted by SBCCI or as a plans examiner as granted by ICBO. Any certification expiration dates must also be submitted.

(vi) The fire safety reviewer shall have a bachelor's degree in engineering or architecture or service equivalent in accordance with subparagraph (C) of this paragraph, a minimum of one year experience in fire protection engineering related to buildings, and certification either as a building plan examiner as granted by SBCCI or as a plans examiner as granted by ICBO. Any certification expiration dates must also be submitted.

(C) A minimum of eight years of creditable experience in engineering or architectural practice indicative of growth in engineering or architectural competency and responsibility is an acceptable service equivalent for academic requirements. This experience may be counted concurrently for those wishing to show service equivalency in more than one field. To be considered creditable, experience must satisfy the requirements outlined in the Texas State Board of Registration for Professional Engineers board rules of practice and procedure or the Texas Board of Architectural Examiner rules and regulations of the board regulating the practice of architecture.

(D) In lieu of a registration number issued by the Texas State Board of Registration for Professional Engineers, an applicant currently registered in some other state and applying for registration in Texas under the provisions of the Texas Engineering Practice Act, §20(a) and (b), may satisfy the requirement by providing a copy of an application for registration and a letter from the board acknowledging receipt and authorizing interim practice.

(3) complete documentation, including examples of data sheets or other forms used to analyze construction and equipment, preliminary and final reports, and an agency compliance assurance manual to substantiate the agency's ability to evaluate building systems and compliance control manuals for compliance with standards. Evidence must be presented in the areas of structural, mechanical, electrical, plumbing, building planning, and fire safety. The documentation should include an example of a building system or compliance control manual which the agency has evaluated for compliance with a code or set of standards;

(4) a properly notarized statement of certification signed by the agency manager or chief executive officer that:

(A) its board of directors, as a body, and its managerial and technical personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;

(B) its activities pursuant to the discharge of responsibility as a design review agency will not result in financial benefit to the agency via stock ownership or other financial interest in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;

(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;

(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a design review agency;

(E) all information contained in the application for approval as a design review agency is true, timely, and correct; and

(F) all future changes will be immediately communicated to the department;

(5) a list of states in which the agency is currently approved to provide similar services.

§70.23. Criteria for Approval of Third Party Inspection Agencies and Inspectors. An agency seeking council approval as a third party inspection agency shall submit a written application to the commissioner. The application will indicate the agency name, address, and telephone number of each office through which third party inspections will be coordinated. The application will include the following information:

(1) an organizational chart showing the names of managerial and technical personnel responsible for in-plant and on-site construction inspections;

(2) a resume for each person listed in the organizational chart indicating academic and professional qualifications, experience in related areas, and specific duties within the agency. Certification expiration dates must also be submitted. The minimum personnel requirements and qualifications are as follows.

(A) The manager or chief executive officer shall have a minimum of five years experience in building code enforcement or compliance control of building systems, a minimum of one year experience in responsible technical project planning and management, and registration as a professional engineer or architect in the State of Texas (note: the applicant's registration number must be included on the resume).

(B) The supervisor of inspections shall have a high school diploma or equivalent, a minimum of five years experience as an inspector in manufactured buildings or related compliance control or equivalent, and certification as:

(i) a combination dwelling inspector as granted by the International Conference of Building Officials, Incorporated (ICBO);

(ii) a one and two family dwelling inspector as granted by either the Southern Building Code Congress International, Incorporated (SBCCI) or ICBO; or

(iii) a building inspector, mechanical inspector, electrical inspector, and plumbing inspector (the applicant must have certifications in all four areas) as granted by either SBCCI or ICBO. The certifications in the four areas of inspection are not required to be from the same certification agency. For example, an applicant may be certified as a building inspector and a mechanical inspector by SBCCI and certified as an electrical inspector and a plumbing inspector by ICBO.

(C) The inspector shall have a high school diploma or equivalent, a minimum of one year experience in building code enforcement, compliance control inspection, or building experience, and certification as:

(i) a combination dwelling inspector as granted by ICBO;

(ii) a one and two family dwelling inspector as granted by either SBCCI or ICBO; or

(iii) a building inspector, mechanical inspector, electrical inspector, and plumbing inspector as granted by either SBCCI or ICBO. The certifications in each of the four areas of inspection are not required to be from the same certification agency. Additionally, one inspector is not required to have certifications in all four areas of inspection. However, all four areas of certification must be represented unless the agency employs inspectors who are certified in accordance with clauses (i) and (ii) of this subparagraph. For example, the agency may employ one inspector certified as a building inspector by SBCCI, one certified as a mechanical inspector by ICBO, one certified as an electrical inspector by ICBO, and one certified as a plumbing inspector by SBCCI. However, each inspector may only inspect in the area for which he or she is certified, i.e., a mechanical inspector inspects mechanical, an electrical inspector inspects electrical, etc.

(D) In lieu of a registration number issued by the Texas State Board of Registration for Professional Engineers, an applicant currently registered in some other state and applying for registration in Texas under the provisions of the Texas Engineering Practice Act, §20(a) and (b), may satisfy the requirement by providing a copy of an application for registration and a letter from the board acknowledging receipt and authorizing interim practice;

(3) complete documentation to substantiate the agency's ability to perform in-plant and on-site construction inspections and follow-up inspections to determine the compliance of a building manufacturer with the standards and rules. The application will include a formal description of the agency's supervision and training program for inspectors, performance records of manufacturers, examples of inspection reports, agreements or contracts with manufacturers, and any other pertinent information;

(4) a properly notarized statement of certification signed by the agency manager or chief executive officer that:

(A) its board of directors, as a body, and its managerial and inspection personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;

(B) its activities pursuant to the discharge of responsibilities as a third party inspection agency will not result in financial benefit to the agency via stock ownership or other financial interests in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;

(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;

(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a third party inspection agency;

(E) all information contained in the application for approval as a third party inspection agency is true, timely, and correct; and

(F) all future changes will be immediately communicated to the department;

(5) a list of states in which the agency is currently approved to provide product certification or validation or third party inspection services and a complete description of each system and program involved.

§70.50. Manufacturer and Builder Monthly Reports.

(a) The manufacturer shall submit a monthly report to the department, on a form supplied by the department, of all industrialized housing, buildings, modules, and modular components which were constructed and to which decals and insignia were applied during the month. The report must state the name and address of the industrialized builder to whom the structures, modules, or modular components were sold, consigned, or shipped. If any such units were produced and stored, the report must state the storage location. The report shall also contain:

(1) the serial or identification number of the units;

(2) the decal or insignia number assigned to each identified unit;

(3) the registration number of the industrialized builder (as assigned by the department) to whom the units were sold, consigned, and shipped;

(4) the building site location to which any units were shipped;

(5) an identification of the type of structure for which the units are to be used, e.g., single family residence, duplex, two-story motel, 75 units three-story apartment, etc.;

(6) any other information the department may require on the form or by separate instruction letter; and

(7) an indication of zero units if there was no activity for the reporting month.

(b) Each industrialized builder shall submit a monthly report to the department, on a form or in the format the department requires, which shall contain:

(1) the specific address of each building site on which the industrialized builder has performed any on-site construction work during the month;

(2) identification of the issuing city and the number and description of any building permit issued to the builder during the month;

(3) the decal and insignia numbers and unit identification numbers of all modules or modular components assembled or installed at a building site during the month;

(4) the locations and descriptions of the types of structures for which certificates of occupancy were issued during the month;

(5) any other information the department may require on the form or by separate instruction letter; and

(6) an indication of zero units if there was no activity for the reporting month.

(c) The manufacturer's and industrialized builder's monthly reports must be filed with the department no later than the 10th day of the following month.

§70.51. Third Party Inspection Reports.

(a) When performing in-plant inspections at a manufacturing facility or performing inspections at the building site, the third party inspector must file reports on the forms and in the format the department may require by written instruction (in accordance with any requirements set by the council). The TPIA/TPI must keep on file, for a minimum of five years, a copy of all inspection reports for inspections performed by the TPIA/TPI.

(b) The reports must be filed with the department each week or at such other intervals as the department may require pursuant to council instructions.

§70.60. Division of Responsibilities. This subchapter implements the intent of the Industrialized Housing and Buildings Act (the Act) in the public interest for the division of responsibility and authority between and among the commission, commissioner, department, council, and local building official.

(1) Commission. The commission shall have the authority to set fees for registration, for inspections, for decals, insignia, and review time.

(2) Commissioner or designee. The commissioner shall:

(A) adopt rules and regulations and administrative orders as necessary to assure compliance with the Act and the actions and decisions of the council;

(B) evaluate, according to the council's criteria, the qualifications of third party inspection agencies/inspectors and design review agencies, and then make recommendations to the council;

(C) publish a listing of all approved third party inspectors and design review agencies; and

(D) authorize a building inspection of industrialized housing and buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of the other state and to authorize the performance of inspections of industrialized housing or buildings that are constructed in this state for use in another state. The commissioner must enter a reciprocity agreement with the agency of the other state as necessary to implement this section.

(3) Department. The department shall have authority to:

(A) review (when the department acts as a design review agency) designs, plans, specifications, and documentation to determine compliance of the submitted building system with the mandatory state codes and these rules and cause the stamp of the council to be placed on each page of such documentation that meets or exceeds the code standards and these rules and regulations;

(B) inspect the construction of industrialized housing or buildings, either modules or modular components, at the manufacturing facility and inspect on-site construction in accordance with the Act and any inspection instructions of the council to assure compliance with the applicable mandatory codes; and

(C) monitor and evaluate the performance of third party inspectors and design review agencies and make performance reports and recommendations to the council as may be necessary.

(4) Council. The council shall have authority to:

(A) establish criteria for the qualification of third party inspectors and design review agencies;

(B) approve or disapprove all applications to be an approved third party inspector or design review agency;

(C) adopt and approve a stamp to be used by a design review agency or the department to certify that the design package meets or exceeds the requirements of the mandatory state codes;

(D) determine if amendments or revisions to the model codes as finally approved, respectively, by the International Conference of Building Officials, Southern Building Code Congress International, or National Fire Protection Association, are in the public interest and consistent with the purposes of the Act; if so determined, and after a hearing, to require that the mandatory state codes be amended accordingly;

(E) resolve all questions relating to the design package concerning code equivalency or the use of alternate materials or methods of construction, from an engineering performance standpoint, to the standards and requirements of the mandatory state codes as may be submitted in writing by a local building official, the department, or a manufacturer;

(F) upon petition by a local building official and after a hearing, to require any reasonable amendment to the Uniform Building Code group or the Standard Building Code group that the council determines to be essential for the health and safety of the public;

(G) issue instructions for the inspection of both the in-plant and on-site construction of industrialized housing and buildings; and

(H) submit to the commissioner for adoption any rules necessary to implement the decisions, actions, and interpretations of the council.

(5) Local building official. The local building official shall have the authority to:

(A) require and review a complete set of design plans and specifications bearing the stamp of the council for each installation of industrialized housing or buildings within its jurisdiction for compliance with the mandatory state codes;

(B) require that all applicable local permits and licenses be obtained and fees paid before any construction or placement of modules or modular components begins on the building;

(C) enforce all local ordinances relating to land use and zoning, building setback, side and rear yard offsets, site planning, development, subdivision control, and landscape architectural requirements;

(D) require that all modules or modular components manufactured after January 1, 1986, have affixed the decal or insignia issued by the department;

(E) witness in-plant inspections in order to make recommendations for inspection procedures to the council;

(F) inspect all on-site construction, including the construction of the foundation system and the erection, assembly, and connection of the modules or modular components to the permanent foundation to assure compliance with the approved design package and the on-site construction documentation for industrialized housing or buildings to be sited within its jurisdiction;

(G) perform an overall visual inspection for obvious nonconformity to the applicable code, require final inspections along with any tests which are required by the approved installation instructions, on-site construction documentation, and/or the applicable code, and require the correction of deficiencies identified by the tests or discovered in final inspections;

(H) notify the commissioner of any damage to a module or modular component resulting from transportation to, or handling at, the building site which is not corrected by the industrialized builder; notify the commissioner of any noncompliance to, or deviation from, the approved building system or applicable code; and report to the commissioner any violation of these rules and regulations. These notices and reports shall be submitted by certified mail; and

(I) petition the council to amend the mandatory state codes if the amendment is essential for the health and safety of the public on a statewide basis.

(6) Local amendments to mandatory codes. A local building official or municipality shall not require or enforce any amendments to the mandatory codes as set forth in these rules as a prerequisite for granting or approving any local building or construction permits or certificates of occupancy.

(7) Enforcement of local ordinances. A municipality or local building official shall reasonably and uniformly apply and enforce all local ordinances and regulations without distinction as to whether the housing or buildings are manufactured (industrialized) or are constructed on-site. Any local requirements, regulations, or ordinances which are in conflict with the Act, or other state law relating to the transportation, on-site construction, or use of industrialized housing or buildings, shall not be enforced.

§70.61. Responsibilities of the Department–Plant Certification.

(a) Prior to being issued decals or insignia, each manufacturing facility will undergo a certification inspection. A representative of the design review agency must be present during the manufacturer's certification inspection. The plant certification will be conducted by a department team normally consisting of an engineer, one or more department inspectors or, when designated by the department, third party inspectors. The purpose of the plant certification inspection will be to assure that the compliance control program in the manufacturing facility is capable of producing structures in compliance with the approved design package. The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the inspection team are being located by the plant compliance control program and are being corrected by the plant personnel. The inspection team will work closely with the plant compliance control personnel to assure that the approved design package and compliance control manuals for the facility are clearly understood and are being followed. The plant certification inspection will terminate when the inspection team has fully evaluated all aspects of the manufacturing facility. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line during the certification.

(b) Following completion of the plant certification inspection, the team will issue a plant certification report. The manufacturer must keep a copy of this report in their permanent records. The plant certification report will contain:

(1) the name and address of the manufacturer;

(2) the names and titles of personnel performing the certification inspection;

(3) the serial or identification numbers of the modules or modular components inspected;

(4) a list of nonconformances observed on the modules or modular components inspected (with appropriate design package references) and corrective action taken in each case;

(5) a list of deviations from the approved compliance control procedures (with section or manual references) observed during the certification inspection with the corrective action taken in each case;

(6) the date of certification;

(7) the following statement: "This report concludes that (name of agency), after evaluating the facility, certifies that (name of factory) of (city) is capable of producing (industrialized housing and buildings or modular components) in accordance with the approved building system and compliance control manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Industrialized Building Code Council"; and

(8) the signature of the inspection team leader.

(c) If during the certification inspection, the manufacturer is judged not capable of building structures in compliance with the approved design package and compliance control manual, the agency will issue a deviation report. The deviation report will detail the specific areas in which the manufacturer was found to be deficient and will make recommendations for improvement. The certification inspection will continue from the date of the report until all certification requirements are met, or 45 days, whichever comes first.

(d) A manufacturing facility which was registered with the department for the construction of modular homes on September 1, 1985, and which had previously been issued a plant certification report, shall not be required to have an additional certification inspection in order to receive decals and insignia.

§70.62. Responsibilities of the Department–In-plant Inspection.

(a) The department or TPIA/TPI shall conduct announced and unannounced inspections at the manufacturing facility at reasonable, but varying, intervals to review any and all aspects of the manufacturer's production and compliance control program. In order to determine if the compliance control program is working as set forth in the compliance control manual, inspection of every visible aspect of every module shall normally be made at least at one point during the manufacturing process. It is the manufacturer's responsibility to assure that the inspections are accomplished

as outlined in this subsection. The department will determine the frequency of modular component inspections.

(b) Inspections at the manufacturing facility shall be increased in frequency as necessary to assure that the manufacturer is performing in accordance with the approved compliance control manual.

(c) The commissioner, at his discretion, may require, or may authorize upon written request by the manufacturer, the use of council-approved third party inspectors to perform in-plant inspections. Third party inspection agencies must provide the department a written schedule of inspections a minimum of seven days prior to the inspection. If the inspection must be rescheduled for any reason, the TPIA must immediately inform the department of the schedule change. If an approved third party inspector is utilized, fees may be paid directly to the third party inspector.

(d) The manufacturer shall reimburse the department the cost of actual expenses incurred outside headquarters in monitoring the performance of the third party inspection agency. The reimbursable cost shall include actual travel expenses, per diem, mileage, and an hourly monitoring fee.

(e) The department or TPI shall furnish the manufacturer a copy of the inspection report upon completion of the in-plant inspection. The report must be kept in the manufacturer's file at least five years.

§70.63. Responsibilities of the Department–Building Site Inspections.

(a) When the building site is within a municipality which has a building inspection agency or department, the local building official will inspect all on-site construction and the attachment of the structure to the permanent foundation to assure completion and attachment in accordance with the approved design package and any unique foundation system or on-site details.

(b) When the building site is outside a municipality, or within a municipality which has no building department or agency, the commissioner or third party inspectors will perform the required inspections. The on-site inspection is normally accomplished in three phases: site preparation, set inspection, and final inspection. The builder is responsible for scheduling each phase of the inspection with the inspecting agency. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. The builder is responsible for assuring that the request for an on-site inspection, on the form supplied by the department and in the format prescribed by the department, and the required fee in accordance with §70.80 of this title (relating to Commission Fees) arrive at the department's Austin office a minimum of 10 working days prior to the first requested inspection date. Third party inspectors may be approved to perform inspections at the discretion of the commissioner. If a council-approved third party inspector does the inspections, fees may be paid directly to the third party inspector. The third party inspector must notify the department of the time, date, and location of the inspection at least three working days prior to the inspection. The industrialized builder may utilize the services of the commissioner on one or more projects and utilize third party inspectors on other projects; however, the election may not be changed once made for a particular project at the building site except with written approval of the commissioner.

(c) If the design package has the stamp of the council on each page, if the foundation drawing has been approved by a registered architect or engineer, and if the module and/or modular component has a decal or insignia affixed thereto, the local building official, the third party inspector, or the department shall not stop assembly, connection, and on-site construction except for deviations from, or nonconformance to, the approved design package or any unique foundation system or on-site detailed drawings.

(d) Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

(e) If an inspector finds a structure, or any part thereof, at the building site to be in violation of the approved design package and/or the unique on-site plans and specifications, the inspector shall immediately post a deviation notice and notify the industrialized builder. The industrialized builder, after making corrections as necessary to bring the unit into compliance, shall request an inspection, either by the commissioner or the on-site inspector. If the deviation is not corrected, a certificate of occupancy shall not be issued.

§70.64. Council's Responsibilities–Compliance Disputes.

(a) The council shall resolve any dispute, disagreement, or difference of opinion between the design review agency (or department when acting as a design review agency) and a local building official as to whether the approved design package meets or exceeds the requirements of the mandatory building codes set forth in this chapter. The council's decision shall be timely made and shall be binding on all parties.

(b) If the local building official thinks the approved design package and/or unique on-site construction documentation does not meet the code requirements of this chapter, this opinion shall be forwarded in writing to the commissioner at the department's Austin office within seven working days following the filing of an application for a building permit and prior to issuance of the building permit. This written opinion shall set forth specifically those code sections for which the noncompliance allegedly exists and the specific reasons the local building official thinks the design package and/or unique on-site construction documentation fails to meet the code requirements. The local building official shall submit 15 copies of the written opinion. The commissioner will submit the local building official's opinion and reasons to the council within three working days following receipt. The council shall determine at the next scheduled meeting, not to exceed 45 days, whether or not the design package and/or unique on-site construction documentation meets the mandatory state code requirements and shall notify the local building official and the commissioner in writing. If the design package and on-site construction documentation are determined by the council to meet the code requirements, the local building official shall issue a building permit. Questions concerning the code compliance of a design package and on-site construction documentation must be raised prior to the issuance of a building permit and, once a local building permit is issued, the local building official shall not stop any on-site construction due to questions about the approved design package or on-site construction documentation.

(c) If a dispute or difference of opinion arises between the manufacturer and the third party inspector during an in-plant inspection as to whether the construction meets or exceeds the approved design package, the dispute or differences shall be resolved by the commissioner. If the commissioner is unable to resolve the dispute, then he will forward it to the council for resolution.

(d) If a dispute or difference of opinion arises between the industrialized builder and a local building official or third party inspector as to whether the on-site construction meets or exceeds the approved design package and/or unique on-site construction documentation, the dispute or difference of opinion shall be resolved by the commissioner. If the commissioner is unable to resolve the dispute, then he will forward it to the council for resolution.

§70.65. Responsibilities of the Department–Proprietary Information Protected.

(a) All designs, plans, specifications, compliance control

programs, manuals, on-site construction instructions and documentation, information relating to alternate methods or materials, or any other documents submitted by a manufacturer to the council, the department, or local building official are proprietary information and shall only be used for purposes of assuring compliance with the provisions of the Industrialized Housing and Buildings Act (the Act) and this chapter.

(b) The items and information set forth in subsection (a) of this section furnished by the manufacturer to the council, the department, or local building official, shall not be copied or distributed to any other person except with the manufacturer's written permission or under the direction of the Texas Attorney General pursuant to applicable law relating to public records as set forth in Texas Civil Statutes, Article 6252-17a.

§70.66. Responsibilities of the Department–Decals and Insignia.

(a) Decals are used for module certification and insignia are used for modular component certification. The department will issue decals and insignia to the manufacturer on application and payment of the fee following certification of the manufacturing facility. Each module or modular component of industrialized housing or buildings shall have the decal or insignia, respectively, affixed thereto before leaving the manufacturing facility. The decal or insignia shall be placed in a visible location as set forth in the approved design package and shall be permanently attached so that it cannot be removed without destruction.

(b) Each decal or insignia shall be assigned to a specific module or modular component and the manufacturer shall keep records as necessary to show, by decal or insignia number, the module or modular component (by identification number) to which the decal or insignia was assigned. The manufacturer shall keep complete records of all decals and insignia received, decals and insignia used, and those which are on-hand. These records shall be made available to the department or in-plant inspector on request. Assigned decals or insignia are not transferable and are void when not affixed as assigned. All decals or insignia which are voided must be returned to, or shall be confiscated by, the department.

(c) By affixing the decal or insignia, the manufacturer certifies that the module or modular component is constructed and inspected in accordance with the approved design package, the mandatory state codes, and the sections in this chapter.

(d) The control of the decals and insignia shall remain with the department. Should inspection reveal that the manufacturer is not constructing structures or any portion thereof in accordance with the approved design package, the manufacturer will be notified of the specific deviations. The deviations shall be corrected at a point in the construction process before the deviation is covered or hidden by additional construction; otherwise, the department (or third party inspector) shall confiscate any decals or insignia previously issued and presently on-hand at the manufacturing facility. In addition, new decals or insignia will not be issued until the manufacturer has shown proof of compliance.

§70.67. Responsibilities of the Commissioner–Reciprocity.

(a) If the commissioner finds that the standards prescribed by the statute or rules and regulations of another state meet the objectives of Texas Civil Statutes, Article 5221f-1 and are satisfactorily enforced by that state or its agents, then the commissioner may enter a reciprocal agreement with that state to authorize building inspections of industrialized houses or buildings constructed in that state to be performed by an inspector of the equivalent regulatory agency of that state. The standards of another state shall not be deemed to be adequately enforced unless the other state provides for immediate written notification to the commissioner of suspensions or revocations of approvals of manufacturers by the other state.

(b) If the commissioner enters a reciprocity agreement with another state, then the commissioner will accept industrialized houses and buildings which have been certified by the reciprocal state and which have the appropriate decal, label, or insignia of the reciprocal state. Manufacturers in the reciprocal state who construct industrialized housing and buildings for Texas will be subject to the following.

(1) Manufacturers must be registered in Texas in accordance with §70. 20 of this title (relating to Registration of Industrialized Housing and Buildings Manufacturers). The manufacturer must submit evidence that its building system and compliance control program have been approved by the reciprocal state. The commissioner shall verify the approval and maintain a list of manufacturers approved under the terms of the reciprocity agreement.

(2) Industrialized housing, buildings, modules, and modular components will be constructed in accordance with the codes referenced in §70.100 of this title (relating to Mandatory State Codes) and any amendments to those codes in accordance with §70.101 of this title (relating to Amendments to Mandatory State Codes). The code used will be determined in accordance with §70.102 of this title (relating to Use and Construction of Codes).

(3) Review and approval of the manufacturer's design package will be in accordance with §70. 70 of this title (relating to Manufacturer's Design Package), except that the reciprocity agreement with the reciprocal state will accept the compliance control program certified by the reciprocal state for that manufacturer. All inspections performed by the reciprocal state must be in accordance with documents reviewed and approved by a council-approved design review agency or the department when acting as a design review agency.

(4) The manufacturer will assign a Texas decal or insignia to each module or modular component for Texas in accordance with §70.66 of this title (relating to Decals and Insignia). The Texas decal or insignia will be placed in the vicinity of the decal, label, or insignia of the reciprocal state.

(5) The manufacturer will permanently attach a data plate to each industrialized house or building in accordance with §70.71 of this title (relating to the Manufacturer's Data Plate).

(6) The manufacturer will submit a monthly report to the commissioner in accordance with §70.50 of this title (relating to Manufacturer and Builder Monthly Reports).

(c) If the commissioner determines that the standards for the manufacture and inspection of industrialized housing and buildings in a reciprocal state, with which the commissioner has entered a reciprocal agreement, do not meet the objectives of Texas Civil Statutes, Article 5221f-1 or are not being enforced by the reciprocal state, then the commissioner shall suspend or revoke the reciprocal agreement. The reciprocal state and affected manufacturers will receive written notification of the reasons for the suspension or revocation of the agreement.

(d) Written notification of suspension or revocation of a manufacturer by another state with which the commissioner has entered a reciprocal agreement will be cause to suspend or revoke the approval of that manufacturer to construct industrialized housing and buildings for Texas.

§70.70. Responsibilities of the Registrants–Manufacturer's Design Package.

(a) Review and approval. The manufacturer's design package must be reviewed and approved in accordance with the following.

(1) The manufacturer must select either the department or a council-approved design review agency (DRA) to perform all required review and evaluation of plans, designs, specifications, compliance control, and on-site construction

documentation, etc. This election shall be made in writing to the commissioner and, if an agency other than the department is selected, the written election will state the name, address, and registration number of the DRA selected.

(2) An approved DRA, or the department, shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory construction codes in accordance with the interpretations, instructions, and determinations of the council. The reviews are to be performed or directly supervised by the DRA's certified plans reviewers for the discipline (electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A DRA's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.22 of this title (relating to Criteria for Approval of Design Review Agencies). The department or DRA will obtain from the manufacturer such information as is necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory codes and the sections in this chapter.

(3) All documents shall have all pages numbered and arranged in accordance with a table of contents and, to the extent practical, they shall be on 8 1/2 inch by 11 inch pages. The floor plans shall have no scale smaller than 1/8th inch equals one foot. All documents shall be identified to indicate the manufacturer's name and address.

(4) The department or DRA will signify approval of a drawing, specification, calculation, or any other document in the manufacturers design package by applying the council's stamp to each page. An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design package. The original council stamp with original signature will be required on these pages. The signature on the original council stamp must be the signature of the manager or chief executive officer of the DRA. The manager or chief executive officer of the DRA must be registered in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of DRAs established by the council. When the department acts as a DRA, the original signature must be the signature of the chief engineer. The stamp shall not be placed on any designs, plans, or specifications which do not meet the requirements of the applicable mandatory state codes or the requirements of these sections. The manufacturer and the DRA must keep copies of the approved documents. The DRA must keep a copy on file of all approved documents deleted or superseded from a design package for a minimum of five years. The manufacturer must make a copy available to the person performing in-plant inspections. A DRA will forward one approved copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.

(5) The department (when acting as a DRA) or a DRA may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of the withdrawal of the approval shall be in writing and shall set forth the reasons for the withdrawal. Any withdrawal of approval shall have prospective effect only, except for life safety items.

(6) The DRA shall reimburse the department the cost of actual expenses incurred outside headquarters in monitoring the performance of the DRA; the reimbursable cost shall include actual travel expenses, per diem, mileage, and an hourly monitoring fee.

(7) Design review agencies or the department acting as a DRA may make red ink corrections to documents provided the corrections meet all of the following criteria:

(A) limited to corrections of minor deviations;

(B) the corrected items can be verified by reference to prescriptive code requirements;

(C) the change does not involve any change of design or require design;

(D) the red ink correction is valid for 10 working days and may not be extended; and

(E) the corrections must be numbered and initialed by the DRA and the statement, "As noted with __________ (number) corrections" shall appear near the stamp of the council with the number of corrections entered.

(b) In-plant documentation. The manufacturer shall provide the DRA inplant documentation which must, at the minimum, contain the following:

(1) specifications and/or detail drawings for all materials, devices, appliances, equipment, and fasteners used in construction;

(2) detailed drawings of all assemblies and components (with cross-sections as necessary to identify major building components);

(3) floor plans for all models and options;

(4) electrical schematics for all models and options;

(5) water system and drain waste vent system drawings for all models and options;

(6) gas piping system drawings for all models and options;

(7) mechanical system drawings for all models and options;

(8) fire protection, fire safety, and exit details;

(9) thermal resistance details;

(10) heating, ventilation, and air conditioning details;

(11) structural, thermal, and electrical load calculations;

(12) weather resistance details;

(13) condensation protection details;

(14) decay protection details;

(15) insect and vermin protection details;

(16) fastening schedule;

(17) assembly and connection instructions for all components, materials, devices, equipment, and appliances;

(18) on the floor plan or on the cover or title sheet for each model and/or project in a title block format:

(A) name and date of applicable codes;

(B) identification of permissible type of gas for appliances;

(C) maximum snow load (roof)(psf);

(D) maximum wind load (psf) /speed (mph);

(E) seismic zone;

(F) occupancy/use group type;

(G) construction type; and

(H) special conditions and/or limitations;

(19) compliance control manual (reference subsection (c) of this section); and

(20) on-site construction documentation (reference subsection (d) of this section).

(c) Compliance control program. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual which must be approved by the design review agency or the department. The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process. The manufacturer shall provide the design review agency a compliance control manual which must, at the minimum, contain the following:

(1) a table of contents;

(2) a chart indicating the manufacturer's organizational structure to assure compliance and to assure that the compliance control staff shall maintain independence from the production personnel;

(3) a statement which defines the obligation, responsibility, and authority for the manufacturer's compliance control program;

(4) identification of compliance control personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;

(5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both upon receipt and from the production line. The areas for rejected materials must be clearly indicated to assure that such material is not used;

(6) a description of an identification system to mark each individual module, or modular component, at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;

(7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those which may be performed at one or more stations;

(8) an inspection checklist including:

(A) a list of inspections to be made at each production station; and

(B) accept/reject criteria (each significant dimension and component should be given tolerances);

(9) step-by-step test procedures when electrical, gas supply, and/or plumbing systems are installed and a description of the station at which each production test will be performed including:

(A) electrical tests as specified in the National Electrical Code, Article 550-10, gas supply pressure tests, water supply pressure tests, and drain-waste-vent system tests;

(B) description of required testing equipment; and

(C) procedures for periodic checking, recalibration, and readjustment of test equipment;

(10) storage procedures for completed structures at the plant and for any other locations prior to installation;

(11) a statement indicating the person who is responsible for compliance control at each manufacturing facility and who will assume responsibility for decals and insignia, his or her application, and the reporting procedure;

(12) a procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;

(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result (actual transportation without damage or deviation is evidence sufficient to justify the method); and

(14) procedures that assure that the compliance control procedures are complied with on all regulated structures. As a minimum, regulated structures must be identified prior to commencing construction.

(d) On-site construction specifications or documentation. All work to be performed on the building site shall be specifically identified and distinguished from construction to be performed in the manufacturing facility, e.g., assembly and connection of all modules, modular components, systems, equipment, and appliances and attachment to the foundation system. The work to be performed on-site shall be described in detail in documents (architectural sheets, specifications, instructions, etc.) which shall be made available to the builder for use at the site and provided as required for review and inspection to the agency having local authority. The manufacturer shall provide the design review agency on-site construction documentation which must, at the minimum, contain the following:

(1) foundation system designs for all models in accordance with the applicable mandatory state code;

(2) details for module to module or modular component assembly and connection;

(3) details for connection and attachment of all modules and modular components to the foundation system;

(4) firestopping and draftstopping details;

(5) details for fire exits, balconies, walkways, and other site-built attachments (six exterior weatherproofing details);

(7) details for thermal, condensation, decay, corrosion, and insect protection;

(8) electrical, mechanical, heating, cooling, and plumbing system completion details;

(9) electrical, mechanical, heating, cooling, and plumbing system test procedures;

(10) fire safety provisions; and

(11) specifications and instructions for cooling equipment, and complete information necessary to calculate sensible heat gain along with information on the sizing of the air distribution system, if applicable, and the R values of insulation in the ceiling, walls, and floors.

(e) Unique on-site details. If the typical foundation drawing in the on-site construction documentation is not suitable for a specific site, or if the structure is only partially constructed of modular components, or if the industrialized builder will add unique on-site details, a registered Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and stamp the unique foundation drawings or on-site details and review by a design review agency is not needed or required.

(f) Non-site specific buildings. Whenever the manufacturer does not know, at the time of construction, where the building is to be placed, in lieu of providing the site specific construction details or typical site construction details as required in subsection (b) of this section, the manufacturer may provide special conditions and/or limitations of the placement on the building. These special conditions and/or limitations will serve to alert the local building official of items,

such as, handicapped accessibility and placement of the building on the property, which the local building official may need to verify for conformance to the mandatory state codes. Certain site-related details, such as, module to module connections, must still be provided by the manufacturer. It is the responsibility of the design review agency to verify that such site-related details are included in the manufacturer's approved design package.

§70.71. Responsibilities of the Registrants–Manufacturer's Data Plate.

(a) The manufacturer will attach a data plate to each dwelling unit of a residential structure and to each appropriate unit of a commercial structure. The data plate must be made of a material that will not deteriorate over time and be permanently placed so that it cannot be removed without destruction. The data plate will be placed on or near the electrical distribution panel or in some other easily accessible location as designated in the approved design package.

(b) The data plate must contain, as a minimum, the following information:

(1) the manufacturer's name and address;

(2) the serial or identification number of the unit;

(3) the decal and insignia numbers;

(4) the name and date of applicable codes;

(5) an identification of permissible type of gas for appliances;

(6) the maximum snow load (roof) (psf);

(7) the maximum wind load (psf)/speed (mph);

(8) the seismic zone;

(9) the occupancy/use group type;

(10) the construction type; and

(11) special conditions and/or limitations.

(c) Structures designated by the manufacturer as not being designed for placement on a permanent foundation shall have a manufacturer's seal permanently attached inside the door of the electrical panel or near the entrance door if the unit does not have an electrical panel. The seal shall not be smaller than 2 by 1 1/2 inches and shall be constructed of a metallic alloy. The seal must contain the following capitalized statement: THIS STRUCTURE IS NOT DESIGNED FOR PLACEMENT ON A PERMANENT FOUNDATION AND DOES NOT MEET THE REQUIREMENTS OF TEXAS CIVIL STATUTES, ARTICLE 5221f-1, INDUSTRIALIZED HOUSING AND BUILDINGS.

§70.72. Responsibilities of the Registrants–Delivery to Other States.

(a) Industrialized housing or buildings designed and constructed by a manufacturer in this state for delivery and placement on a building site in another state are not subject to the sections in this chapter. Unless there is a reciprocity agreement between the two states, the manufacturer shall notify the department in writing prior to constructing any modules or modular components designed for out-of-state delivery.

(b) A manufacturer of industrialized housing or buildings designed and constructed for delivery and placement in another state may, however, elect to build such structures in accordance with the sections of this chapter by notifying the department in writing.

(c) A manufacturer engaged exclusively in constructing industrialized housing or buildings in this state for delivery to another state is subject to the registration requirements expressly set forth in §70.20 of this title (relating to Manufacturers and Industrialized Builders).

§70.73. Responsibilities of the Registrants–Building Site Inspections.

(a) When the building site is within a municipality which has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the permanent foundation to assure completion and attachment in accordance with the design package, the on-site construction documentation, and any unique foundation system or on-site detailed drawings.

(b) When the building site is outside a municipality, or within a municipality which has no building department or agency, the department or third party inspectors will perform the required inspections. The on-site inspection is normally accomplished in three phases: site preparation, set inspection, and final inspection. The builder is responsible for scheduling each phase of the inspection with the inspecting agency. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. When the department performs the inspection, the builder is responsible for assuring that the request for an on-site inspection, on the form supplied by the department, and the fee arrive at the department's Austin office at least 10 working days prior to the first requested inspection date. If a council approved third party inspector is approved by the department and completes the inspection in accordance with §70.63 of this title (relating to Building Site Inspections), fees may be paid directly to the third party inspector. The third party inspector must notify the department of the time, date, and location of the inspection, at least three working days prior to the inspection. The industrialized builder may utilize the services of the department on one or more projects and utilize third party inspectors on other projects; however, the election may not be changed once made for a particular project at the building site except with written approval of the department.

(c) If a structure, or any part thereof, is found by the inspector at the building site to be in violation of the approved design package or the on-site construction documentation, the inspector shall immediately post a deviation notice and notify the industrialized builder. The industrialized builder, after making corrections as necessary to bring the unit into compliance, shall request an inspection, either by the department or the on-site inspector. If the deviation is not corrected, a certificate of occupancy shall not be issued.

(d) The builder shall not permit occupancy of a structure until a successful final inspection has been completed and a certificate of occupancy issued. The department will issue certificates of occupancy for buildings located outside a municipality that regulates on-site construction.

(e) The owner shall post the certificate of occupancy in a conspicuous place on the premises of an industrialized building. The certificate of occupancy may be suspended or revoked, in writing, whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of the mandatory codes, the Industrialized Housing and Buildings Act (the Act) or any rule, regulation, or administrative order made or issued by the commissioner in, or pursuant to this chapter, or any decisions, actions, or interpretations of the council.

§70.74. Responsibilities of the Registrants–Alterations or Deviations.

(a) The manufacturer or industrialized builder shall not alter or deviate from the approved design package and on-site construction documentation. Unique foundation drawings and on-site details are subject to §70.70(e) of this title (relating to Unique On-Site Details).

(b) An alteration of an industrialized house or building which results in a structure that does not comply with the mandatory state code is prohibited.

(c) A complete set of plans and specifications describing a proposed alteration of an industrialized house or building shall be submitted to a design review agency for approval prior to construction. All work must be performed in accordance

with the approved plans and specifications. The person performing the alteration shall notify the department in writing at least 10 days in advance of the work. The department may inspect the work performed to ensure conformance to the approved plans by utilizing department or third party inspectors. An alteration to an industrialized house or building resulting in a change in the principal use of the structure shall require a reclassification of the structure to the appropriate occupancy group defined in the mandatory state code.

§70.75. Responsibilities of the Registrants–Owner Information.

(a) The industrialized builder shall provide the purchaser (owner) of any industrialized house or building the following information:

(1) the name, location, and address of the manufacturer and industrialized builder;

(2) a description of the location of the data plate and explanation of the information thereon;

(3) the floor plan of the dwelling unit or structure as appropriate;

(4) schematic drawings of the plumbing, electrical, and heating/ventilation systems; and

(5) a site plan showing the on-site location of all utilities and utility taps.

(b) The builder must have written proof that the information in subsection (a) of this section was delivered to the purchaser (owner) and keep this proof in the industrialized builder's files for a minimum of two years.

§70.76. Responsibilities of the Registrants–Proprietary Information Protected.

(a) All designs, plans, specifications, compliance control programs, on-site construction instructions and documentation, information relating to alternate methods or materials, or any other documents submitted by a manufacturer to a design review agency or third party inspector are proprietary information and shall only be used for purposes of assuring compliance with the provisions of the Industrialized Housing and Buildings Act (the Act) and this chapter.

(b) The items and information furnished by the manufacturer to a design review agency or third party inspector as set forth in subsection (a) of this section shall not be copied or distributed to any other person except with the manufacturer's written permission.

§70.77. Responsibilities of the Registrants–Decals and Insignia.

(a) Decals are used for module certification, and insignia are used for modular component certification. The department will issue decals and insignia to the manufacturer on application and payment of the fee following certification of the manufacturing facility in accordance with §70.61 of this title (relating to Plant Certifications). Each module or modular component of industrialized housing or buildings shall have the decal or insignia affixed thereto before leaving the manufacturing facility. The decal or insignia shall be placed in a visible location as set forth in the approved design package and in the on-site construction documentation and shall be permanently attached so that it cannot be removed without destruction.

(b) Each decal or insignia shall be assigned to a specific module or modular component, and the manufacturer shall keep records as necessary to show, by decal or insignia number, the module or modular component (by identification number) to which the decal or insignia was assigned. The manufacturer shall keep complete records of all decals and insignia received, decals and insignia used, and those which are on-hand. These records shall be made available to the department or in-plant inspector on request. Assigned decals or insignia are not transferable and are void when not affixed as assigned. All decals or insignia which are voided must be returned to, or shall be confiscated by, the department.

(c) By affixing the decal or insignia, the manufacturer certifies that the module or modular component is constructed and inspected in accordance with the approved design package, the mandatory state codes, and §70.62 of this title (relating to In-Plant Inspections).

(d) The control of the decals and insignia shall remain with the department. Should inspection reveal that the manufacturer is not constructing structures or any portion thereof in accordance with the approved design package, the manufacturer will be notified of the specific deviations. The deviations shall be corrected at a point in the construction process before the deviation is covered or hidden by additional construction. Otherwise, the department (or third party inspector) shall confiscate any decals or insignia previously issued and presently on-hand at the manufacturing facility. In addition, new decals or insignia will not be issued until the manufacturer has shown proof of compliance.

§70.100. Mandatory State Codes. All industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes and their appendices:

(1) National Fire Protection Association–National Electrical Code, 1987 Edition; and

(2) either:

(A) International Conference of Building Officials–Uniform Building Code, 1988 Edition; Uniform Mechanical Code, 1988 Edition; and Uniform Plumbing Code, 1988 Edition; or

(B) Southern Building Code Congress International, Inc.–Standard Building Code, 1988 Edition; Standard Plumbing Code, 1988 Edition; Standard Mechanical Code, 1988 Edition; and Standard Gas Code, 1988 Edition.

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 March 1, 1990.

TRD-9003060 Larry Kosta
Executive Director
Texas Department of Licensing and Regulation

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

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Subchapter B. Responsibility and Authority of Local Building Officials, Council, and Department

• 16 TAC §§70.10-70.13

The Texas Department of Licensing and Regulation adopts the repeal of §§70.10-70.13, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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.

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Subchapter C. Standards and Codes

• 16 TAC §§70.20-70.22, 70.25-70.27

The Texas Department of Licensing and Regulation adopts the repeal of §§70.20-70.22, and §§70.25-70.27, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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.

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Subchapter D. Administration and Enforcement

• 16 TAC §§70.30-70.45

The Texas Department of Licensing and Regulation adopts the repeal of §§70.30-70.45, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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.

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Subchapter E. Fees and Reports

• 16 TAC §§70.50-70.52

The Texas Department of Licensing and Regulation adopts the repeal of §§70.50-70.52, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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.

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TRD-9003055 Larry Kosta
Executive Director
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Subchapter F. General and Miscellaneous

• 16 TAC §§70.101-70.105

The Texas Department of Licensing and Regulation adopts the repeal of §§70.101-70.105, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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.

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TRD-9003061 Larry Kosta
Executive Director
Texas Department of Licensing and Regulation

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

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Subchapter G. Sanctions and Penalties

• 16 TAC §70.125, §70.126

The Texas Department of Licensing and Regulation adopts the repeal of §70. 125, and §70.126, without changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 176).

The agency determined a need for a standard numbering system; therefore, the repeals are being adopted to allow for the adoption of edited, renumbered, and reorganized sections.

Adoption of the repeals will allow for the adoption of edited, renumbered, and reorganized sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221f-1, and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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.

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TRD-9003062 Larry Kosta
Executive Director
Texas Department of Licensing and Regulation

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Proposal publication date: January 12, 1990

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

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Chapter 75. Air Conditioning and Refrigeration Contractor License Law

• 16 TAC §75.20, §75.60

The Texas Department of Licensing and Regulation adopts amendments to §75. 20 and §75.60, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 808).

The amended sections are adopted in order to incorporate recommendations by the Air Conditioning and Refrigeration Contractor Advisory Board.

The amended sections will function to add a personal reference requirement; revise the requirement and further explain requesting an exam analysis; add a temporary license status and requirements thereto; and add a provision for reciprocal agreement.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Texas Civil Statutes, Article 8861, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the 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 March 20, 1990.

TRD-9002995 Larry E. Kosta
Executive Director
Texas Department of Licensing and Regulation

Effective date: April 11, 1990

Proposal publication date: February 16, 1990

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. Texas Water Commission

Chapter 317. Design Criteria for Sewerage Systems

The Texas Water Commission (TWC) adopts the repeal of §§317.1-317.13 and new §§317.1-317.14. New §§317.1-317.8, 317.10, 317.11, and 317.13 are adopted with changes to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 5027). The repeals and new §§317.9, 317.12 and 317.14 are adopted without changes and will not be republished.

New criteria were required to address changes in technology and tighter effluent quality requirements.

TWC received numerous comments from various parties. Some comments were general, but the majority were specific in nature and simply required clarification which has been provided in the changed sections.

The Light Company suggested that the design criteria not apply to units of a capacity less than 100,000 gallons per day due to an assumption of reduced risk to public health and the environment. TWC disagrees and believes that all wastewater discharges can have localized impacts.

Langford Engineering, Incorporated questioned how the word "recommended" would be interpreted at the time of project review. TWC has in the past used the word "shall" for certain requirements. A variance was required if a "shall" was not adhered to. Where appropriate, TWC has replaced the word "recommended" with "shall" to indicate when compliance is specifically required. This commentor also raised the issue of TWC liability when reviewing supporting design calculations. As stated in §317.1(a)(2)(A), TWC approval does not relieve the design engineer of any liabilities or responsibilities.

Century Engineering, Incorporated suggested that pipe velocities in gravity sewers be calculated using a Manning's "n" value representative of the pipe material in lieu of the standard value of 0.013. TWC agrees that other "n" may be estimated from laboratory tests using clean water on clean pipes; however, TWC feels that the standardized "n" value accommodates additional friction causing agents commonly found in installations such as rough, opened or offset joints, poor alignment and grade, deposits in sewers, coatings of grease or slime, etc. This commentor also suggested that "C" values appropriate to the pipe material selected be utilized in designing pumping stations. TWC agrees that other "C" values have been determined in laboratory tests; however, the standardized "C" values accommodate true installation practices and operating conditions. One final issue raised by this commentor was the use of pressure rated sewer pipe in the proximity of a water line. TWC understands that diameters are different in pressure and non-pressure rated pipes and that a boot is often required to mate these pipes. The use of an entirely leak proof system is one choice a design engineer may make if numerous water crossings will be made. TWC has coordinated these pipe crossing specifications with the Texas Department of Health and feels they are adequate to protect potable water supplies and yet still keep sewers within leakage limitations.

Fort Worth Water Department suggested that curved sewers be allowed in new developments. TWC feels that curved sewers should be used as a last resort and will handle a proposal for the use of curved sewers as a variance request.

Texas Water Development Board suggested that the crown of a force main pipe entering a manhole should be level with the invert of the gravity pipe leaving the manhole. TWC does not agree.

Texas Water Development Board suggested that §317.3 concerning lift stations address the design of vacuum sewers. Vacuum sewers are not in common use in the state and will be handled on a case by case basis.

Fort Worth Water Department suggested that §317.3(b)(2)(B) be modified to include a check valve on sump pump discharge piping. TWC agrees and has modified the rule to include one. The commentor also suggested that §317.3(b)(3) allow dry well pump controls. TWC agrees and has modified the section. This commentor suggested that §317.3(b)(4)(B) allow a longer cycle time for larger pumps. TWC agrees and the rules allow this.

Process Engineered Equipment Company suggested that the wording in §317.3(b)(6)(B) regarding explosion and spark-proof construction be revised. TWC agrees and has modified the section to make this type construction a "should" where mechanical ventilation is not provided. The revised wording was moved to §317. 3(b)(6)(A). This commentor also suggested reducing the minimum requirements regarding lift station alarms in §317.3(e)(5). TWC disagrees.

Fort Worth Water Development suggested that ladders with non-slip rungs be allowable for use in lift station entry and the criteria as written permits ladders for small lift stations. This commentor also suggested that §317.3(d) (2) address surge effects. TWC has added language to that effect. The commentor also suggested that §317.3(d)(4) be changed to reduce the maximum allowable discharge velocity to six feet per second. TWC disagrees. This commentor suggested that the 120-minute default power outage stated in §317.3(e)(1) be reconcile with the provision to restore the lift station to service within four hours as stated in §317.3(e)(3). TWC disagrees since the provision for restoring a lift station to service in four hours applies to all lift stations irregardless of the amount of system storage provided.

Process Engineered Equipment Company suggested that §317.4(a)(2) be revised to use dry weather flow ratios. TWC disagrees and notes that plant design flows must reflect permit conditions.

Fort Worth Water Department suggested that §317.4(a)(3) be modified to require that bypass of a treatment unit require prior state approval. TWC feels that operators of treatment facilities need sufficient flexibility to operate and maintain treatment units so long as effluent quality does not suffer. The commentor also suggested that only a final engineering report be required and that a preliminary engineering report be optional. TWC agrees and feels the rules as written allow this. This commentor suggested that stairways and handrails in process areas be OSHA standard or better. TWC agrees and has modified §317.7(b) to require this. This commentor suggested that additional information regarding performance bonds be placed in the criteria. TWC feels that performance bonds will be rare and will be unique to each situation and that specific rules would not be very useful.

Jones & Attwood, Incorporated, and Jones & Carter, Incorporated, made comments regarding backup manually cleaned bar screens where mechanically cleaned screens are used. TWC feels that a backup screen is necessary in this situation and has modified §317.4(b)(1) to require that provisions be made to divert flow from the mechanical screen to the manual screen.

Jones & Carter, Incorporated suggested that §317.4(b)(1) be modified to say the flow velocity through a bar screen opening "should" (instead of "shall") be less than three feet per second. TWC agrees.

Fort Worth Water Department suggested that the requirement for a minimum of two fine screens preceded by a bar screen in §317.4(b)(3) be changed to require only one fine screen. TWC disagrees. Any circumstances which might affect the requirement for two fine screens can be evaluated on a case by case basis. This commentor also suggested that additional guidance concerning screenings and grit disposal be provided. TWC feels that current rules adequately cover this topic and that additional regulation is unnecessary.

Fort Worth Water Department suggested that §317.4(c) allow the calculation of plant effluent flow rate from other process metering. TWC disagrees. This commentor also suggested §317.4(d)(3) allow a weir loading rate in excess of 30,000 gallons per day. TWC will consider higher loading rates as a variance and will evaluate them on a case-by-case basis. This commentor requested a definition of QDW, QD, and QP. These are defined earlier in §317.4. This commentor requested that a specific flowrate be defined for use in calculating the 10% variance described in §317.4(e)(5)(B). TWC feels this is unnecessary since any additional variance as a result of velocity changes would be negligible.

General comments regarding hopper bottom clarifiers were received from Process Engineered Equipment Company TWC feels that §317.4(d)(7) adequately addresses design of these units at this point in time.

Fort Worth Water Department requested a definition of plug flow be placed in §317.4(g)(1)(a). TWC has provided this. This commentor also suggested that §317.4(g)(1) allow a space loading of 45 lbs BOD5 per day per 1000 cubic feet for single stage nitrification. TWC experience indicates that an organic loading of near 35 lbs/1000 cu ft is the maximum allowable under all operating conditions.

Fort Worth Water Department indicated that §317.4(g) should read "lb BOD5/day/1000 cu ft" instead of "lb BOD5 day/1000 cu ft". TWC agrees. This commentor also indicated that the table in §317.4(g)(4)(A) is incorrect and that the values under "Minimum Air Required" should be changed. TWC agrees. This commentor suggested §317.4(g)(2) allow a six inch freeboard at peak flow. TWC disagrees. The commentor also suggested that §317.4(g)(3) be modified to require return activated sludge be measured after the return activated sludge pump station. For a single clarifier treatment facility, this would be acceptable and would conform with the rule. Otherwise, TWC disagrees.

Process Engineered Equipment Company questioned the return activated sludge rates stated in §317.4(g)(3) with respect to specific modes of activated sludge operation. It is important to note that when comparing these return rates with the overflow rates stated in §317.4(d)(5), that the overflow rates in the table are based upon a 10 foot sidewater depth and the specified minimum detention time.

Fort Worth Water Department requested clarification with respect to the dissolved oxygen (DO) requirement stated in §317.4(g)(4)(A). TWC has included language to indicate that the minimum DO requirement applies throughout the basin. The commentor suggested that §317.4(g)(4)(B)(ii) include a table referenced in the rule. TWC disagrees. The commentor felt that §317.4(g)(4)(b) (iii) was extremely conservative with respect to alpha and that the maximum allowable transfer efficiency be raised to 18%. TWC notes that the rule states that ... transfer efficiencies may be estimated ..., which still allows the design engineer the choice of selecting other values of alpha which may be more appropriate. TWC feels that transfer efficiencies greater than 12% are difficult to maintain and will evaluate any such proposed systems on a case-by-case basis. The commentor suggested a full range of air control out of diffuser headers be provided in §317.4(g)(4)(B)(iv). TWC agrees and proposed rules allow this.

One commentor suggested deletion of the air velocities stated in §317.4(g) (4)(B)(iv). TWC notes that these velocities are only presented as being typical and are not requirements.

Fort Worth Water Department suggested that §317.4(g)(5) require two mechanical aerators per treatment unit. TWC feels that the proposed wording provides for sufficient aerators at this point in time. The commentor suggested that §317.4(i)(1) be based on water horsepower, not line horsepower. TWC disagrees and computes horsepower requirements based upon nameplate ratings.

A commentor noted that the efficiency formula stated in §317.4(i)(3) should be revised and TWC agrees. This commentor also noted that §317.4(1)(2)(H) should be revised to read "Backwash for single media filters should be provided by a surface air scour or combination ..." TWC agrees.

A commentor suggested allowing partial bypassing of a filter if on-line controls were provided to prevent exceedance of discharge limits. This comment relates to §317.4(1). TWC agrees that use of a filter (or filters) to meet a specific discharge limitation can be an operational decision based upon a specific facility's characteristics. The section has been modified.

Dallas Water Utilities suggested that the requirement set forth in §317.5(a) (5) should be modified to allow for non-stabilized sludges from biological treatment processes. TWC disagrees and feels that any proposal to dispose of unstabilized sludges should require a specific variance. Variances have been anticipated in §317.14 titled Appendix F - Sludge Disposal. Jones & Attwood, Incorporated also suggested that §317.5(c)(2) include additional information regarding what would be considered adequate mixing of an anaerobic digester. TWC feels that there is sufficient information in the literature to guide designers and that additional regulation at this time is not warranted.

Fort Worth Water Department suggested that §317.6(b)(1)(e) include a 75-foot separation distance from the storage facility to the nearest personnel access door and conformance to NFPA codes. TWC agrees that these are good suggestions but does not feel they warrant a change of the proposed rules.

Fort Worth Water Department suggested that §317.6(b)(1)(F) allow stand-by power from a separate feeder. The rules as written allow that. The commentor also suggested that §317.6(b)(3)(D) allow alternate means of sludge removal be allowed. TWC agrees and rules will allow that.

Ultraviolet Purification Systems, Incorporated, suggested that §317.6(c)(2) (A) include a requirement of 65% transmittance at 254 nanometers. TWC feels this is unnecessary based upon the treatment level restrictions already imposed. The commentor also proposed the addition of some definitions to address closed channel reactors in §317.6(c)(2)(B). TWC feels the proposals would only be informational at best and probably not of any use in a wastewater application. The commentor also suggested the use of a biological assay for determination of UV dosage in §317.6(c)(2)(C). TWC feels that calculation of an inactivation rate based upon conservative parameters will be sufficient. The commentor also suggested that this same subsection limit flowrate through the reactor. TWC disagrees and will continue to recommend the EPA methodology. The commentor also suggested that §317.6(c)(2)(C) require a minimum contact time. TWC disagrees; contact time is a function of lamp intensity and will be determined as a part of the design. This commentor suggested that §317.6(c)(2)(D) include a requirement that the system be capable of disinfection with the largest bank out of service. TWC feels that alarms and an ample supply of replacement parts is adequate backup. This commentor suggested that this same subsection require the ability to change lamps without removing from the channel or disassembling the module and that all electrical connections be above the water line. TWC disagrees.

Ultraviolet Purification Systems, Incorporated, suggested that §317.6(c)(2) (E) include a lamp failure alarm for each lamp. TWC disagrees and feels that the number of failure alarms should be related to the total number of lamps. The commentor also suggested that this subsection require dual intensity meters for each bank and that the meters be able to trigger alarms. TWC does not feel that these are necessary. This commentor suggested that §317.6(c)(2)(F) delete the reference to mechanical wipers. TWC disagrees and notes that this is only mentioned as a possible cleaning method. The commentor also suggested deletion of a portion of this subsection relating to the amount of cleaning solution mix to be provided. TWC disagrees and notes that the rule applies the 125% volume requirement to only the portion to be cleaned. This commentor suggested §317. 6(c)(2)(H) be modified with respect to module replacement requirements. TWC agrees and has revised the rule to require a minimum of one spare module.

Ultraviolet Purification Systems, Incorporated, suggested §317.6(c)(2)(E) be modified to delete the requirement for a separate power meter. TWC agrees.

Fort Worth Water Department suggested that §317.6(c)(3) not require details on the impact on the receiving stream for other types of disinfection. TWC agrees.

Fort Worth Water Department suggested that §317.7(d) require color coding of

underground piping and that all PVC pipe be provided with tracer tape. TWC notes that the rules state what pipes must be color coded and will amend §317. 7(g) to require that all pipe not containing metal should be installed with tracer tape. The commentor suggested that §317.7(e) use the term "intruder resistant" when referring to fencing. TWC feels that the current requirements define "intruder resistant" and that other designs can be dealt with on a case-by-case basis. The commentor also suggested that this subsection delete the requirement for hazard signs. TWC disagrees. The commentor suggested that §317. 7(h) not require personal gas detectors but should require an approved personnel retrieval system. TWC feels that a personal gas detector can provide life saving information prior to anyone entering a hazardous environment. TWC agrees that an approved personnel retrieval system is desirable and will revise the rule. This commentor suggested that §317.7(1) should not make safety training a requirement, just a suggestion. TWC disagrees. This commentor also suggested the addition of eyewash showers at certain places and protection of electrical duct banks. TWC is currently evaluating these and may propose them as rule changes at some point in the future.

Fort Worth Water Department suggested that §317.8(a)(2) require a separate air system be provided for fume hoods and instrument air. TWC disagrees. The commentor also noted that handicap access did not pertain to operational areas and TWC agrees.

Fort Worth Water Department suggested that a design report be required under §317.10 pertaining to the overland flow process. A final engineering report is required under §317.1(c). The commentor also noted that the treatment area be protected from flooding. TWC agrees and has modified §317.10(4)(C).

Fort Worth Water Department suggested that §317.11(a)(3) require positive ventilation and heaters might be the basis for utilizing hyacinths in northern parts of the state. The commentor also suggested that §317.11 include information on harvesting and disposal. TWC agrees and has included this in §317.11(c)(1) and (2).

Fort Worth Water Department noted that the reference in §317.13(b) should be (a)(4) not (b)(4), TWC agrees and has made the change.

• 31 TAC §§317.1-317.13

The repeals are adopted under the authority of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approval all general policy of the commission.

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 March 26, 1990.

TRD-9003153 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: April 16, 1990

Proposal publication date: September 26, 1989

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

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• 31 TAC §§317.1-317.14

The new sections are adopted under the authority of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approval of all general policy of the commission.

§317.1. General Provisions.

(a) Introduction. These design criteria are minimum guidelines to be used for comprehensive consideration of sewage collection, treatment, and disposal systems and establish the minimum design criteria compatible with existing state statutes pertaining to effluent quality. These criteria will promote the design of facilities in accordance with good public health and water quality engineering practices. These criteria include the minimum requirements for a preliminary engineering report which supplies the rationale for the proposed project, and a final engineering report detailing the fully developed project along with plans and specifications.

(1) Authority for requirement. The Texas Water Code prescribes the duties of the Texas Water Commission relating to the control of pollution, including the review and approval of plans and specifications for sewage disposal systems. This authority is found in the Texas Water Code, §§5.013, 12.081-12.083, 15. 104, 15.114, 26.034, 50.107, 51.333, 51.421, 51.422, 54.024, 54.516, 54.517, and 55.503.

(2) Conditions of approval.

(A) Examination of plans and specifications. The commission furnishes consultation services as a reviewing body only, and its registered professional engineers do not serve in the capacity of design engineers or furnish detailed cost estimates. The commission does not ordinarily examine features of the design, such as strength of concrete or adequacy of reinforcing. Plans and specifications will be examined primarily for the aspects of design covered by these design criteria and the operation, maintenance, and safety aspects of the proposed project. Approval given by the commission is not intended to relieve the sewerage system owner or the design engineer of any liabilities or responsibilities with respect to the design, construction, or operation of the project.

(B) Standard approval. Plans and specifications found to comply with all applicable parts of these criteria and to conform to commonly accepted sanitary engineering design practices shall be approved for construction by the commission. Where appropriate, such approvals may contain detailed stipulations or restrictions. Depending on the sewerage facilities proposed, the approval may be issued for a specific set of flow situations, wastewater characteristics, and/or required effluent quality.

(C) Conditional approval. Engineering proposals for processes, equipment, or construction materials not covered in these criteria must be fully described in submitted planning materials and the reasons for their selection clearly outlined. Processes considered by the commission to be new or innovative must also be supported by results of pilot or demonstration studies. Where similarly designed full scale processes exist, and are known to have operated for a reasonable period of time under conditions similar to those suggested for the proposed design, performance data from these existing full scale facilities is preferable to and where appropriate may be substituted for results of pilot or small scale demonstration studies. Any warranties or performance bond agreements offered by the process, equipment, or material manufacturers shall be fully described. When approval to construct is issued for plans and specifications describing processes, equipment, or construction materials determined to fall under this approval category, all parties concerned should understand that the basis upon which the commission's approval was granted centered primarily on the engineering evaluation by the commission's staff of a number of factors including the supporting information provided in the submitting engineer's design report. Where appropriate, conditional approvals may contain a number of stipulations such as requirements for testing, recordkeeping, and reporting. As is true in all cases, regardless of the type of approval, constructed facilities when in operation are required to produce the quality of effluent specified in the appropriate discharge permit(s).

(D) Time to be allowed. Detailed plans and specifications should be submitted at least 30 days prior to the time that approval, comments, or recommendations are desired by the owner. If the review is to be made with the design engineer and/or his client present in view of some unusual features in the proposed design or if early action on the planning material is desired, appointments for such a review must be made in advance of the planned visit. Advance copies of the planning material shall be made available to the commission at least one week prior to the proposed visit. This should not be construed to mean that final action will be taken

within the times mentioned; however, every effort will be made to complete the review as quickly as possible.

(E) Changes or alterations. When changes or alterations are planned for existing systems, written notification to the commission shall be made and shall include sufficient information to describe the significance of such modifications. If a waiver of review is requested, it shall be submitted by an engineer registered in Texas. The commission will determine whether engineering plans and specifications will be required following this initial notification of the extent of the planned modifications.

(3) Federal guidelines. Any project constructed with federal financial assistance may be required to conform to federal design criteria or guidelines if such criteria or guidelines are more stringent than those contained herein.

(b) Preliminary engineering report.

(1) Definition. The preliminary engineering report shall form the conceptual basis for the collection, treatment, and/or disposal system proposed. This document shall bear the signed and dated seal of the registered professional engineer responsible for the design.

(A) For projects receiving United States Environmental Protection Agency construction grants assistance, a facility plan may serve as the preliminary engineering report.

(B) For all other projects, a preliminary engineering report proposing processes, methods, or procedures may be submitted as early in the planning stage as is practical. Submission of a preliminary engineering report at this point is only necessary to resolve any potential disagreements between the design engineer and the commission regarding the essential planning information, design data, population projections, and other requirements of the commission. Agreement is desirable to eliminate delays or inconveniences and to avoid the possibility of having to revise the final plans and specifications.

(C) The preliminary engineering report may be merged directly with the final engineering report to produce a single engineering report at the discretion of the sewerage system owner.

(2) General requirements. The following is required for each project as applicable.

(A) A brief description of the project with maps showing the area to be served, general location of proposed improvements, water and wastewater treatment plant sites, existing and proposed streets, parks, drainage ditches, creeks, streams, and water mains shall be provided. The drainage area should be defined clearly, either by contour map or otherwise. Where a contour map is not available to the community, one should be obtained and the contours should be shown at intervals of not more than 10 feet. The maps and plans shall be reproduced on paper not larger than 24 inches by 36 inches in size; however, where variations are necessary, all sheets shall be uniform in size.

(B) The domestic population of the area to be served (present and projected) and design population of the project shall be included.

(C) The names of industries contributing any significant wastes, types of industry (standard industry codes), volume of wastes, characteristics and strength of wastes, population equivalent, and other pertinent information shall be included. It should be emphasized that if significant amounts of wastes other than normal domestic sewage are to be treated at the wastewater treatment plant, sufficient data on such wastes must be presented to allow an evaluation of the effect on the treatment process. This would include, but not be limited to, heavy metals and toxic materials such as polychlorinated biphenyls, organic chemicals, and pesticides.

(D) The preliminary engineering report shall include the technical information described in §317.10 of this title (relating to Appendix B-Land Application of Sewage Effluent) for all overland flow projects.

(3) Collection system. The following information shall be provided in the preliminary engineering report if applicable to the project:

(A) present area served and future areas to be served;

(B) terrain data in sufficient detail to establish general topographical features of present and future areas to be served;

(C) lift stations existing and/or proposed;

(D) effect of proposed system expansion on existing system capacity; and

(E) amount of infiltration/inflow existing and anticipated, and how it is to be addressed in the collection system design.

(4) Treatment plant. The following information is required in a preliminary engineering report;

(A) quantity and quality of existing sewage influent and changes in the characteristics anticipated in the future. If adequate records are not available, analyses shall be made for the existing conditions and such information included in the report;

(B) design and peak flow rates being considered and the design period. Design flow is defined as the wet weather maximum 30-day average flow. Therefore, when determining design flow rates, consideration must be given to flows during periods of wet weather in order to assure consistent compliance with discharge permit volume and quality limitations. Peak flow is defined as the highest two hour flow expected to be encountered under any operational conditions, including times of high rainfall (generally the two-year, 24-hour storm is assumed) and prolonged periods of wet weather. For new systems, the peak flow to average annual flow ratio is normally in the range of three-five to one, although other peaking factors may be warranted;

(C) type of treatment plant proposed and the effluent quality expected. The information should include basis of design, flow, organic loading, infiltration allowance, and efficiency determinations sufficient to a given level of treatment;

(D) type of units proposed and their capacities, considering the criteria contained herein. The information should include detention times, surface loadings, weir loadings, flow diagram, and other pertinent information regarding the design of the plant, including sludge processing units required for the selected ultimate sludge disposal;

(E) treatment plant site information and the siting analysis. The location of the plant, the area included in the plant site, dedicated buffer zone, and a description of the surrounding area including a map or a sketch of the area. Particular reference should be made as to the plant's proximity to present and future housing developments, industrial sites, prevailing winds, highways and/or public thoroughfares, water plants, water supply wells, parks, schools, recreational areas, and shopping centers. If the effluent is to be discharged to the waters of the state, the immediate receiving stream, canal, major water course, etc., shall be designated. The siting analysis shall include:

(i) flood hazard analysis. Provide the 100-year flood plain elevation. Proposed treatment units which are to be located within the 100-year flood plain will not be approved for construction unless protective measures satisfactory to the commission (such as levees or elevation of the treatment units) are included in the project design;

(ii) buffer zone analysis. Demonstrate that the location of each proposed treatment unit is consistent with the buffer zone criteria specified in Chapter 309 of this title (relating to Treatment Plant Siting).

(5) Sludge management. The preliminary engineering report shall include a discussion of the method of sludge disposal to be utilized. The report shall assess the following factors:

(A) estimated quantity of sludge that must be handled which includes future sludge loads based on flow projections;

(B) quality and sludge treatment requirements for ultimate disposal;

(C) sludge storage requirements for each alternative considering normal operating requirements and contingencies;

(D) transportation of sludge;

(E) land use and land availability; and

(F) reliability of the various alternatives, contingencies, and mitigation plans to ensure reliable capacity and operational flexibility.

(6) Control of bypassing. Information and data shall be submitted to describe features (auxiliary power, standby and duplicate units, holding tanks, storm water clarifiers, etc.) and operational arrangements (flexibility of piping and valves to control flow through the plant, reliability of power sources, etc.) to prevent unauthorized discharges of untreated or partially treated wastewater. An outline of control measures to prevent unauthorized discharges of untreated or partially treated wastewater during construction (see subsection (e)(5) of this section) is to be included.

(c) Final engineering design report. The final engineering design report shall be submitted with the final plans and technical specifications. The report shall include calculations and any other engineering information pertaining to the plant design as may be necessary in the review of the plans and specifications by the commission. This report shall bear the signed and dated seal of the registered professional engineer responsible for the design. Information should be included to describe any changes that have been made since a preliminary engineering report was submitted, along with additional information as follows.

(1) Collection system (if applicable):

(A) minimum and maximum grades proposed for each size and type of pipe;

(B) lift stations (also refer to §317.3 of this title (relating to Lift Stations)):

(i) the operating characteristics of the stations at minimum, maximum, and design flows (both present and future);

(ii) safety considerations, such as ventilation, entrances, working areas, and prevention of explosions; and

(iii) means of preventing overflow of raw sewage;

(C) capability of existing trunk and interceptor sewers and lift stations to handle the peak flow under anticipated conditions and capability of existing treatment facilities to receive and adequately treat the anticipated peak flows;

(D) type of pipe proposed and its anticipated performance under the conditions imposed by the particular wastewater quality and loading conditions;

(E) the manhole spacing proposed;

(F) areas not served by the present proposed project, and the projected means of providing service to these areas, including special provisions incorporated in the present plans for future expansion;

(G) amount of infiltration/inflow existing and anticipated, its hydraulic effect on the proposed and existing system, and an abatement plan if applicable, including a:

(i) description of infiltration allowances and test procedures in the specifications governing design of new sanitary sewer lines; and

(ii) description of control program to reduce infiltration/inflow occurring in the existing sewer system;

(H) soil conditions, such as quicksand, that will not support collection system development, and measures to be taken to overcome the anticipated difficulties.

(2) Treatment plant:

(A) the final decisions as to the method of treatment;

(B) types of units proposed and their capacities, considering the criteria contained herein including:

(i) detention times, surface loadings, weir loadings, and flow diagram; and

(ii) other pertinent information regarding the design of the plant, including hydraulic profiles for wastewater and sludge which includes a plot of the hydraulic gradient at peak flow conditions for all gravity lines;

(C) the anticipated operation mode of the plant, the degree of treatment expected and any special characteristics of the plant; and

(D) the safety features included such as stairways, railing, lighting, insulation mats and walkway mats.

(3) Sludge management system:

(A) the final decisions as to the method(s) of managing sludge, including final disposal;

(B) contingency alternatives; and

(C) the type and size of sludge treatment units to provide the quality of sludge for the selected sludge management method.

(d) Final plans and technical specifications.

(1) Construction drawings and technical specifications will not be considered for review unless they bear the signed and dated seal of the registered professional engineer responsible for the design on each sheet of the plans and on the title page of the technical specifications. These shall be the plans and specifications to be used by the contractor for bidding and construction.

(2) Plans and profiles for sanitary sewers, insofar as practical, shall be prepared using one of the following scales.

Horizontal	Vertical
1" = 20 feet	1" = 2 feet
1" = 40 feet	1" = 4 feet
1" = 50 feet	1" = 5 feet

(3) The size, grade, and type of pipe material shall be shown. Alternate materials may be identified in the bid document.

(4) The location and structural features of the sewers, including manholes to be installed, shall be shown on plans and profiles. The details of the appurtenances shall be provided.

(5) The plans and technical specifications for lift stations shall fully describe all pumps, valves, pumping control mechanisms, safety and ventilation equipment, access operator points, hatches, and hoisting equipment for installing and removing equipment.

(6) The plans and technical specifications for the wastewater treatment plant shall include construction details for all units of the plant as well as equipment and material specifications and installation procedures. The location and details of inlet and outlet structures, valving, and piping arrangements that allow alternate modes of operation during periods of stress such as mechanical failure, structural repair, or any other activity which requires the removal of one or more treatment elements from service, shall be included. The plans shall include a hydraulic profile of the treatment facilities at both design and peak flows. The plans shall also show provisions for future expansion of the plant, should such be contemplated. Details of complex piping should be clarified by the inclusion of an isometric flow diagram as a part of the plans.

(e) Other requirements.

(1) Completion. Upon completion of construction, the design engineer or other engineer appointed by the owner shall notify the commission of completion and attest to the fact that the completed work is substantially in accordance with the plans, technical specifications, and change orders approved by the commission. If substantial changes have been made to the original plans, record drawings documenting such changes shall be submitted to the commission.

(2) Inspection. During construction, the project may be visited by a representative of the commission during normal working hours to establish general compliance with the plans and technical specifications approved by the commission.

(3) Operation and maintenance manual. Prior to completion of construction of a new wastewater treatment plant or plant expansion, an operation and maintenance manual covering the recommended operating procedures and maintenance practices for the entire facility shall be furnished to the sewerage system owner by the design engineer. The design engineer shall submit a letter to the commission certifying that this action has been performed and shall furnish a copy of the operation and maintenance manual to the commission upon request.

(4) Sludge management implementation plan. The design engineer shall prepare an implementation plan for the selected sludge management method. The plan shall identify regulatory requirements of state and federal agencies. The plan shall also include requirements for selected contingency alternatives.

(5) Authorization to discharge. For treatment plant projects, the owner is required to secure proper authorization from the commission prior to initiation of construction. No discharge shall be authorized without a discharge permit. In no case shall bypassing of partially treated wastewater be authorized during construction without an order for such discharge from the commission. Also see §317.4(a)(3) of this title (relating to Wastewater Treatment Facilities).

(f) Variance. A variance from the design criteria herein may be granted by the commission if the variance would not result in an unreasonable risk to treatment plant performance, public health, or the waters in the state. Requests for variances must be submitted in writing by the design engineer and must, for each affected item, include a detailed engineering justification.

§317.2. Sewage Collection System.

(a) General requirements.

(1) Design. Sewer lines shall be designed considering the estimated population to be served in the future, plus adequate allowance for institutional and commercial flows. Consideration should also be given to the maximum anticipated future wastewater contribution of institutions. Strict attention shall be given to minimizing infiltration/inflow into the system.

(2) Pipe selection. In selecting pipe for sewers, consideration shall be given to the chemical characteristics of the water delivered by public and private water suppliers, the character of industrial wastes, the possibilities of septicity, the exclusion of infiltration, the external forces and internal pressures, abrasion, etc. With due consideration being given to the previously listed, any material suitably adapted to the local conditions may be used for sewers. The sewer pipe to be used shall be identified in the technical specifications with appropriate ASTM, ANSI, or AWWA specification numbers for both quality control (dimensions, tolerances, etc.) and installation (bedding, backfill, etc.). In the design of small-diameter sewers (15 inch and smaller), a minimum pipe stiffness of 46 pounds per square inch should be considered. In the design of large-diameter sanitary sewer systems, other minimum pipe stiffnesses (smaller or larger) may be considered appropriate depending upon the type of pipe selected, the proposed embedment requirements, and other specific design conditions.

(3) Jointing material. The materials used and methods to be applied in making joints shall be included in the specifications. Materials used for sewer joints shall have a satisfactory record of preventing infiltration and root entrance. Rubber gaskets, PVC compression joints, or other types of factory-made joints are required.

(4) Testing of installed pipe. An infiltration and/or exfiltration and/or low-pressure air test shall be specified. Copies of all test results shall be made available to the commission upon request. Tests shall conform to the following requirements.

(A) Infiltration/exfiltration tests. The total infiltration or exfiltration, as determined by water test, shall not exceed 200 gallons per inch diameter per mile of pipe per 24 hours at a minimum test head of two feet. If the quantity of infiltration or exfiltration exceeds the maximum quantity specified, remedial action shall be undertaken in order to reduce the infiltration or exfiltration to an amount within the limits specified.

(B) Low-pressure air tests. This test shall conform to the procedure described in ASTM C-828, ASTM C-924, or other appropriate procedures. For safety reasons, air testing of sections of pipe shall be limited to lines less than 36 inch average

inside diameter. Lines 36 inch average inside diameter and larger may be air tested at each joint. The maximum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge during a joint test, regardless of pipe size, shall be 20 seconds. For sections of pipe less than 36 inch average inside diameter, the maximum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge shall be computed by the following equation:

computed by the following equation:

T = 0.0850(D)(K)/(Q) where T = time for pressure to drop 1.0 pounds per square inch gauge in seconds

K = 0.00049DL, but not less than 1.0

D = average inside diameter in inches

L = length of line of same pipe size in feet

Q = rate of loss, assume 0.0015 ft3/min/sq ft internal surface

(5) Bedding.

(A) Trenching, bedding, and backfill. The width of the trench shall be minimized, but shall be ample to allow the pipe to be laid and jointed properly and to allow the backfill to be placed and compacted as needed. The trench sides shall be kept as nearly vertical as possible. When wider trenches are necessary, appropriate bedding class and pipe strength shall be used. Ledge rock, boulders, and large stones shall be removed to provide a minimum clearance of four inches below and on each side of all pipe(s). Bedding classes A, B, C, or D, as described in ASTM C 12 (ANSI A 106.2), Water Pollution Control Federation (WPCF) Manual of Practice (MOP) Number 9 or American Society of Civil Engineers (ASCE) MOP 37 shall be used for all rigid pipes, provided that the proper strength pipe is used with the specified bedding to support the anticipated load. Bedding classes I, II, or III, as described in ASTM D-2321 (ANSI K65.171), shall be used for all flexible and semi-rigid pipes, provided the proper strength pipe is used with the specified bedding to support the anticipated load. Backfill shall be of suitable material removed from excavation except where other material is specified. Debris, large clods or stones, organic matter, or other unstable materials shall not be used for backfill within two feet of the top of the pipe. Backfill shall be placed in such a manner as not to disturb the alignment of the pipe. Waterline crossings shall be governed by special backfill requirements specified in §317.13 of this title (relating to Appendix E-Separation Distances).

(B) Deflection test. Deflection tests shall be performed on all flexible and semi-rigid pipes. The tests shall be conducted after the final backfill has been in place at least 30 days. No pipe shall exceed a deflection of 5.0%. If the deflection test is to be run using a rigid ball or mandrel, such test device shall have a diameter equal to 95% of the inside diameter of the pipe. The tests shall be performed without mechanical pulling devices. The design engineer should recognize that this is a maximum deflection criterion for all pipes. A reduced percent deflection may be more appropriate for specific types and sizes of pipe.

(6) Protecting public water supply. Water lines and sanitary sewers shall be installed no closer to each other than nine feet. Where this cannot be achieved, the sanitary sewer shall be constructed in accordance with §317.13 of this title (relating to Appendix E-Separation Distances). No physical connection shall be made between a drinking water supply, public or private, and the sewer or any appurtenance. An air gap of a minimum of two inlet pipe diameters between the potable water inlet and the overflow level of the sewer appurtenances shall be provided.

(7) Excluding surface water. Proposals for the construction of combined sewers will not be approved. Roof, street, or other types of drains which will permit entrance of surface water into the sanitary sewer system will not be considered acceptable.

(8) Active geologic faults. For systems to be located in areas of known active geologic faults, the design engineer shall locate any faults within the area of the collection system and the system shall be laid out to minimize the number of sewers crossing faults. Where crossings are unavoidable, the engineering report shall specify design features to protect the integrity of the sewer. Consideration should be given to joints providing maximum deflection and to providing manholes on each side of the fault so that a portable pump may be used in the event of sewer failures. Service connections within 50 feet of an active fault should be avoided.

(b) Capacities.

(1) Sources. The peak flow of domestic sewage, peak flow of waste from industrial plants, and maximum infiltration rates shall be considered in determining the capacities of sanitary sewers.

(2) Existing systems. The design of extensions to sanitary sewage collection systems should be based on experience. If adequate records are not available, the design will be based on data from similar systems furnished by the design engineer, or in paragraph (3) of this subsection.

(3) New systems. New sewers shall be designed on the basis of an estimated daily sewage flow contribution as shown in the table in §317.4(a) of this title (relating to Wastewater Treatment Facilities). Laterals and minor sewers shall be designed such that when flowing full they will transport wastewater at a rate approximately four times the system design daily average flow. Main trunk, interceptor, and outfall sewers shall be designed to convey expected peak flow.

(c) Design details.

(1) Minimum size. No sewer other than house laterals and force mains shall be less than six inches in diameter.

(2) Hydraulic slopes. All sewers shall be designed and constructed with hydraulic slopes sufficient to give a velocity when flowing full of not less than two feet per second. The grades shown in the following table are based on Manning's formula with an assumed "n factor" of 0. 013 and constitute minimum acceptable slopes.

Size of Pipe In Inches I.D.	Fall in Feet Per 100 Feet of Sewer
6	0.50
8	0.33
10	0.25
12	0.20
15	0.15
18	0.11
21	0.09

24	0.08
27	0.06
30	0.055
33	0.05
36	0.045
39	0.04
>39	*

* For lines larger than 39 inches diameter, the slope may be determined by Manning's formula (as shown in this paragraph) to maintain a minimum velocity of two feet per second when flowing full.

$V = (1.49/n)(R^{h\ 0.67})(S^{0.5})$, where:

V = velocity (ft/sec)

n = Manning's roughness coefficient (0.013)

R^h = hydraulic radius (ft)

S = slope (ft/ft)

(3) High velocity protection. Where velocities greater than 10 feet per second are likely to be attained, special provision shall be made to protect against pipe displacement by erosion and/or shock.

(4) Alignment. Sewers shall be laid in straight alignment with uniform grade between manholes. Deviations from straight alignment and uniform grade shall be justified to the satisfaction of the commission.

(5) Manhole use. Manholes shall be placed at points of change in alignment, grade or size of sewer, and at the intersection of sewers and the end of all sewer lines that will be extended at a later date. Any proposal that deviates from this shall be discussed with and justified to the satisfaction of the commission. Cleanouts with plugs may be installed in lieu of manholes at the end of sewers which are not anticipated to be extended within one year of completion of construction.

(A) Type. Manholes shall be monolithic, cast-in-place concrete, fiberglass, precast concrete, or of equivalent construction. Use of brick manholes shall be justified to the satisfaction of the commission.

(B) Spacing. The typical maximum manhole spacing for sewers with straight alignment and uniform grades are in the following table. Reduced manhole spacing may be necessary and is dependent on an entity's ability to maintain its sewer lines. Manholes shall not be located where surface water can drain into them. Areas subject to frequent flooding will require special consideration.

Pipe Diameter (Inches)	Maximum Manhole Spacing(Feet)
6 - 15	500
16 - 30	800
36 - 48	1000
54 or larger	2000

(C) Infiltration control. Brick manholes shall not be used in areas where high water tables are encountered. Impervious material should be utilized for manhole construction in these areas in order to insure maximum exclusion of infiltration.

(D) Manhole diameter. Manholes shall be of sufficient inside diameters to allow personnel to work within them and to allow proper joining of the sewer pipes in the manhole wall. The inside diameter of the manholes shall be not less than four feet.

(E) Manhole inverts. Manholes shall have inverts to channel flow to the spring line of the pipes. Inverts shall be equal in depth to one-half the diameter of the pipes connected to that manhole. In manholes with pipes of different sizes, the tops of the pipes shall be placed at the same elevation and flow channels in the invert sloped on an even slope from pipe to pipe. Where sewer lines enter the manhole higher than 24 inches above the manhole invert, the invert shall be filleted to prevent solids deposition. A drop pipe should be provided for a sewer entering a manhole more than 24 inches above the invert. The top of the poured manhole invert outside of the flow channels is to be steeply sloped into the channels.

(F) Manhole covers. Solid manhole covers of nominal 24-inch diameter are to be used for all sewer manholes. Whenever they are within the 100-year floodplain, the manhole covers shall have gaskets and be bolted. Where gasketed manhole covers are required for more than three manholes in sequence, alternate means of venting shall be provided.

(G) Manhole access. Design of features for entering manholes shall be guided by the following criteria.

(i) It is suggested that entrance into manholes in excess of four feet deep be accomplished by means of a portable ladder. Other designs for ingress and egress will be given consideration and careful evaluation. Attention is directed to the safety hazards with the use of manhole steps under certain conditions.

(ii) Monolithically placed or precast concrete, premolded fiberglass, or other similar type manholes, which may not have non-corrosive manhole steps installed, may be entered by use of a portable ladder.

(iii) Where non-corrosive steps are used, the design and construction of such steps should be in accordance with applicable OSHA specifications as published by the United States Department of Labor.

(6) Inverted siphons. Inverted siphons should have not less than two barrels, a minimum pipe size of six inches, and shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding, and in general, sufficient head shall be provided and pipe sizes selected to assure velocities of at least three feet per second at design flows. The inlet and outlet details shall be arranged so that the normal flow is diverted to one barrel. Provisions shall be made such that either barrel may be taken out of service for cleaning.

(d) Pressure sewer systems. Use of pressure sewers may be considered when justified by unusual terrain or geological formations, low population density, difficult construction, or other circumstances where a pressure system would offer an advantage over a gravity system. A pressure sewer system is not necessarily a substitute for conventional gravity systems, but lends itself as an alternate to supplement gravity when conditions make a conventional collection system impractical.

(1) Management. A responsible management structure shall be established, to the satisfaction of the commission, to be in charge of the operation and maintenance of a pressure sewer system.

(A) Pumping units and grinder pumps shall be regarded as integral components of the system and not as a part of the home plumbing.

(B) A reliable community power source shall be provided.

(2) Design considerations. Design considerations are as follows:

(A) the number of units pumping at any one time;

(B) flow velocities in the range of two to five feet per second;

(C) the installation of air relief valves;

(D) positive pressure control valves;

(E) the provision of a means to flush all lines in the system;

(F) the installation of cleanouts; and

(G) development of procedures whereby portions of the pressure system may be rerouted with temporary lines in the event of leaks, construction, or repair.

(3) Pipe selection. The pipe which will be used in this type of sewer application shall have a minimum sustained working pressure rating of 150 pounds per square inch gauge. Joints appropriate for the pipe selected shall be specified. Pipe selection shall also conform to subsections (a)(1), (2), (3), and (5) of this section.

(4) Leakage testing. All pressure pipe installations shall be tested for leakage. Copies of all test results shall be made available to the commission upon request. Leakage shall be defined as the quantity of water that must be supplied into the pipe, or any valved section thereof, to maintain pressure within five pounds per square inch of the specified test pressure after the air in the pipeline has been expelled. The test pressure shall be either a minimum of 25 pounds per square inch gauge or 1.5 times the maximum force main design pressure, whichever is larger. The maximum allowable leakage shall be calculated using the formula as follows. If the quantity of leakage exceeds the maximum amount calculated, remedial action shall be taken to reduce the leakage to an amount within the allowable limit.

$$L = (S)(D)(P^{0.5})/133,200$$

where L = leakage in gal/hr

S = length of pipe in ft

D = inside diameter of pipe in inches

P = pressure in pounds per square inch

(5) Pumps. Pumping units and grinder pumps used in pressure sewer systems should be reliable, easily maintained, and should have compatible characteristics.

(A) Pumps and grinder pump units shall be provided with backflow prevention devices.

(B) Sufficient holding capacity shall be provided in the pumping compartment to allow for wastewater storage during power outages and equipment failures. Storage volume may be based on power supply outage records and replacement equipment availability.

(C) Pumping units should not be installed in the settling chamber of a septic tank if the septic tank is to be used for solids reduction.

(D) Alarms, warning lights, or other suitable indicators of unit malfunction shall be installed at each pumping station.

(E) Whenever any pumping station handles waste from two or more residential housing units or from any public establishment, dual grinder pump units shall be provided to assure continued service in the event of equipment malfunction.

§317.3. Lift Stations.

(a) Site selection. In the selection of a site for a lift station, consideration shall be given to accessibility and potential nuisance aspects. The station shall be protected from the 100-year flood and shall be accessible during a 25-year flood. All lift stations shall be intruder-resistant with a controlled access. Lift stations should be located as remotely as possible from populated areas.

(b) Design.

(1) Small lift stations. Lift stations designed for a discharge capacity of less than 100 gallons per minute will be reviewed on a case-by-case basis by the commission and shall be used only for institutional use or other locations where it is necessary to pump the sewage from a single building, school, or other measurable source establishment into the sanitary sewer lines. If the location of the discharge does not provide a positive head due to elevation, then a positive pressure control valve shall be provided. Ejectors may be used for this type of lift station. Whenever a lift station handles waste from two or more residential housing units, or from any public establishment, standby pumps shall be provided. In the case of ejectors or eductors, two air compressors shall be provided. Grinder pumps should be used for all small installations.

(2) Dry well sump pump. The following design considerations shall be addressed in providing dry well sump pumps.

(A) Two separate sump pumps should be provided for removal of leakage or water from the dry well floor.

(B) The discharge pipe level from the sump pumps shall be above the maximum liquid level of the wet well. A check valve should be installed on the discharge side of each sump pump.

(C) All floor and walkway surfaces shall have an adequate slope to a point of drainage with sufficient measures taken to maximize traction and safety.

(D) Motors to drive sump pumps shall be located above the height of the maximum liquid level in the wet well. As an alternate, sump pumps may be of the submersible type.

(3) Pump controls. All lift stations shall have automatically operated pump control mechanisms. Pump control mechanisms shall be located so that they

will not be affected by flow currents in the wet well. Provisions shall be made to prevent grease and other floating materials and rags in the wet well from interfering with the operation of the controls. When a float tube is located in the dry well, its height shall be such as to prevent overflow of the sewage into the dry well. Pump control mechanisms which depend on a bubbler in the wet well shall be equipped with a backup air supply system. All connections to level controls in the wet well shall be accessible at all times. The circuit breakers, indicator lights, pump control switches, and other electrical equipment should be located on a control panel at least three feet above ground surface elevation. If controls are located in a dry well, the dry well shall be protected from flooding.

(4) Wet wells.

(A) Wet wells and dry wells, including their superstructure, shall be separated by at least a watertight and gastight wall with separate lockable entrances provided to each. Equipment requiring regular or routine inspection and maintenance shall not be located in the wet well, unless the maintenance can be accomplished without entering the wet well.

(B) Based on design flow, wet well capacity should provide a pump cycle time of not less than six minutes for those lift stations using submersible pumps and not less than 10 minutes for other nonsubmersible pump lift stations.

(C) All influent gravity lines into a wet well shall be located where the invert is above the "off" setting liquid level of the pumps, and preferably should be located above the lead pump "on" setting.

(5) Stairways. Stairways with non-slip steps shall be provided in all underground dry wells. Removable ladders may be provided in small stations where it is impractical to install stairways.

(6) Ventilation. Ventilation shall be provided for lift stations, including both wet and dry wells.

(A) Passive ventilation such as gooseneck type or turbine ventilators designed to prevent possible entry of insects or birds shall be provided in all wet wells if mechanical ventilation is not provided. All mechanical and electrical equipment in wet wells should be explosion-proof and spark-proof construction if mechanical ventilation is not provided.

(B) Mechanical ventilation shall be provided for all dry wells below the ground surface. The ventilation equipment shall have a minimum capacity of six air changes per hour under continuous operations. At least a capacity of 30 air changes per hour shall be required where the operation is intermittent. All intermittently operated venting equipment shall be interconnected with the stations lighting system.

(7) Wet well slopes. The bottom of wet wells shall have a minimum slope of 10% to the pump intakes and shall have a smooth finish. There shall be no projections in the wet well which will allow deposition of solids under ordinary operating conditions. Antivortex baffling should be considered for the pump suctions in all large sewage pumping stations (greater than five mgd firm pumping capacity).

(8) Hoisting equipment. Hoisting equipment or access by hoisting equipment for the removal of pumps, motors, valves, etc., shall be incorporated in the station design.

(9) Dry wells and valve vault drains. Drains from dry wells or valve vaults to the wet well shall be equipped with suitable devices to prevent entry of potentially hazardous gases.

(c) Pumps.

(1) General. All raw sewage pumps shall be of a non-clog design, capable of passing 2 1/2 inch diameter spheres, and shall have no less than three-inch diameter suction and discharge openings. Inspection and cleanout plates, located both on the suction and discharge sides of each pumping unit, are suggested for all non-submersible pumps so as to facilitate locating and removing blockage-causing materials. Where such openings are not provided on the pumps, a hand hole in the first fitting connected to the suction of each pump shall be provided. All pumps shall be securely supported so as to prevent movement during operation. For submersible pumps, rail-type pump support systems incorporating manufacturer-approved mechanisms designed to allow the operator to remove and replace any single pump without first entering or dewatering the wet well should be provided.

(2) Lift station pumping capacity. The firm pumping capacity of all lift stations shall be such that the expected peak flow can be pumped to its desired destination. Firm pumping capacity is defined as total station maximum pumping capacity with the largest pumping unit out of service.

(3) Variable capacity pumps. Lift stations or transfer pumping facilities at a wastewater treatment plant or those discharging directly to the treatment plant where the plant's permitted daily average flow is equal to or greater than 100,000 gallons per day shall be provided with three or more pumps or with duplex automatically controlled variable capacity pumps or other automatic flow control devices. The pumps or other devices shall be adjusted for actual flow conditions and controlled to operate so as to minimize surges in the treatment units. No single pumping unit shall have a capacity greater than the design peak flow of the wastewater treatment plant unless flow splitting/equalization is provided.

(4) Pump head calculations. The engineering design report accompanying the plans shall include system curves, pump curves, and head calculations. Calculations and pump curves at both minimum (all pumps off) and maximum (last normal operating pump on) static heads and for a C value of both 100 and 140 must be provided for each pump and for the combination of pumps (modified pump curves). Where a suction lift is required, the report shall include a calculation of the available net positive suction head (NPSH) and a comparison of that value to the required NPSH for the pump as furnished by the pump manufacturer.

(5) Self-priming pumps. Only self-priming pumps or pumps with acceptable priming systems, as demonstrated by a reliable record of satisfactory operation, shall be used where the suction head is negative. All self-priming pumps shall include a means for venting the air back to the wet well when the pump is priming.

(6) Pump positioning. All raw sewage pumps, other than submersible pumps without "suction" piping and self-priming units capable of satisfactory operation under any negative suction heads anticipated for the lift station under consideration, shall be positioned such that the pumps always experience, during their normal on-off cycling, a positive static suction head.

(7) Grinder pumps. See §317.2(d) of this title (relating to Sewage Collection System).

(d) Piping.

(1) Pump suctions. Each pump shall have a separate suction pipe. Cavitation may be avoided by using eccentric reducers in lieu of typical reducers in order to prevent air pockets from forming in the suction line.

(2) Valves. Full closing valves shall be installed on the discharge piping of each pump and on the suction of all dry pit pumps. A check valve shall be installed on the discharge side of each pump, preceding the full closing valve. Check valves should be of a swing check type with external levers. Rubberball check valves may be used for grinder pump installations in lieu of the swing check type. Butterfly valves, tilting disc check valves, or other valves with a pivoted disc in the flow line are not allowed. The design shall consider surge effects and provide protection where necessary. Surge relief shall be contained in the system.

(3) Valve position indicators. Gate valves should be rising-stem valves. If

other than rising-stem gate valves and check valves with external levers are used, the valves shall include a position indicator to show their open and closed positions.

(4) Lift station piping. Flanged pipe and fitting or welded pipe shall be used for exposed piping inside of lift stations. A flexible or flanged connection shall be installed in the piping to each pump so that the pump may be removed easily for repairs. Provisions shall be made in the design to permit flexure where pipes pass through walls of the station. Piping should normally be sized so that the maximum suction velocity does not exceed five feet per second and the maximum discharge velocity does not exceed eight feet per second.

(5) Force main pipe selection. Force mains shall be a minimum of four inches in diameter, unless justified, as with the use of grinder pumps. In no case shall the velocity be less than two feet per second with only the smallest pump operating, unless special facilities are provided for cleaning the line at specified intervals or it can be shown that a flushing velocity of five feet per second or greater will occur one or more times per day. Pipe specified for force mains shall be of a type having an expected life at least as long as that of the lift station and shall be suitable for the material being pumped and the operating pressures to which it will be subjected. All pipe shall be identified in the technical specifications with appropriate ASTM, ANSI, or AWWA specifications numbers for both quality control (dimensions, tolerances, etc.) and installation (bedding, backfill, etc.). All pipe and fittings shall have a minimum working pressure rating of 150 pounds per square inch.

(6) Force main tests. Final plans and specifications shall describe and require pressure testing for all installed force mains. Minimum test pressure shall be 1. 5 times the maximum design pressure.

(7) Air release valves. Air release valves or combination air release/vacuum valves suitable for sewage service shall be provided at all peaks in elevation. The final engineering drawings must depict all proposed force mains in both plan and profile.

(e) Emergency provisions. Lift stations shall be designed such that there is not a substantial hazard of stream pollution from overflow or surcharge onto public or private property with sewage from the lift station. Options for a reliable power source may include.

(1) Power supply. The commission will determine the reliability of the existing commercial power service. Such determinations shall be based on power outage records obtained from the appropriate power company and presented to the commission. When requesting outage records for submittal to the commission, it is important to note that the records be in writing, bear the signature of an authorized utility employee, identify the location of the wastewater facilities being served, list the total number of outages that have occurred during the past 24 months, and indicate the duration of each recorded outage. The facility will be deemed reliable if the demonstrated wastewater retention capacity, in the station's wet well, spill retention facility, and incoming gravity sewer lines, is sufficient to insure that no discharge of untreated wastewater will occur for a length of time equal to the longest electrical outage recorded in the past 24 months. If records for the service area cannot be obtained, a 120 minute worst case outage duration will be assumed. Provisions for a minimum wastewater retention period of 20 minutes should be considered even in those cases where power company records indicate no actual outages of more than 20 minutes occurred during the past 24 months.

(2) Alternative power supply. If the existing power supply is found to be unreliable, an emergency power supply or detention facility shall be provided. Options include:

(A) electrical service from two separate commercial power companies, provided automatic switchover capabilities are in effect;

(B) electrical service from two independent feeder lines or substations of the same electric utility, provided automatic switchover capabilities are in effect;

(C) on-site automatic starting electrical generators;

(D) reliance on portable generators or pumps. Proposals for the utilization of portable units shall be accompanied by a detailed report showing conclusively the ability of such a system to function satisfactorily. Portable units will be approved only in those cases where the station is equipped with an auto-dialer, telemetry device, or other acceptable operator notification device, operators knowledgeable in acquisition and startup of the portable units are on 24-hour call, the station is accessible in all weather conditions, reasonable assurances exist as to the timely availability and accessibility of the proper portable equipment, and the station is equipped with properly designed and tested quick connection facilities. This option is usually acceptable only for smaller lift stations.

(3) Restoration of lift station. Provisions should be made to restore the lift station to service within four hours of outage.

(4) Spill containment structures. A spill containment structure should be considered together with in-system retention in determining a total wastewater retention time. Because separate spill retention facilities are not suitable for all locations, engineers should check with the commission prior to designing such structures. The design shall provide:

(A) a minimum storage volume of average design flow from the contributing area and the longest power outage during the most recent consecutive 24-month period or, if power records are not available, an assumed 24-hour outage;

(B) an impermeable liner (such as concrete or synthetic fabric (20 mil thickness)) and should have an energy dissipator at the point of overflow from the lift station to prevent scour;

(C) a fence with a controlled access; and

(D) a plan for routine cleaning. and inspection.

(5) Alarm system. An audiovisual alarm system (red flashing light and horn) shall be provided for all lift stations. These alarm systems should be telemetered to a facility where 24-hour attendance is available. The alarm system shall be activated in case of power outage, pump failure, or a specified high water level.

§317.4. Wastewater Treatment Facilities.

(a) General requirements. Whenever possible, existing data of flows and raw waste strength from the same plant or nearby plants with similar service areas should be used in design of treatment facilities. When using such data for design purposes, the variability of data should be considered and the design based on the highest flows and strengths encountered during normal operating periods, taking into consideration possible infiltration/inflow. In the absence of existing data, the following are generally acceptable parameters to which must be added appropriate allowances for inflow and infiltration into the collection system to obtain plant influent characteristics.

Source	Remarks	Daily Wastewater Flow - Gallons Per Person	Wastewater Strength mg/1 BOD_5
Municipality	Residential	100	200
Subdivision	Residential	100	200
Trailer Park Transient)	2 1/2 persons per trailer	50	300
Mobile Home Park	3 persons per trailer	75	300
School with Cafeteria	With Showers	20	300
	Without showers	15	300
Recreational Parks	Overnight user	30	200
	Day User	5	100
Office Building or Factory		20	300
Motel		50	300
Restaurant	Per Meal	5	1000
Hospital	Per Bed	200	300
Nursing Home	Per Bed	100	300

(1) Effluent quality. Wastewater treatment plants shall be designed to consistently meet the effluent concentration and loading requirements of the applicable waste disposal permit.

(2) Effluent quantity. The design flow of a treatment plant is defined as the wet weather, maximum 30-day average flow. The design basis shall include industrial wastewaters which will enter the sewerage system. The engineering report shall state the flow and strength of wastewaters from industries which individually contribute 5.0% or more of plant flow or loading and discuss the aspect of hazardous or toxic wastes. It is the intent of these design criteria that the permit conditions not be violated. The engineering report shall list the design influent flow and concentration of BOD5, TSS, or other parameters for the following:

(A) dry weather 30-day average (QDW);

(B) wet weather maximum 30-day average (QD); and

(C) two-hour peak flow (Qp)

(3) Piping. The piping within all plants shall be arranged so that when one unit is out of service for repairs, plant operation will continue and emergency treatment can be accomplished. Valves and piping shall be provided and sized to allow dewatering of any unit, in order that repairs of the unit can be completed in as short a period of time as possible. Portable pumping units may be used for dewatering small treatment plants (design flow of less than 100,000 gallons per day) or interim facilities. Removed wastes must be stored for retreatment or delivered to another treatment facility for processing. Consideration shall be given in design for means to clean piping, especially piping carrying raw wastewater, sludges, scum, and grit.

(4) Peak flow. For treatment unit design purposes, peak flow is defined as the highest two-hour average flow rate expected to be delivered to the treatment units under any operational condition, including periods of high rainfall (generally the two-year, 24-hour storm is assumed) and prolonged periods of wet weather. With pumped inflow, clarifiers shall have the capacity of all pumps operating at maximum wet well level unless a control system is provided that will limit the pumping rate to the firm capacity. This flow rate may also include skimmer flow, thickener overflow, filter backwash, etc. All treatment plants must be designed to hydraulically accommodate peak flows without adversely affecting the treatment processes. The engineer shall determine, by methods acceptable to the commission, the appropriate peak flow rate, including the possibility of utilizing standby pumps. The proposed two-hour peak flow rate, together with a discussion of rationale, calculations, and all supporting flow rate data shall be, unless presented in the preliminary engineering report, included in the final engineering design report. Special storm flow holding basins or flow equalization facilities can be specified to partially satisfy the requirements of this section where all treatment units within a plant are not sized for peak flow. See §317.9 of this title (relating to Appendix A) for referencing a two-year 24-hour rainfall event.

(5) Auxiliary power. The need for auxiliary power facilities shall be evaluated for each plant and discussed in the preliminary and final engineering reports. Auxiliary power facilities are required for all plants, unless dual power supply arrangements can be made or unless it can be demonstrated that the plant is located in an area where electric power reliability is such that power failure for a period to cause deterioration of effluent quality is unlikely. Acceptable alternatives to auxiliary power include the ability to store influent flow or partially treated wastewater during power outage. Auxiliary power may be required by the commission for plants discharging near drinking water reservoirs, shellfish waters, or areas used for contact recreation, and for plants discharging into waters that could be unacceptably damaged by untreated or partially treated effluent. For more information on power reliability determination and emergency power alternatives, refer to §317.3(e) of this title (relating to Emergency Provisions).

(6) Component reliability. Multiple units may be required based upon the uses of the receiving waters and the significance of the treatment units to the treatment processes.

(7) Stairways, walkways, and guard rails. Basins having vertical walls terminating four or more feet above or below ground level shall provide a stairway to the walkway. Guard rails on walkways shall have adequate clearance space for maintenance operations (see §317.7 of this title (relating to Safety)).

(8) Public drinking water supply connections. There shall be no water connection from any public drinking water supply system to a wastewater treatment plant facility unless made through an air gap or a backflow prevention device, in accordance with AWWA Standard C506 (latest revision) and AWWA Manual M14. All backflow prevention devices shall be tested annually with their test and maintenance report forms retained for a minimum of three years. All washdown hoses using potable water must be equipped with atmospheric vacuum breakers located above the overflow level of the washdown area.

(9) Ground movement protection. The structural design of treatment plants shall be sufficient to accommodate anticipated ground movement including any active geologic faults and allow for independent dewatering of all treatment units. Plants should not be located within 50 feet of geologic faults.

(10) Odor control facilities. The need for odor control facilities shall be evaluated for each plant. Factors to be considered are the dissolved oxygen level of the incoming sewage and the type of treatment process proposed.

(11) Innovative or nonconforming technology. Where it is proposed to use an innovative technology or such technology that does not conform with or is not addressed in this design criteria, the facility may be conditionally approved where the manufacturer or supplier provides the commission a copy of a two year performance bond insuring the performance of their facility. The performance bond must cover the cost of removal or abandonment of the facility, replacement with a previously agreed upon type of facility, and all associated engineering fees necessary for the removal and replacement. Two years after the facility startup, an engineering report must be submitted to the commission detailing the performance of the facility, unbiased calculations and data supporting the facility's performance, and statements from the design engineer and permittee demonstrating that the facility has satisfied its manufacturer's claims. The determination of when a two-year performance bond is required rests with the commission.

(b) Preliminary treatment units. Bar screens, screens, or shredders through which all wastewater will pass should be provided at all plants with the exception of plants in which septic tanks, Imhoff tanks, facultative, aerated, or partially mixed lagoons represent the initial treatment unit. In the event bar screens, screens, or shredders are located four or more feet below ground level, appropriate equipment shall be provided to lift the screenings to ground elevation. Where mechanically cleaned bar screens or shredders are utilized, a backup unit or manually cleaned bar screen shall be provided. A means of diverting flow to the backup screen shall be included in the design.

(1) Bar screens. Manually cleaned bar screens shall be constructed having a 30-degree to 60-degree slope to a horizontal platform which will provide for drainage of the screenings. Bar screen openings shall not be less than 3/4 inch for manually cleaned bar screens and 1/2 inch for mechanically cleaned bar screens. The

channel in which the screen is placed shall allow a velocity of two feet per second or more at design flow. Velocity through the screen opening should be less than three feet per second at design flow.

(2) Grit removal. Grit removal facilities should be considered for all wastewater treatment plants. Grit washing facilities shall be provided unless a burial area for the grit is provided within the plant grounds, or the grit is handled otherwise in such a manner as to prevent odors or fly breeding. Grit removal units shall have mechanical means of grit removal or other acceptable methods for grit removal. Plants which have a single grit collecting chamber shall have a bypass around the chamber. All grit collecting chambers shall be designed with the capability to be dewatered. The method of velocity control used to accomplish grit removal in gravity settling chambers shall be detailed in the final engineering report.

(3) Fine screens. Fine screens, if used, shall be preceded by a bar screen. Fine screens shall not be substituted for primary sedimentation or grit removal; however, they may be used in lieu of primary treatment if fully justified by the design engineer. A minimum of two fine screens shall be provided, each capable of independent operation at peak flow. A steam cleaner or high pressure water hose shall be provided for daily maintenance of fine screens.

(4) Screenings and grit disposal. All screenings and grit shall be disposed of in an approved manner. Suitable containers with lids shall be provided for holding screenings. Runoff control must be provided around the containers where applicable. Fine screen tailings are considered as infectious waste; therefore, containers must provide vector control if wastes are not disposed of daily at a Type 1 landfill.

(5) Preaeration. Because preaeration may be proposed when a particular problem is anticipated, evaluation of these units will be on a case-by-case basis. Diffuser equipment shall be arranged for greatest efficiency, with consideration given to maintenance and inspection.

(6) Flow equalization. Equalization should be considered to minimize random or cyclic peaking of organic or hydraulic loadings. Equalization units should be provided after screening and grit removal.

(A) Aeration. Aeration may be required for odor control. When required, air supply must be sufficient to maintain 1.0 mg/l of dissolved oxygen in the wastewater.

(B) Volume. A diurnal flow graph with supporting calculations used for sizing the equalization facility must be provided in the engineering report. Generally, an equalization facility requires a volume equivalent to 10% to 20% of the anticipated dry weather 30-day average flow. Tankage should be divided into separate compartments to allow for operational flexibility, repair, and cleaning.

(c) Flow measuring devices and sampling points. A means for measuring effluent flow shall be provided at all plants. Consideration should be given to providing a means to monitor influent flow. Where average influent and effluent flows are significantly different, e.g., plants with large water surfaces located in areas of high rainfall or evaporation or plants using a portion of effluent for irrigation, both influent and effluent must be measured. Consideration should be given to internal flow monitoring devices to measure returned activated sludge and/or to facilitate splitting flows between units with special attention being given when units are of unequal size. All plants shall be provided with a readily accessible area for sampling effluent.

(d) Clarifiers.

(1) Inlets. Clarifier inlets shall be designed to provide uniform flow and stilling. Vertical flow velocity through the inlet stilling well shall not exceed 0.15 feet per second at peak flow. Inlet distribution channels shall not have deadened corners and shall be designed to prevent the settling of solids in the channels. Inlet structures should be designed to allow floating material to enter the clarifier.

(2) Scum removal. Scum baffles and a means for the collection and disposal of scum shall be provided for primary and final clarifiers. Scum collected from final clarifiers in plants utilizing the activated sludge process, or any modification thereof, and aerated lagoons may be discharged to aeration basin(s) and/or digester or disposed of by other approved methods. Scum from all other final clarifiers and from primary clarifiers shall be discharged to the sludge digester or other approved method of disposal. Discharge of scum to any open drying area is not acceptable. Mechanical skimmers shall be used in units with a design flow greater than 25, 000 gallons per day. Smaller systems may use hydraulic differential skimming provided that the scum pickup is capable of removing scum from the entire operating surface of the clarifier. Scum pumps shall be specifically designed for this purpose.

(3) Effluent weirs. Effluent weirs shall be designed to prevent turbulence or localized high vertical flow velocity in the clarifiers. Weirs shall be located to prevent short circuiting flow through the clarifier and shall be adjustable for leveling. Weir loadings shall not exceed 20,000 gallons per day peak design flow per linear foot of weir length for plants with a design flow of 1.0 mgd or less. Special consideration will be given to weir loadings for plants with a design flow in excess of 1.0 mgd, but such loadings shall not exceed 30,000 gallons per day peak flow per linear foot of weir.

(4) Sludge lines. Means for transfer of sludge from primary, intermediate, or final clarifiers for subsequent processing shall be provided so that treatment efficiency will not be adversely affected. Gravity sludge transfer lines shall not be less than eight inches in diameter.

(5) Basin sizing. Overflow rates are based on the surface area of clarifiers. The surface areas required shall be computed using the following criteria. The actual clarifier size shall be based on whichever is the larger size from the two surface area calculations (peak flow and design flow surface loading rates). The final clarifier solids loading for all activated sludge treatment processes shall not exceed 50 pounds of solids per day per square foot of surface area at peak flow rate. The following design criteria for clarifiers are based upon a side water depth of 10 feet and shall be considered acceptable.

Clarifier	Maximum Surface[a] Loading @ Peak Flow (gal/day/sq ft)	Minimum Effective[c] Detention Time @ Peak Flow (hrs)	Maximum Surface[a] Loading @ Design Flow (gal/day/sq ft)	Minimum Effective[c] Detention Time @ Design Flow (hrs)
Primary & Intermediate	1800	——	1000	——
Final:				
Fixed Film Secondary	1600	1.1	800	2.2
Fixed Film Enhanceed Secondary[b]	1400	1.3	700	3.0
Activated Sludge (except extended air) Secondary	1400	1.3	700	2.6
Enhanced Secondary[b]	1200	1.5	600	3.0
Extended Air Secondary	1000	1.8	500	3.6
Extended Air Enhanced Secondary[b]	800	2.2	400	4.5
Second Stage Nitrification	1200	1.5	600	3.0

a Does not include recirculation

b Enhanced Secondary Treatment refers to enhanced solids removal achieved through reducing the hydraulic and solids loading to the clarifier

c Overflow rate and side water depth (SWD) may be adjusted, keeping the detention time unchanged, over a range of 8 ft. to 16 ft. of SWD. The detention time is based on the effective volume and the

overflow rate of the circular or rectangular clarifier. (The effective volume includes all liquid above the sludge blanket). For cone bottom tanks, the top of the sludge blanket is considered to be at the top of the cone. For flat bottom tanks, a sludge blanket of 3 ft. should be allowed for development of maximum return sludge concentration.

(6) Sidewater depth. The minimum sidewater depth for conventional primary and intermediate clarifiers is seven feet. All final clarifiers shall have a minimum sidewater depth of eight feet. Final clarifiers having a surface area equal to or greater than 1,250 square feet (diameter equal to or greater than 40 feet) must be provided with a minimum sidewater depth of 10 feet.

(7) Hopper bottom clarifiers. Hopper bottom clarifiers without mechanical sludge collecting equipment will only be approved for those facilities with a permitted design flow of less than 25,000 gallons per day. The required sidewater depth (SWD) for hopper bottom clarifiers may be computed using the following equation: SWD = 160 QD + 4, where SWD equals required sidewater depth in feet and QD equals design flow in million gallons per day. Furthermore, SWD as computed previously for any flow may be reduced by crediting the upper one-third of the hopper as effective sidewater depth if the following conditions are met:

(A) clarifier surface loading rate is reduced by at least 15% from maximum loading rate as per paragraph (5) of this subsection;

(B) influent stilling baffle and effluent weir are designed to prevent short circuiting;

(C) detention time at peak flow is at least 1.8 hours for secondary treatment and 2.4 hours for advanced treatment; and

(D) an appropriate form of flow equalization is used.

(8) Sludge collection equipment. All conventional clarifier units that treat flow from a treatment plant facility with a design flow of 25,000 gallons per day or greater shall be provided with mechanical sludge collecting equipment. Hopper bottom clarifiers must have a smooth wall finish and a hopper slope of not less than 60 degrees.

(9) BOD5 removal. It shall be assumed that the BOD5 removal in a primary clarifier is 35%, unless satisfactory evidence is presented to indicate that the efficiency will be otherwise. In plant efficiency calculations, it shall be assumed that the BOD5 removal in intermediate and final clarifiers is included in the calculation for the efficiency of the treatment unit preceding the intermediate or final clarifier.

(e) Trickling filters.

(1) General. Trickling filters are secondary aerobic biological processes which are used for treatment of sewage.

(2) Basic design parameters. Trickling filters are classified according to applied hydraulic loading in million gallons per day per acre of filter media surface area (mgd/acre), and organic loadings in pounds BOD per day per 1,000 cubic feet of filter media (lb BOD/day-1,000 cu ft). The following factors should be considered in the selection of the design hydraulic and organic loadings: strength of the influent sewage, effectiveness of pretreatment, type of filter media, and treatment efficiency required. Typical ranges of applied hydraulic and organic loadings for the different classes of trickling filters are presented in the following table for illustrative purposes. The design engineer shall submit sufficient operating data from existing trickling filters of similar construction and operation to justify his efficiency calculations for the filters, and a filter efficiency formula from a reliable source acceptable to the commission. The formula of the National Research Council may be used when rock media is used in the trickling filter(s).

Typical Design Loadings

Operating Charcteristics	Standard Rate	Intermediate Rate	High Rate		Roughing
Media	Rock	Rock	Rock	Manufactured	Rock
Hydraulic Loading:					
mgd/acre	1-4	4-10	10-40	15-90*	60-180*
gpd/sq ft	25-90	90-230	230-900	350-1000*	1400-4200
Organic Loading:					
lb BOD/acre-ft/day	200-1000	700-1400	1000-1300	up to 300	
100+					
lb BOD/day/1000 cu. ft.	5-25	15-30	25-300	65-85	40-65
BOD Removal (%)	80-85	50-70	65-85		

*Does not include recirculation

(3) Pretreatment. The trickling filter treatment facility shall be preceded by primary clarifiers equipped with scum and grease removal devices. Design engineers may submit operating data as justification of other alternative pretreatment devices which provide for effective removal of grit, debris, suspended solids, and excess oil and grease. Preaeration shall be provided where influent wastewater contains harmful levels of hydrogen sulfide concentrations.

(4) Filter media.

(A) Material specifications for rock media. The following are minimum requirements.

(i) Crushed rock, slag, or similar media should not contain more than 5.0% by weight of pieces whose longest dimension is greater than three times its least dimension. The rock media should be free from thin, elongated, and flat pieces and should be free from dust, clay, sand, or fine material. Rock media should conform to the following size distribution and grading when mechanically graded over a vibrating screen with square openings:

(I) passing five inch sieve-100% by weight;

(II) retained on three-inch sieve-95-100% by weight;

(III) passing two inch sieve-0.2% by weight;

(IV) passing one inch sieve-0.1% by weight;

(V) the loss of weight by a 20-cycle sodium sulphate test, as described in the American Society of Civil Engineers Manual of Engineering and Engineering Practice Number 13, shall be less than 10%.

(ii) Rock media shall not be less than four feet in depth (at the shallowest point) nor deeper than eight feet (at the deepest point of the filter).

(B) Synthetic (manufactured or prefabricated) media.

(i) Application of synthetic media shall be evaluated on a case-by-case basis. Suitability should be evaluated on the basis of experience with installations treating similar strength wastewater under similar hydraulic and organic loading conditions. The manufacturer's recommendations shall be included, as well as case histories involving the use of the media.

(ii) Media shall be relatively insoluble in sewage and resistant to flaking or spalling, ultraviolet degradation,

disintegration, erosion, aging, all common acids and alkalies, organic compounds, biological attack, and shall support the weight of a person when the media is in operation.

(iii) Media depths should be consistent with the recommendations of the manufacturer.

(C) Placing of media.

(i) The dumping of media directly on the filter is unacceptable. Instructions for placing media shall be included in the specifications.

(ii) Crushed rock, slag, and similar media shall be washed and screened or forked to remove clays, organic material, and fines.

(iii) Such materials should be placed by hand to a depth of 12 inches above the underdrains and all material should be carefully placed in a manner which will not damage the underdrains. The remainder of the material may be placed by means of belt conveyors or equally effective methods approved by the engineers. Trucks, tractors, or other heavy equipment should not be driven over the filter media during or after construction.

(iv) Prefabricated filter media shall be placed in accordance with recommendations provided by the manufacturer.

(5) Filter hydraulics.

(A) Dosing. Wastewater may be applied to the filters by siphons, pumps, or by gravity discharge from preceding treatment units when suitable flow characteristics have been developed.

(B) Distribution equipment. Settled wastewater may be distributed over the filter media by rotary, horizontal, or travelling distributors, provided the equipment proposed is capable of producing the required continuity and uniformity of distribution over the entire surface of the filter. Deviation from a calculated uniformly distributed volume per unit surface area shall not exceed 10% at any portion of the filter. Filter distributors shall be designed to operate properly at all flow rates. Excessive head in the center column of rotary distributors shall be avoided, and all center columns shall have adequately sized overflow ports to prevent the head from building up sufficiently for the water to reach the bearings in the center column. Distributors shall include cleanout gates on the ends of the arms and shall also include an end nozzle to spray water on the wall of the filter to keep the edge of the media continuously wet. The filter walls shall extend at least 12 inches above the top of the ends of the distributor arms.

(C) Seals. The use of mercury seals is prohibited in the distributors of newly constructed trickling filters. If an existing treatment facility is to be modified, any mercury seals in the trickling filters shall be replaced with oil or mechanical seals.

(D) Distributor clearance. A minimum clearance of six inches shall be provided between the top of the filter media and the distributing nozzles.

(E) Recirculation. In order to insure that the biological growth on the filter media remains active at all times, provisions shall be included in all designs for minimum recirculation during periods of low flow. This minimum recirculation shall not be considered in the evaluation of the efficiency of the filter unless it is part of the proposed specified continuous recirculation rate. Minimum flow to the filters shall not be less than 1.0 mgd per acre of filter surface. In addition, the minimum flow rate must be great enough to keep rotary distributors turning and the distribution nozzles operating properly. For facilities with a design capacity greater than or equal to 0.5 mgd and in which recirculation is included in design computations for BOD5 removal, recirculation shall be provided by variable speed pumps and a method of conveniently measuring the recycle flow rate shall be provided.

(F) Surface loading. The engineering report shall include calculations of the maximum, design, and minimum surface loadings on the filter(s) in terms of millions of gallons per acre of filter area per day (for the initial year and design year). Hydraulic loadings of filters with crushed rock, slag or similar media shall not exceed 40 mgd per acre based on design flow. The minimum surface loading shall not be less than 1.0 mgd per acre. Loadings on synthetic (manufactured or prefabricated) filter media shall be within the ranges specified by the manufacturer.

(6) Underdrain system.

(A) Underdrains. Underdrains with semicircular inverts or equivalent shall be provided and the underdrainage system shall cover the entire floor of the trickling filter. Inlet openings into the underdrains shall provide an unsubmerged gross combined area of at least 15% of the surface area of the filter.

(B) Hydraulics. Underdrains and the filter effluent channel floor shall have a minimum slope of 1.0%. Effluent channels shall be designed to produce a minimum velocity of two feet per second at average daily flow rate of application to the trickling filter.

(C) Drain tile. Underdrains for rock media trickling filters shall be either vitrified clay or precast reinforced concrete. The use of half tile for underdrain systems is unacceptable.

(D) Corrosion. Underdrain systems for synthetic media trickling filters shall be resistant to corrosion.

(E) Ventilation. The underdrain system, effluent channels, and effluent pipe shall be designed to permit free passage of air. Drains, channels, and effluent pipes shall have a cross-sectional area such that not more than 50% of the cross-sectional area will be submerged at peak flow plus recirculation. Provision shall be made in the design of the effluent channels to allow the possibility of increased hydraulic loading. The underdrain system shall provide at least one square foot of ventilating area (vent stacks, ventilating holes, ventilating ports) for every 250 square feet of rock media filter plan area. Ventilating area for synthetic media underdrains will be provided as recommended by the manufacturer, but shall be at least one square foot for every 175 square feet of synthetic media trickling filter plan area.

(F) Maintenance. All flow distribution devices, underdrains, channels, and pipes shall be designed so they may be maintained, flushed, and properly drained. The units shall be designed to facilitate cleaning of the distributor arms. A gate shall be provided in the wall to facilitate rodding of the distributor arms.

(G) Flooding. Provisions shall be made to enable flooding of the trickling filter for filter fly control; however, consideration will be given by the commission to alternate methods of filter fly control provided that the effectiveness of the alternate method is verified at a full scale installation. This information shall be submitted with the plans and specifications.

(H) Flow measurements. Means shall be provided to measure flow to the filter and recirculation flows.

(f) Rotating biological contactors (RBC).

(1) General.

(A) RBC units shall be covered and ample ventilation provided. Working clearance of approximately 30 inches should be provided within the cover unless the covers are removable, utilizing equipment normally available on site. Enclosures shall be constructed of a suitable corrosion-resistant material.

(B) The design of the RBC media shall provide for self-cleaning action

due to the flow of water and air through the media. Careful selection of media that will not entrap solids should be made.

(C) The RBC tank should be esigned to minimize zones in which solids will settle out.

(D) RBC media should be selected which is compatible with the wastewater. Selection of media can be critical where the wastewater has an industrial waste portion which either significantly increases the wastewater temperature or contains a chemical constituent which may decrease the life of the RBC media.

(2) Design.

(A) Pretreatment. RBC units shall be preceded by pretreatment to remove any grit, debris, and excess oil and grease which may hinder the treatment process or damage the RBC units. The design engineer should consider primary clarifiers with scum and grease collecting devices, fine screens, and oil separators. For wastes with high hydrogen sulfide concentrations, preaeration shall be provided.

(B) Organic loading. The organic loading for the design of RBC units shall be based on total BOD5 in the waste going to the RBC, including any side streams. The design engineer should consider a maximum loading rate of 5 lb BOD5 per day per 1,000 ft2 of media in any stage, depending on the character of the influent wastewater. The maximum loading rate shall not exceed 8 pound BOD5 per day per 1,000 ft2 of media in any stage. The design engineer should also consider the ratio of soluble BOD5 to total BOD5 and its possible effect on required RBC media area. Allowable organic loading for the entire RBC system shall not exceed the following criteria.

Degree of Treatment	Maximum Organic Loading ($lb. BOD_5/day/1,000 ft.^2$ of media area)
Secondary	3.0
Advanced Secondary	2.0

(C) Stages of treatment. The number of RBC units in series (stages) for BOD removal only shall be a minimum of three stages. For BOD removal and nitrification, there shall be a minimum of four stages. If the plant is designed with less stages than noted in the previous sentences of this subparagraph, the engineer must provide justification based on either full-scale operating facilities or pilot unit operational data. Any pilot unit data used in the justification must take into consideration an appropriate scale-up factor.

(D) Drive system. The drive system for each RBC unit shall be selected for the maximum anticipated media load. A variable speed system should be considered to provide additional operator flexibility. The RBC units may be mechanically driven or air driven.

(i) Mechanical drives.

(I) Each RBC unit shall have a positively connected mechanical drive with motor and speed reduction unit to maintain the required rpm.

(II) A fully-assembled spare mechanical drive unit for each size shall be provided on-site.

(III) Supplemental diffused air should be considered for mechanical drive systems to help remove excess biomass from the media and to help maintain the minimum dissolved oxygen concentration.

(ii) Air drives.

(I) Each RBC unit shall have air diffusers mounted below the media and off-center from the vertical axis of the RBC unit. Air cups mounted on the outside of the media shall collect the air to provide the driving force and maintain the required rpm.

(II) Blowers shall provide enough air flow for each RBC unit plus additional capacity to double the air flow rate to any one unit while the others are running normally.

(III) The blowers shall be capable of providing the required air flow with the largest unit out of service.

(IV) The air diffuser line to each unit shall be mounted such that it can be removed without draining the tank or removing the RBC media.

(V) An air control valve shall be installed on the air diffuser line to each RBC unit.

(E) Dissolved oxygen. The RBC plant shall be designed to maintain a minimum dissolved oxygen concentration of one milligram per liter at all stages during the peak organic flow rate. Supplemental aeration may be required.

(F) Nitrification. The design of a RBC plant to achieve nitrification is dependent upon a number of factors, including the concentration of ammonia in the influent, effluent ammonia concentration required, BOD5 removal required, minimum operational temperatures, and ratio of peak to design hydraulic flow. Each of these factors will impact the number of stages of treatment required and the allowable ammonia nitrogen loading (lb NH3/day/1,000 ft2 media) required to achieve the desired levels of nitrification for a given facility. The engineer shall submit appropriate data supporting the design.

(G) Design flexibility. The designer of a RBC plant should consider provisions to provide additional operational flexibility such as controlled flow to multiple first stages, alternate flow and staging arrangements, removable baffles between stages, and provision for step feed and supplemental aeration.

(g) Activated sludge facilities.

(1) Organic loading rates. Aeration tank volumes should be based upon full scale experience, pilot scale studies, or rational calculations based upon commonly accepted design parameters such as food to

microorganism ratio, mixed liquor suspended solids, and the solids retention time. Other factors to be considered include size of the treatment plant, diurnal load variations, return flows and soluble organic loads from digesters, or sludge dewatering operations and degree of treatment required. Temperature, pH, and dissolved oxygen concentration are particularly important to consider when designing for nitrification. As a general rate, minimum aeration tank volumes shall be as set forth in the following table. Calculations must be submitted to fully justify the basis of design for any aeration basins not conforming to these minimum recommendations.

DESIGN ORGANIC LOADINGS

Process	Aeration Tank Organic Loading lb BOD_5/day/1000 cu ft
Conventional[A]	45
Complete Mix	45
Contact Stabilization[B]	50
Extended Aeration	15
Oxidation Ditch[C]	15
Single Stage Nitrification	35

(A) The conventional activated sludge process is characterized by having a plug flow hydraulic regime wherein particles are discharged in the same sequence in which they enter the aeration basin. Plug flow may be approximated in long tanks with a high length-to-width ratio.

(B) The contact stabilization process divides the aeration tank volume between the reaeration zone and the contact zone. The ratio of reaeration volume to contact volume ranges from 1:1 to 2:1. The hydraulic detention time in the contact zone shall be sufficient to provide removals of soluble substrates to the required levels. For domestic flows normally two hours is sufficient in the contact zone. Contact zone volume shall be based upon acceptable removal kinetics for soluble BOD5 and ammonia nitrogen.

(C) Oxidation ditches (which are organically loaded consistent with §317.4(g)(1) of this title (relating to Wastewater Treatment Facilities)) shall have a minimum hydraulic retention time of 20 hours based on design flow. These oxidation ditch systems shall provide final clarification and return sludge capability equal to that required for the extended aeration process. There shall be a minimum of two rotors per ditch, each capable of supplying the required oxygenation capacity and maintaining a minimum channel velocity of 1.0 fps with one rotor out of service. The ditch shall be lined with reinforced concrete or other acceptable erosion-resistant liner material. Provision shall be made to easily vary the liquid level in the ditch to control the immersion depth of the rotor for flexibility of operation. A motor of sufficient size to maintain the proper rotor speed for continuous operation shall be provided. Rotor bearings should have grease fittings that are readily accessible to maintenance personnel. Gear housing and outboard bearings should be shielded from rotor splash.

(2) Aeration basin general design considerations. Aeration tank geometry shall be arranged to provide optimum oxygen transfer and mixing for the type aeration device proposed. Aeratio tanks must be constructed of reinforced concrete, steel with corrosion resistant linings or coatings, or lined earthen basins. Liquid depths shall not be less than 8.0 feet when diffused air is used. All aeration tanks shall have a freeboard of not less than 18 inches at peak flow. Access walkways with properly designed safety handrails shall be provided to all areas that require routine maintenance. Where operators would be required to climb heights greater than four feet, properly designed stairways with safety handrails should be provided. The shape of the tank and the installation of aeration equipment should provide a means to control short circuiting through the tank. For plants designed for design flows greater than 2.0 mgd the total aeration basin volume shall be divided among two or more basins. Each treatment facility shall be designed to hydraulically pass the design two-hour peak flow with one basin out of service.

(3) Sludge pumps, piping, and return sludge flow measurement. The pumps and piping for return activated sludge shall be designed to provide variable underflow rates of 200 to 400 gallons per day per square foot for each clarifier. If mechanical pumps are used, sufficient pumping units shall be provided to maintain design pumping rates with the largest single unit out of service. Sludge piping and/or channels shall be so arranged that flushing can be accomplished. A minimum pipe line velocity of three feet per second should be provided at an underflow rate of 200 gallons per day per square foot. Some method shall be provided to measure the return sludge flow from each clarifier.

(4) Aeration system design.

(A) General design consideration. Aeration systems shall be designed to maintain a minimum dissolved oxygen concentration of 2.0 mg/l throughout the basin at the maximum diurnal organic loading rate and to provide thorough mixing of the mixed liquor. The design

oxygen requirements for activated sludge facilities are presented in the following table. The minimum air volume requirements may be reduced with appropriate supporting performance evaluations from the manufacturer.

Process	Minimum O_2 Required lb O_2/lb BOD_5	Minimum[i] Air Required SCF/lb BOD_5
Conventional	1.2	1800
Complete Mix	1.2	1800
Contact Stabilization	1.2	1800
Extended Aeration	2.2	2850
Oxidation Ditch	1.6(2.2)[ii]	----
Nitrification	2.2	3200

(i) Minimum air volume requirements are based upon a transfer efficiency of 4.0% in wastewater for all activated sludge processes except extended aeration, for which a wastewater transfer efficiency of 4.5% is assumed.

(ii) Value in parentheses represents the minimum oxygen requirement for ditch type systems which will achieve nitrification.

(B) Diffused air systems.

(i) Volumetric aeration requirements. Volumetric aeration requirements shall be as determined from the preceding table unless certified diffuser performance data is presented which demonstrates transfer efficiencies greater than those used in the preparation of the table. Wastewater transfer efficiencies may be estimated for:

(I) coarse bubble diffusers by multiplying the clean water transfer efficiency by 0.65;

(II) fine bubble diffusers by multiplying the clean water transfer efficiency by 0.45. The maximum allowable wastewater transfer efficiency shall be 12%. Plants treating greater than 10% industrial wastes shall provide data to justify actual wastewater transfer efficiencies. Wastewater oxygen transfer efficiencies greater than 12% are considered innovative technology. See §317.1(a)(2)(C) of this title (relating to General Provisions) for performance bond requirements. Clean water transfer efficiencies obtained at 20 degrees Celsius shall be adjusted to reflect field conditions (i.e., wastewater transfer efficiencies) by use of the following equation:

$$\text{Air Flowrate Required (scfm)} = \frac{(\text{lbs. } BOD_5/\text{day})(\text{lbs.} O_2 \text{ Req'd/lb. } BOD_5)}{\text{Wastewater T.E.} \times 0.23 \times 0.075 \times 1440}$$

Where: Wastewater T.E. = Wastewater Transfer Efficiency, %

0.23 = lb O_2/lb air @ 20 degrees C

1440 = minutes/day

0.075 = lb air/(cubic foot)

(ii) Mixing requirement. Air requirements for mixing should be considered along with those required for the design organic loading. The designer is referred to Table 14-V, aerator mixing requirements in **Wastewater Treatment Plant Design**, a joint publication of the American Society of Civil Engineers and the Water Pollution Control Federation.

(iii) Blowers and compressors. Blowers and compressors shall be of such capacity to provide the required aeration rate as well as the requirements of all supplemental units such as airlift pumps. Multiple compressor units shall be provided and shall be arranged so the capacity of the total air supply may be adjusted to meet the variable organic load to be placed on the

treatment facility. The compressors shall be designed so that the maximum design air requirements can be met with the largest single unit out of service. The blower/compressor units shall automatically restart after a period of power outage or the operator or owner shall be notified by some method such as telemetry or an auto-dialer. The specified capacity of the blowers or air compressors, particularly centrifugal blowers, should take into account that the air intake temperature may reach 104 degrees Fahrenheit (40 degrees Celsius) or higher and the pressure may be less than standard (14.7 pounds per square inch absolute). The capacity of the motor drive should also take into account that the intake air may be 10 degrees Fahrenheit (-12 degrees Celsius) or less and may require oversizing of the motor or a means of reducing the rate of air delivery to prevent overheating or damage to the motor.

(iv) Diffusers and piping. Each diffuser header shall include a control valve. These valves are basically for open/close operation but should be of the throttling type. The depth of each diffuser shall be adjustable. The air diffuser system, including piping, shall be capable of delivering 150% of design air requirements. The aeration system piping should be designed to minimize headlosses. Typical air velocities in air delivery piping systems are presented in the following table.

Pipe Diameter (Inches)	Velocity (Feet/min.-Std.Air)
1 - 3	1,200 - 1,800
4 - 10	1,800 - 3,000
12 - 24	2,700 - 4,000
30 - 60	3,800 - 6,500

(5) Mechanical aeration systems. Mechanical aeration devices shall be of such capacity to provide oxygen transfer to and mixing of the tank contents equivalent to that provided by compressed air. A minimum of two mechanical aeration devices shall be provided. Two speed or variable speed drive units should be considered. The oxygen transfer capability of mechanical surface aerators shall be calculated by the use of a generally accepted formula and the calculations presented in the engineering report. Proposed clean water transfer rates in excess of 2.0 pounds per horsepower-hour shall be justified by performance data. In addition to providing sufficient oxygen transfer capability for oxygen transfer, the mechanical aeration devices shall also be required to prevent deposition of mixed liquor suspended solids under any flow condition. A minimum of 100 horsepower per million gallons of aeration basin volume shall be furnished.

(h) Nutrient removal.

(1) Nitrogen removal. Biological systems designed for nitrification and denitrification may be utilized for the conversion/removal of nitrogen. Various physical/chemical processes may be considered on a case-by-case basis.

(2) Phosphorous removal.

(A) Chemical treatment. Addition of lime or the salts of aluminum, or iron may be used for the chemical removal of soluble phosphorous. The phosphorous reacts with the calcium, aluminum, or iron ions to form insoluble compounds. These insoluble compounds may be flocculated with or without the addition of a coagulant aid such as a polyelectrolyte to facilitate separation by sedimentation. When adding salts of aluminum or iron, the designer should evaluate the wastewater to ensure sufficient alkalinity is available to prevent excessive depression of the wastewater or effluent pH. This is of particular importance when the system will also be required to achieve nitrification. The designer is referred to **Nutrient Control**, Manual of Practice FD-7 Facilities Design, published by the Water Pollution Control Federation and the **Process Design Manual for Phosphorus Removal**, published by the Environmental Protection Agency, for additional information.

(B) Biological phosphorus removal. Biological phosphorus removal systems will be considered on a case-by-case basis for systems which can produce operating data which demonstrate the capability to remove phosphorus to the required levels. All biological systems which are required to meet a 1.0 mg/l effluent phosphorus concentration shall make provision for stand-by chemical treatment to ensure the 1.0 mg/l is achieved.

(i) Aerated lagoon.

(1) Horsepower. Mechanical aeration units in aerated lagoons shall have sufficient power to provide a minimum of 1.6 pounds of oxygen per pound of BOD5 applied with the largest unit out of service. If oxygen requirements control the amount of horsepower needed, proposed oxygen transfer rates in excess of 2 pounds per horsepower-hour must be justified by actual performance data. The amount of oxygen supplied or the pounds of BOD5 per hour that may be applied per horsepower-hour may be calculated by the use of any acceptable formula. The combined horsepower rating of the aeration units shall not be less than 30 horsepower per million gallons of aerated lagoon volume.

(2) Construction. Earthen ponds shall have large sections of concrete slabs or equivalent protection under each aeration unit to prevent scouring of the earth. Concrete scour pads shall be used in all areas where the velocity exceeds one foot per second. Earthen ponds shall have protection on the slopes of the embankment at the water line to prevent erosion of the slopes from the turbulence in the lagoon. Where the horsepower level is more than 200 horsepower per million gallons of lagoon volume, the pond embankment at the water line shall be protected from erosion with riprap which may be concrete, gunite, a six-inch thick layer of asphalt-saturated or cement-stabilized earth rolled and compacted into place, or suitable rock riprap. The crest and dry slopes of embankments shall be protected from erosion by planting of grass.

(3) Subsequent treatment, discharge systems. Aerated lagoon effluent will normally be routed to additional ponds for secondary treatment and to provide sufficient detention time for disinfection. The secondary ponds system shall consist of two or more ponds. Secondary pond sizing shall not exceed 35 pounds of BOD5 per acre per day. Hydraulic detention time in a combined aerated lagoon and secondary pond system shall be a minimum of 21 days (based on design flow) in order

to provide adequate disinfection. In designing the secondary ponds, BOD5 removal efficiency in the aerated lagoon(s) may be calculated using the following formula:

$$E = \frac{1}{1+K(V/Q)}$$

Where:

E = efficiency of a complete mix reactor without recycle

K = removal rate constant, day^{-1} (generally 0.5 day^{-1} for domestic sewage)

V = aeration basin volume, million gallons

Q = wastewater flow rate, in million gallons per day

(j) Wastewater stabilization ponds (secondary treatment ponds).

(1) Pretreatment. Wastewater stabilization ponds shall be preceded by facilities for primary sedimentation of the raw sewage. Aerated lagoons or facultative lagoons may be utilized in place of conventional primary treatment facilities.

(2) Imperviousness. All earthen structures proposed for use in domestic wastewater treatment or storage shall be constructed to protect groundwater resources. Where linings are necessary, the following methods are acceptable:

(A) in-situ or placed clay soils having the following qualities may be utilized for pond lining:

(i) more than 30% passing a 200-mesh sieve;

(ii) liquid limit greater than 30%;

(iii) plasticity index greater than 15; and

(iv) a minimum thickness of two feet;

(B) membrane lining with a minimum thickness of 20 mils, and an underdrain leak detection system;

(C) other methods with commission approval.

(3) Distribution of flow. Stabilization ponds shall be of such shape and size to insure even distribution of the wastewater flow throughout the entire pond. While the shapes of ponds may be dictated to some extent by the topography of the location, long narrow ponds are preferable and they should be oriented in the direction of the prevailing wind*? such that debris is blown toward the inlet. Ponds with narrow inlets or sloughs should be avoided.

(4) Access area. Storm water drainage shall be excluded from all ponds. All vegetation shall be removed from within the pond area during construction. Access areas shall be cleared and maintained for a distance of at least 20 feet from the outside toes of the pond embankment walls.

(5) Multiple ponds. The use of multiple ponds in pond systems is required. The operation of the ponds shall be flexible, enabling one or more ponds to be taken out of service without affecting the operation of the remaining ponds. The ponds shall be operated in series during routine operation periods.

(6) Organic loading. The organic loading on the stabilization ponds, based on the total surface area of the ponds, shall not exceed 35 pounds of BOD5 per acre per day. The loading on the initial stabilization pond shall not exceed 75 pounds of BOD5 per acre per day.

(7) Depth. The stabilization ponds or cells shall have a normal water depth of three to five feet.

(8) Inlets and outlets. Multiple inlets and multiple outlets are required. The inlets and outlets shall be arranged to prevent short circuiting within the pond so that the flow of wastewater is distributed evenly throughout the pond. Multiple inlets and outlets shall be spaced evenly. All outlets shall be baffled with removable baffles to prevent floating material from being discharged, and shall be constructed so that the level of the pond surface may be varied under normal operating conditions. Submerged outlets shall be used to prevent the discharge of algae.

(9) Embankment walls. The embankment walls should be compacted thoroughly and compaction details shall be covered in the specifications. Soil used in the embankment shall be free of foreign material such as paper, brush, and fallen trees. The embankment walls shall have a top width of at least 10 feet. Interior and exterior slope of the embankment wall should be one foot vertical to three feet horizontal. There shall be a freeboard of not less than two feet nor more than three feet based on the normal operating depth. All embankment walls shall be protected by planting grass or riprapping. Where embankment walls are subject to wave action, riprapping should be installed. Erosion stops and water seals shall be installed on all piping penetrating the embankments. Provisions should be made to change the operating level of the pond so the pond surface can be raised or lowered at least six inches.

(10) Partially mixed aerated lagoons.

(A) Horsepower. With partially mixed aerated lagoons, no attempt is made to keep all pond solids in suspension.

Mechanical or diffused aeration equipment should be sized to provide a minimum of 1.6 pounds of oxygen per pound of BOD5 applied with the largest unit out of service. Where multiple ponds are used in series, the power input may be reduced as the influent BOD5 to each pond decreases. Proposed oxygen transfer rates in excess of two pounds per horsepower-hour must be justified by actual performance data.

(B) Pond sizing. Partially mixed aerated lagoons should be sized in accordance with the formula in §317.4(i)(3) of this title (relating to Wastewater Treatment Facilities) using K-0.28. Pond length to width ratios should be three to one or four to one.

(C) Imperviousness. Requirements for imperviousness, multiple cells, embankment walls, and inlets and outlets shall be the same as for other secondary treatment ponds.

(k) Facultative lagoon (raw wastewater stabilization pond).

(1) Configuration. The length to width ratio of the lagoon should be three to one, with flow along the length from inlets near one end to outlets at the opposite end (other configurations may be approved if adequate means of prevention of short circuiting are provided). The length should be oriented in the direction of the prevailing winds with the inlet side located such that debris will be blown toward the inlet (generally, the north-northwest side). Inlet baffles shall be provided to collect floatable material. The outlets shall be constructed so that the water level of the lagoon may be varied under normal operating conditions. Storm water drainage shall be prevented from entering the lagoon. The design engineer may wish to locate the facultative lagoon in a central location with regard to the surrounding secondary ponds to facilitate compliance with the buffer zone requirement specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitations and Plant Siting).

(2) Imperviousness. Requirements for imperviousness shall be the same as those for secondary treatment ponds.

(3) Depth. The portion of the lagoon near the inlets shall have a 10 to 12 foot depth to provide sludge storage and anaerobic treatment. This deeper portion should be approximately 25% of the area of the lagoon bottom. The remainder of the pond should have a depth of five to eight feet.

(4) Organic loading. The organic loading, based on the surface area of the facultative lagoon, shall not exceed 150 pounds of BOD5 per acre per day.

(5) Odor control. The facultative lagoon shall have multiple inlets and the inlets should be submerged approximately 24 inches below the water surface to minimize odor but not disturb the anaerobic zone. Capabilities for recirculation at 50% to 100% of the design flow should be provided. Care should be taken to avoid situations where siphoning of lagoon contents through submerged inlets can occur.

(6) Embankment walls. Refer to §317.4(j)(9) of this title (relating to Wastewater Treatment Facilities).

(7) Subsequent treatment. The facultative lagoon effluent will normally be routed to a wastewater stabilization pond system for secondary treatment. In designing the stabilization pond system, it may be assumed that BOD removal in the facultative lagoon is 50%. The stabilization pond system shall contain two or more ponds.

(l) Filtration. Filtration must be employed as a unit operation to supplement suspended solids removal for those treatment facilities with tertiary effluent limitations (suspended solids effluent quality equal to or less than 10 mg/l). Filtration may be employed as a unit operation for those treatment facilities with secondary or advanced secondary effluent limitations. The utilization of filtration in the design of the treatment facility normally provides effective removal of suspended biological floc and neutral density trash material which may remain in secondary clarifier effluent. Intermittent filter operation is acceptable where on line controls monitor platn performance or filters are not necessary to meet a specific discharge limitation.

(1) General requirements.

(A) Filter units shall be preceded by final clarifiers designed in accordance with §317.4(d) of this title (relating to Wastewater Treatment Facilities) for secondary treatment criteria.

(B) Filtered effluent, and not potable water, shall be utilized as the source of backwash water.

(2) Deep bed, intermittently backwashed granular media filters.

(A) Single media (sand filters), dual media (Anthracite-sand filters), or mixed media filter types (non-stratified anthracite, sand, garnet, or other media) are acceptable for application; however, single media filters shall be designed for maximum filtration runs of six hours between backwash periods.

(B) Design filtration rates shall not exceed three gpm/ft2 for single media filters, four gpm/ft2 for dual media filters, and five gpm/ft2 for mixed media filters. The filter area required shall be calculated utilizing the previously listed specified rates at the design flow of the facility. A minimum of two filter units shall be provided with the required filter area calculated with one unit out of service.

(C) Facilities to provide periodic treatment utilizing chlorine or other suitable agents, introduced to the influent stream of the filter units, shall be provided as an operational technique to control slime growth on the filter surface and the backwash storage basin.

(D) A graded gravel layer of a minimum of 15 inches or variable thickness of other filter media support material shall be provided over the filter underdrain system. Filter media support material other than gravel will be reviewed on a case-by-case basis. Normal media depths for the various filter types are as specified below. Media depths significantly different than these must be justified to the commission. The justification must include an analysis of the backwash rates. The uniformity coefficient shall be 1.7 or less. The particle size distribution for dual and mixed media filters shall result in a hydraulic grading of material during backwash which will result in a filter bed with a pore space graded progressively coarse to fine from the top of the media to the supporting layer.

Filter Type	Type of Media	Minimum Depth (Inches)	Effective Particle Size (mm)
Single Media	Sand	24	1.0 - 4.0
Automatic Backwash	Sand	11	1.0 - 4.0
Dual Media	Anthracite & Sand	16	
	Anthracite	10	1.0 - 2.0
	Sand	6	0.5 - 1.0
Mixed Media	Anthracite, Sand & Other	16	
	Anthracite	10	1.0 - 2.0
	Sand	4	0.6 - 0.8
	Garnet or Similar Material	2	0.3 - 0.6

(E) The unit piping for the filter units shall be designed to return backwash waste to upstream treatment units. In order to minimize a hydraulic surge, a backwash tank must be included into the design for those plants that do not have some means of flow equalization or surge control. A backwash tank shall be designed to provide storage for filter backwash based upon the number of design daily backwash cycles and the volume required for each backwash. Calculations must be provided to the commission demonstrating that the performance of the plant will not diminish with the discharging of the backwash water into the treatment process. Enclosed backwash tanks shall be vented to maintain atmospheric pressure. Surge control shall be provided to the backwash system to limit flow rate variations to no more than 15% of the design flow of the treatment units that will receive the backwash water. For these calculations, an influent lift station is not considered as a treatment unit and, therefore, is not bound by the 15% design flow requirement.

(F) Pumps for backwashing filter units shall be designed to deliver the required rate with the largest pump out of service. The backup pump unit may be uninstalled provided that the commission is satisfied that the spare unit can be quickly installed and placed into operation. Valve arrangement for isolating a filter unit for backwashing shall provide ready access for the operator. Provision for manual override shall be provided for any backwash system employing automatic control.

(G) Head loss indicators shall be provided for all filter units.

(H) Backwash for dual or mixed media filters shall provide a minimum bed expansion of 20%. A surface scour shall be provided prior to or during the backwash cycle. Backwash flow rates at 15 to 20 gpm/ft2 and at a cycle time of 10 to 15 minutes should be provided. The backwash cycle shall provide media fluidization at the end of the cycle to restratify the media. Backwash for single media filters should be provided by a surface air scour or combination air-water scour and washwater at recommended rates as follows.

Air Scour	3 - 5	scfm/ft^2
Water Scour	0.5 - 2	gpm/ft^2
Backwash Water	6 - 8	gpm/ft^2

(I) The filter underdrain system shall be of a design adaptable to wastewater treatment, providing a uniform distribution of filter backwash and freedom from excessive orifice plugging. Wash wa-

ter collection trough bottoms shall be located a minimum of six inches above the maximum elevations of the expanded media. A minimum freeboard of three inches shall be provided in addition to the design upstream depth of the wash water media. A minimum freeboard of three inches shall be provided in addition to the design upstream depth of the wash water trough to prevent submerged trough conditions during filter backwashing.

(3) Multi-compartmented low head filters with continuous operation (automatic backwash). This paragraph contains the design criteria for multi-compartmented low head filters where the applicable criteria are different than those contained in paragraphs (1) and (2) of this subsection. All other criteria included in paragraphs (1) and (2) of this subsection will apply to multi-compartmented low head filters with continuous operation.

(A) Filtration rates. Filtration rates shall not exceed three gpm/ft2 for single media filters and four gpm/ft2 for dual media filters based on the design flow rate applied to the filters. The total filter area should be provided in two or more units and the filtration rate shall be calculated on the total available filter area with one cell of each unit out of service. Manufacturer's recommended rates should be utilized if substantiated by test data.

(B) Backwash. The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20%. Provision should be made for an approximate rate of 10 gpm/ft2 over a 30 to 60 second interval. Manufacturer's recommended rates should be utilized if substantiated by test data. Pumps for backwashing filter units shall be adequate to provide the required rate with the largest pump out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced. Waste filter backwash water shall be returned to upstream units, preferably the final clarifiers, for treatment.

(C) Backwash surge control. The rate of return of waste filter backwash water to treatment units shall be controlled such that the rate does not exceed 15% of the design flow of the treatment units. The hydraulic and organic load from waste backwash water shall be considered in the overall design of the treatment plant. Where waste backwash water is returned for treatment by pumping, adequate pumping capacity shall be provided with the largest unit out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced.

(4) Alternative design for effluent polishing. Where filters are proposed to remove remaining visible particles, other criteria will be considered on a case-by-case basis.

§317.5. Sludge Processing.

(a) General requirements.

(1) Disposal requirements, agreement with. Sludge processing and treatment shall be in agreement with the requirements of the ultimate form of disposal.

(2) Control of sludge and supernatant volumes. Provisions shall be made to insure that waste sludge will be discharged to the sludge digester in such a manner so as to minimize the volume of digester supernatant liquor. Provisions shall be made for the return of supernatant from sludge thickeners and digesters to the head of the treatment works or to the aeration system accounting for the impact on the treatment units.

(3) Piping. All piping from clarifiers to thickeners, digesters, or other sludge processing facilities shall be arranged for ease of maintenance and with sufficient hydraulic gradient to insure the flow of sludge. Piping under stationary structures shall be arranged so that stoppages can be readily eliminated by rodding or with sewer cleaning devices. The sludge piping within the digester, including the sludge drain line, shall be a minimum of four inches in diameter. Appropriate facilities for transfer of supernatant liquor shall be provided. Piping shall include means to observe the quality of the supernatant from each of the withdrawal outlets provided. All units shall be capable of being drained independently of one another.

(4) Sludge pumps. Selection of sludge transfer pumps shall be based on both the quantity and character of the anticipated solids load to be handled by them. Where mechanical pumps are used, a sufficient number of pumps shall be provided so that the design pumping capacity is available with the largest sludge pump out of service. Air lift pumps are an acceptable mechanism for sludge transfer. Duplicate design pumping capacity is not required when air lift pumps are used. Pumps used for pumping sludge shall be specifically designed for that purpose. Centrifugal sludge pumps shall have a positive suction head unless they are self-priming or equipped with some other priming device acceptable to the commission.

(5) Sludge stabilization. Sludge stabilization is required for all biological treatment processes with the exception of extended aeration processes (with a solids retention time of 20 days or more) in which case the sludge may be drawn directly to a sludge dewatering facility.

(6) Sizing. Sizing requirements must be determined using the BOD5 and design flow of the raw sewage influent to the plant.

(b) Aerobic digesters.

(1) Sludge thickening. Aerobic digesters should be provided with sludge thickening capability.

(2) Aeration. Air supplied from air compressors or blowers through diffusers shall be not less than 30 scfm per 1,000 cubic feet of aerobic digester volume. If a separate system of air compressors or blowers will supply air to the digester, then the compressor or blower system shall be designed so that the air requirements can be met with the largest single unit out of service. If mechanical aerators are used, a minimum of 1.5 horsepower per 1,000 cubic feet must be provided.

(3) Mixing. Adequate mixing of the sludge shall be provided to keep the solids in suspension and to bring the deoxygenated liquid continuously to the aeration device. The amount of mixing shall be based upon the sludge characteristics, the tank geometry, and type of aeration/mixing devices.

(4) Volume. A digester shall provide a minimum sludge retention time of 15 days. The design volume of the aerobic digesters may be calculated using 20 cubic feet per lb BOD5 per day. This volume should be provided in two cells capable of operating as a single or two-step unit.

(5) Sludge withdrawal. Provisions shall be made to include an effective means of removing solids from the digester.

(c) Anaerobic digesters.

(1) Volume. The following minimum design criteria shall be used in computing the capacity of digesters with and without facilities for heating the sludge undergoing digestion and without sludge thickening ahead of the digester. Variances to the table referenced as follows for minimum digester volume may be granted provided that it can be demonstrated to the satisfaction of the commission that a minimum solids retention time (SRT) of 30 days will be provided for unheated digesters and a minimum SRT of 15 days will be provided for heated digesters. Heating of the digester means that adequate facilities shall be provided for heating and mixing the sludge and maintaining a year-round temperature of at least 95 degrees Fahrenheit. Heating coils inside the digester are not acceptable. All heated digesters shall include a thermometer with not less than a four inch dial to indicate the temperature of digester contents. The use of flat-bottomed digestion chambers is not acceptable. In sewage treatment plants employing sludge thickeners, the volume of the digester may be reduced, with sufficient justification, as a result of the thickeners reducing the volume of sludge going to the digester. The calculations for the required sludge digestion volume shall be based on the minimum percent solids in the sludge expected to be encountered.

Type of Sludge	Cubic Feet Per Pound BOD_5 per day	
	Unheated Digester	Heated Digester
Sludge from primary clarifiers	20.5	14.5
Sludge from primary clarifiers, including Imhoff tanks, plus sludge from clarifiers following trickling filters; sludge from chemical precipitation units, either alone or with sludge from biological treatment unit	26.5	19.0
Sludge from primary clarifiers with waste activated sludge or contact stabilization sludge; sludge from secondary clarifiers	44.0	29.5

(2) Mixing. Adequate mixing of digester contents is required for all first-stage and all single-stage digesters. Mixing may be performed by mechanical equipment, including external pumps, or by gas recirculation. The rate of mixing shall be such that the flow created in the digester is sufficient to completely mix the incoming sludge with the digester contents and prevent the formation of a scum layer.

(3) Digester covers. Uncovered anaerobic digesters are not acceptable. The sludge and supernatant withdrawal piping for all single-stage and first-stage digesters with fixed covers shall be arranged in such a manner so as to minimize the possibility of air being drawn into the gas chamber above the liquid in the digester. All digester covers shall include a gas chamber adequate for the gas production anticipated. Digester covers shall be gas tight and the specifications shall require a test of every digester cover for gas leakage.

(4) Gas piping and safety equipment. The gas piping shall be adequate for the volume of gas to be handled and shall be pressure tested for leakage (at 1.5 times the design pressure) before the digester is placed into operation. All gas piping shall slope at least 1/8 inch per foot to provide drainage of condensation in the gas piping. The main gas line from the digester shall have a sediment trap equipped with a drip trap. Drip traps shall be provided at all other low points in gas piping. The gas piping to every gas outlet including the pilot line to the waste gas burner shall be equipped with flame checks or flame traps. A natural or bottled gas source shall be utilized for the burner pilot. Flame traps with fusible shutoffs shall be included in all main gas lines. The gas line to the waste gas burner shall include a suitable pressure, vacuum and relief valve. Digester covers shall be equipped with an air vent which includes a flame trap, a vacuum breaker, and pressure relief valve. The main gas line shall be provided with a manometer or other acceptable device which measures the gas pressure in inches of water. Manometers may be used to measure the gas pressure in other gas lines. All manometers shall be vented to the atmosphere outside digester buildings. A gas meter to measure the rate of gas production is desirable and is mandatory on all anaerobic digester systems designed for 1.0 MGD facilities or larger. All rooms in digester buildings with floor level below grade shall be ventilated. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least six complete air changes per hour; if intermittent, at least 30 complete air changes per hour.

(5) Other requirements. The discharge end of sludge inlet piping shall be separated from the overflow of the supernatant liquor withdrawal point by a minimum distance equal to the radius of the digester tank. Every digester shall be provided with

an overflow. A means shall be provided by which the level can be varied from which supernatant liquor is withdrawn either automatically or by the operator. If this means is by withdrawal pipes at different levels in the digester, at least three different levels of supernatant liquor withdrawal shall be provided. All supernatant liquor withdrawal systems shall be provided with sampling cocks or other means of inspecting and testing the supernatant liquor from each level. Piping for hot water heating systems may be of any size adequate for the flow. The fresh water supply to hot water heating systems shall be from a tank with an air gap between the top of the tank and the fresh water supply pipe to prevent a cross connection between the digester hot water system and the fresh water supply system.

(6) Treatment of digester supernatant liquor. Supernatant liquor from anaerobic digesters may be treated by chemical means or other acceptable methods before being returned to the plant. If the commonly used method of dosing with lime is employed, the following criteria shall apply: lime shall be applied to obtain a pH of 11.5. The lime feeder shall be capable of feeding 2,000 mg/l of hydrated lime or its equivalent. The lime shall be mixed with the supernatant liquor by a rapid mixer or by agitation with air in a mixing chamber. After adequate mixing, the solids shall be allowed to settle. The supernatant liquor treatment system may be a batch or continuous process. If a batch process is used, the mixing and settling may be in the same tank. The sedimentation tank shall have a capacity to hold 36 hours of supernatant liquor but not less than 1. 5 gallons per capita. If a continuous process is used, the sedimentation tank shall have a detention time of not less than eight hours. Solids settled from the supernatant liquor treatment are to be returned to the digester or conveyed to sludge handling facilities. The clarified supernatant liquor shall be returned to the head of the treatment works or to the aeration system.

(d) Other stabilization processes.

(1) Incineration and heat treatment. The equipment shall be housed in a fireproof building. Adequate facilities shall be provided for storage of sludge during the longest period that drying and/or incineration units might normally be out of service for repairs or maintenance. Plans for control of odors, insects, fly ash, and for adequate facilities for the disposal of dried sludge or ash shall be provided to the commission. Prior to construction of an incineration or heat treatment facility, consultation should be made to the Texas Air Control Board for applicable emission standards and the possible requirement for a separate Texas Air Control Board permit.

(2) Composting, wet oxidation and other processes. Design information given to the commission shall include the demonstrated level of stabilization achieved by the process to be employed. Test results to verify the degree of stabilization may be required. In addition, design information shall address design and/or operational methods to minimize odor, insects, and other nuisance conditions. Sludge storage requirements for each process shall be provided to the commission. Also, the ultimate disposal method for the processed sludge shall be reflected in the waste disposal application.

(e) Sludge dewatering facilities. Sludge shall be dewatered sufficiently to meet the requirements of the ultimate form of disposal.

(1) Sludge drying beds.

(A) Required area. The area of sludge drying beds to be provided will vary in accordance with the average rainfall, average humidity, and type of treatment process used. The required area for aerobic sludge dewatering shall be determined from §317.12 of this title (relating to Appendix D) (for anaerobic sludge dewatering, the value obtained from §317.12 of this title (relating to Appendix D) may be reduced 35% to determine the required area) using a waste load based on sewage strength and the daily average flow of the raw sewage. The bed area sizing requirements shown in §317.12 of this title (relating to Appendix D) are for sludge drying beds utilizing a continuous underdrain media as specified in subsection (e) of this section. Concrete (or similar impervious material) sludge drying beds which do not use an underdrain media may require additional area and will be evaluated on a case-by-case basis; however, in those counties of the state which experience both high rainfall and high relative humidity (Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Newton, and Orange), other methods of sludge dewatering should be utilized in lieu of sludge drying beds. Where sludge drying beds are used in those counties of high rainfall and humidity, provisions shall be made in the design of these beds for covering the beds, for means of accelerated dewatering, or for extra storage capacity and alternate dewatering methods to effectively dewater the sludge during inclement weather.

(B) General design features. At least two sludge drying beds shall be provided and they shall be constructed at elevations above groundwater level. Construction shall be such as to exclude surface water runoff from the beds and seepage from the beds into the ground. Channels shall be of sufficient grade and size to facilitate the flow of the sludge to the various beds. Runners should be provided to facilitate sludge handling.

(C) Filtrate. The filtrate (or drainage) from the sludge drying beds shall be returned to the head of the treatment works or to the aeration system.

(D) Sludge removal. A splash block or slab shall be provided at the point where digested sludge is discharged onto each of the beds. Appropriate means shall be provided to facilitate the remova' of the dried sludge from the beds for disposal without bed damage resulting. Every sludge drying bed should include a removal gate or stop planks in one end to provide access for machinery and trucks to remove and haul away the dried sludge.

(E) Media. A minimum depth of 12 inches of filtering material, of which four to six inches is coarse sand, is required. To exclude surface water and eroded earth, the bed shall be protected by a permanent wall which shall extend at least 12 inches but not more than 24 inches above the finished surface of the beds.

(2) Vacuum filters, belt filters, belt filter presses, and other mechanical dewatering filters.

(A) Multiple units. Where dewatering of sludge is proposed, the design engineer shall provide data to document sufficient capacity, alternate disposal means, or storage facilities capable of maintaining normal daily operations during breakdowns, upsets, etc.

(B) Filtrate. The filtrate from the filters shall be returned to the head of the treatment works or to the aeration system. Consideration shall be given to the impact of the returned filtrate on the treatment units and to providing odor and insect control facilities.

(3) Portable dewatering units. If sludge is to be treated using portable mechanical dewatering units, provisions shall be made in the facility plan or preliminary engineering report for the location and connection of the portable dewatering unit(s) during facility operation.

§317.6. Disinfection.

(a) General policy. Facilities for disinfection shall be provided to protect the public health and as an aid to plant operation.

(b) Chlorination facilities.

(1) Chlorination equipment. Chlorination equipment shall be selected and installed which is capable of applying desired amounts of chlorine continuously to the effluent. Chlorination equipment may also be installed to control odors and generally assist treatment. To accomplish these objectives, points of chlorine application may be established at the head of the plant for prechlorination, in the effluent chlorine contact chamber, or other suitable locations.

(A) Capacity. Chlorination equipment shall have a capacity greater than the highest expected dosage to be applied. Chlorination systems shall be capable of operating under all design hydraulic conditions. Duplicate equipment with automatic switchover should be considered for standby service, so that continuous chlorination can be provided.

(B) Controls. Means for automatic proportioning of the chlorine amount to be applied in accordance with the rate of effluent being treated is encouraged for all plants and may be required if a maximum chlorine residual is required in the applicable discharge permit. Manual control will be permitted where the rate of effluent flow is relatively constant and for pre-chlorination applications. Consideration shall also be given to controlling chlorine feed by use of demand.

(C) Measurements. A scale for determining the amount of chlorine used daily, as well as the amount of chlorine remaining in the container, shall be provided.

(D) Safety equipment. Self-contained breathing apparatus shall be available for use by plant personnel. The equipment should be located at a safe distance from the chlorine facilities to insure accessibility. Self-contained breathing apparatus shall be located outside the entrance to the chlorine facility.

(E) Housing. Housing of chlorination equipment and cylinders of chlorine shall be in separate rooms above ground level, with the door opening to the outside, as a measure of safety. Doors should be equipped with panic hardware. The chlorination room should be separated from other rooms by gas- tight partitions and should be equipped with a clear glass, gas-tight window which permits the chlorinator to be viewed without entering the room. Forced mechanical ventilation shall be included in chlorination rooms which will provide a complete air change a minimum of every three minutes. The exhaust equipment should be automatically activated by external light switches and gas detectors that are provided with contact closures or relays. No other equipment shall be installed or stored in the chlorinator room. Vents from chlorinators, vaporizers, and pressure reducing values should be piped to the outdoors at a point not frequented by personnel, nor near a fresh air intake. Detectors and alarms should be located in each area containing chlorine gas under pressure. If gas withdrawal chlorine storage cylinders are subjected to direct sun, pressure reducing devices must be provided at the cylinders. Fire protection devices and fireproof construction is required for all chlorine storage areas. Electrical controls in chlorine facilities must be replaceable or protected against corrosion. Separate, trapless floor drains or a drain to an ample dilution point shall be provided from the chlorine storage room and from liquid feed chlorinator rooms.

(F) Emergency chlorination. Emergency power should be provided for chlorination facilities.

(G) Other. Chlorine rooms shall maintain a minimum temperature of 65 degrees Fahrenheit. Chlorinate solution should be prepared using treated effluent. If potable water is used, the potable water supply system must be protected by an adequate backflow prevention device. When a booster pump is required, duplicate equipment should be provided.

(2) Pellets. The use of pellet systems will be considered for approval on a case-by-case basis.

(3) Chlorine contact chamber design criteria.

(A) Initial mixing. Rapid initial mixing of the chlorine solution and wastewater is essential for effective disinfection. Effective initial mixing can be accomplished by applying the chlorine solution in a highly turbulent flow regime created by in-line diffusers, submerged hydraulic structures, mechanical mixers, or jet mixers. The mean velocity gradient in the area of turbulent flow, or G value, shall exceed 500 sec.-1 with residence times of three to 15 seconds. Calculations supporting the design G value shall be presented in the engineering report. Mixing devices for which the mean velocity gradient is difficult to verify shall be justified by pilot or full-scale performance data.

(B) Contact time. Contact chambers shall be designed to provide a minimum average hydraulic residence time (chamber volume divided by flow) of 20 minutes at the design peak hydraulic flow.

(C) Contact chamber configuration. Pipe contact chambers shall be sized so that a scour velocity of at least one foot per second will be obtained at the existing maximum daily dry weather flow rate. If adequate initial mixing is not provided, contact chambers shall have a flow pathway length-to-width ratio of at least 40 and a maximum depth-to-width ratio of no greater than 1.0. This length-to-width ratio may be accomplished by baffling.

(D) Sludge and scum removal. Contact chambers shall either be provided with a means to remove sludge and scum, such as a small hydraulic dredge and skimmers, without taking the contact tank out of service, or shall be configured so that one-half of the contact chamber can be drained for cleaning without interrupting flow through the other half.

(c) Other means of disinfection.

(1) Chemical disinfection is not normally required when the total residence time in the wastewater treatment system (based on design flow) is at least 21 days.

(2) Ultraviolet light (U.V.) disinfection.

(A) General. Ultraviolet disinfection systems are considered applicable to treated wastewaters with daily average BOD5 and TSS concentrations consistently less than 20 mg/l.

(B) Definitions.

(i) Ultraviolet module–A grouping of UV germicidal lamps of a specified arc length in a quartz or teflon sleeve, sealed and supported in a single stainless steel or some other non-corrosive frame.

(ii) Ultraviolet bank–A grouping of UV modules which span the entire width and depth (of flow) of the reactor.

(C) Sizing, configuration, and required dosage. Ultraviolet disinfection units will be designed in accordance with methodologies presented in the United States Environmental Protection Agency Design Manual, Municipal Disinfection, EPA/625/1-86/021. Turbulent flow is necessary due to non-uniform intensity fields in an ultraviolet reactor. The proposed design shall have a Reynolds' number of greater than 6,000 at average design flows. Disinfection systems shall consist of a minimum of two ultraviolet banks in series and shall be capable of providing disinfection to permitted fecal coliform levels at the design daily average flow with the largest bank out of service.

(D) System details. The ultraviolet unit shall be configured so that there is adequate space for the removal and maintenance of lamps. One person should be able to replace lamps without the aid of mechanical lifting devices, special tools, or equipment. Drains shall be provided to completely drain the ultraviolet reactor unless the equipment can be easily removed from the effluent channel, but lamps shall be replaceable without draining the unit. The materials used to construct the reactor shall be resistant to ultraviolet light. Ballasts and other electrical components shall be consistent with the ultraviolet lamp manufacturer's recommendations. Temporary screens shall be installed to protect the lamps and other fragile components from construction debris.

(E) Controls. Each individual ultraviolet lamp shall be provided with a remote operation indicator. Lamp failure alarms shall also be provided for a predetermined number of lamp failures. Techniques that result in non-irradiated flow pathways are prohibited. Each ultraviolet bank shall be equipped with at least one ultraviolet intensity meter or some means to monitor changes in ultraviolet dosage; however, intensity meters shall not be relied upon to automatically control system operation. A flow control device, such as an automatic level control, shall be provided to ensure that the lamps are submerged in the effluent at all times regardless of flow rate. The automatic level control shall be arranged so that it will allow suspended solids, which may settle, to be washed out of the area of UV disinfection. Proper heating and ventilation are critical to ultraviolet system operation. Cabinets containing ballasts and/or transformers shall be provided with positive filtered air ventilation and automatic shutdown/alarms at high temperatures. Provisions shall also be made to maintain the ultraviolet lamps at or near their optimum operating temperature and to filter ventilating air so as to limit ultraviolet light absorbance by dust accumulations. Elapsed operation time meters shall be provided for each bank of ultraviolet lamps.

(F) Cleaning. Provisions for routine cleaning such as mechanical wipers, high pressure sprayers, ultrasonic transducers, or chemical cleaning agents are required. Quartz sleeve ultraviolet systems shall have a chemical cleaning capability in addition to any ultrasonic and/or mechanical wiper systems. Cleaning solution mix and storage tanks shall have a volume of at least 125% of the reactor volume to be cleaned. A spent cleaning solution disposal plan shall be included in the engineering report.

(G) Safety. Operators shall be protected from exposure to ultraviolet light during normal operations.

(H) Replacement Parts. Replacement part provisions shall be based on:

(i) the following table which summarizes minimum requirements as a percentage of the total provided in the ultraviolet system; or

(ii) a minimum of one uninstalled spare module.

Part Description	Minimum Percent of Total
Lamps	10
Ballast	5
Enclosure Tubes	5
Modules*	2

* (excluding lamps and enclosure tubes)

(3) Disinfection techniques not in widespread use, such as ozonation, bromine chloride, and chlorine dioxide, will be considered for approval on a case-by-case basis. Full details of application, operation, and maintenance, and results of pilot and developmental studies, shall be furnished to the commission by the design engineer for each proposal.

§317.7. Safety.

(a) General policy. Design of facilities should follow guidelines established under 29 Code of Federal Regulations, Parts 1901.1 (OSHA) and other regulatory authorities.

(b) Railings and stairways. Railings should conform with guidelines contained in the Occupational Safety and Health Act, Paragraph 1910.23. Openings in railings must have removable chains. Open valve boxes and pits must be guarded by railings. Refer to §317.4(a)(7) of this title (relating to Wastewater Treatment Facilities) for additional requirements. Steep and vertical ladders are acceptable for infrequent access to equipment. Walkways and steps must have a nonslip finish. Ladders must have flat safety tread rungs and extensions at least one foot out of a vault. Seven feet of clearance shall be provided for overhead piping, unless piping is padded to prevent head injury and warning signs are provided.

(c) Electrical code. Electrical design shall conform to local electrical codes. Where there are no local electrical codes, the design shall conform to the National Electrical Code. Where a flammable gas may exist, all electrical equipment shall conform to the requirements of the National Electrical Code, Chapter 5, Articles 500-510, "Hazardous Locations." The equipment shall bear the seal of the Underwriter Laboratories, Inc. or comply with the National Electrical Code. Adequate lighting must be provided, especially in areas to be serviced by personnel on duty during hours of darkness.

(d) Unsafe water. When non-potable water is made available to any part of the plant, all yard hydrants and outlets shall be properly marked "Unsafe Water, " and all underground and exposed piping shall be identified as specified in subsection (g) of this section.

(e) Plant protection. The plant area shall be completely fenced and have lockable gates at all access points. Plants containing open clarifiers, aeration basins, and other open tanks shall be surrounded by an eight-foot fence with a minimum single apron barbed wire outrigger. Livestock fence may be provided in lieu of an eight-foot fence for stabilization ponds, lagoons, overland flow plots, and similar facilities. Hazard signs stating "Danger-Open Tanks-No Trespassing" must be secured to the fence, within visible sighting of each other, as well as on all gates and levees. Plants shall have at least one all-weather access road with the driving surface situated above the 100-year floodplain or be provided by an alternate method of access approved by the commission.

(f) Other safety equipment. The plant as a whole, and hazardous areas in particular, shall be posted in accordance with the Hazardous Communication Act.

(g) Color coding of piping. All piping both exposed and to be buried or located out of view, containing gas, chlorine, or other hazardous materials shall be color coded. Other piping should be color coded. All non-metallic underground plant piping should be installed with tracer type. The non-potable waterline should also be identified with a proper color coding. This line shall be painted white and be stenciled "NON-POTABLE WATER" or "UNSAFE WATER". The following coding is recommended by the Water Pollution Control Federation.

Sludge Line	Brown
Gas Line	Red
Potable Water Line	Blue
Chlorine Line	Yellow
Sewage Line	Grey
Compressed Air Line	Green
Heating Water Lines	Blue with 6" red bands spaced 30" apart
Power Conduit	Orange

(h) Portable ventilators and gas detection equipment. Portable gasoline operated ventilators must be provided for ventilating manholes. Personal gas detectors are required for wear by all personnel whose jobs require entering enclosed spaces capable of having accumulations of hydrogen sulfide or other harmful gases. An approved personnel retrieval system should be provided for continued space entry.

(i) Potable water. Potable water should be provided to the plant site. Double check backflow preventers must be provided at the main plant service. Atmospheric vacuum breakers are required at all potable water washdown hoses.

(j) Freeze protection. All surfaces subject to freezing shall be adequately sloped to prevent standing water.

(k) Noise levels. Noise levels in all working areas shall be kept below standards established by the Occupational Safety and Health Act. Removable noise attenuators should not be utilized.

(l) Safety training. Regular safety training shall be provided to all employees.

§317.8. Design And Operation Features.

(a) Laboratory control.

(1) Facilities. Laboratory capability for operational control and testing shall be provided. The laboratory should be located on ground level and easily accessible to the treatment plant and sampling points. The laboratory should be located away from vibrating machinery or equipment which could have an adverse effect on the performance of the operation of laboratory instruments. The extent of the equipment to be provided and the specific tests to be performed will vary according to capacity and type of plant. As a minimum, provisions should be made at all plants so that chemicals and equipment are available for performing such on-site tests as settleable solids (Imhoff cone), 30-minute settleability, dissolved oxygen, pH, and chlorine residual. For plants with a design flow of 1. 0 mgd to 5.0 mgd, equipment shall also be provided to determine suspended solids concentration. All plants with design flows in excess of 5.0 mgd shall have access to facilities to provide all permit required compliance monitoring, plus volatile suspended solids, nitrogen series, and alkalinity determinations (if anaerobic sludge digestion is used). Alternately, such tests may be performed under contract with other laboratories. Special consideration, for treatment plants located in remote or vandal prone areas, may be given by the commission to methods for storing chemicals and analytical equipment at an off-site location. Provisions shall be made in all cases to provide for the requirements of the commission self-reporting system procedures and for proper monitoring of significant industrial connections. These requirements are minimum requirements only; additional provisions may be needed to insure optimum plant operations. Raw waste characterization should be provided for all facilities with a design flow in excess of 5.0 mgd and for all facilities anticipating a plant expansion.

(2) Air conditioning. All laboratories shall be air conditioned and heated to maintain a constant temperature.

(b) Office and toilet facilities. Hand washing facilities should be provided for the protection of operating personnel. Office, showers, toilets, heating, proper lighting, and ventilation shall be provided where operators are to be stationed at the plant for operating shifts. The needs of male and female employees, the handicapped, and visitors to the plant should be considered in the design of sanitary facilities.

(c) Tool shed and work shop. Appropriate facilities should be provided for the storage of tools and spare parts, and a work shop should be provided to allow repairs and maintenance.

(d) Landscaping and beautification. Upon completion of the treatment plant, the grounds should be properly graded for surface drainage. Asphalt, concrete, gravel, or shell walkways should be provided for access to all treatment units and to the final sampling point. Where possible, steep slopes should be avoided to prevent erosion. Surface water shall not be allowed to drain into any unit. Particular care shall be taken to protect trickling filter beds, sludge drying beds, and intermittent sand filters from storm water runoff. Provision should be made for landscaping and plant site beautification, particularly when a plant is visible to the public.

§317.10. Appendix B–Overland flow process. The overland flow process is the application of wastewater along the upper portion of uniformly sloped and grass covered land and allowing it to flow in a thin sheet over the vegetated surface to runoff collection ditches. The primary objective of this process is treatment of wastewater. Utilization of this process does result in a discharge and therefore a waste dis-

charge permit from the Texas Water Commission is required. This process is best utilized on soils with low permeability. The performance of the overland flow process is dependent on the detention time of the wastewater on the vegetated sloped area. Therefore, in order to meet a specified effluent criteria, the hydraulic loading rate, the application rate, and the effectiveness of the distribution system are essential design considerations. For detailed process design guidance, the latest edition of the Environmental Protection Agency **Technology Transfer Process Design Manual for Land Treatment of Municipal Wastewater** may be used.

(1) Hydraulic loading rate. The hydraulic loading rate and application rate can vary depending on levels of pretreatment, quality of effluent, temperature, and other climatic conditions. A hydraulic loading rate of 1.5 to 2. 0 inches per day and an application rate of six to eight gallons per hour per foot of slope width are suggested as general guides. The design rates selected and their justification shall be submitted in the design report.

(2) Wastewater storage. Storage capacity for inclement weather conditions shall be provided. To minimize the impact of algae on the treatment performance, this storage shall be designed as an off-line basin, used only as needed and emptied as soon as possible by blending with other pretreated wastewater prior to application. To control odors, provisions for aeration in the storage basin should be considered.

(3) Soil testing. For the overland flow process, the soil profile evaluation should extend to a depth of at least three feet. The soil sampling and testing specified in subsection (b) of this section shall be representative of the soil to this depth.

(4) Other design considerations.

(A) The overland flow process treatment area shall be subject to the same buffer zone requirement as a treatment plant.

(B) The minimum slope length for the applied wastewater shall be 100 feet.

(C) The sloped areas to receive wastewater shall be uniformly graded to eliminate wastewater ponding and short circuiting for the length of the flow. Site grading procedures and tolerances shall be included in the specifications. Minimum slopes shall equal or exceed 2.0%; maximum slope shall not exceed 8.0%. The application site shall be protected from flooding.

(D) The application cycle should provide a maximum of 10 hours for dosing followed by a minimum period of 14 hours of resting.

(E) The method of application shall provide uniform coverage of the area.

(F) A vegetative cover shall be provided on the application site. The plant types selected shall be suitable for overland flow conditions and shall provide uniform coverage of soil to prevent short circuiting and channelization of the area.

(G) Wastewater quality and disinfection requirements for overland flow process discharges will be established by the discharge permit.

(H) An effluent sampling station shall be provided prior to discharge to surface waters. The sampling and reporting requirements will be established by the discharge permit.

§317.11. Appendix C–Hyacinth Basins.

(a) Introduction.

(1) Purpose. Hyacinths may be used for the removal of suspended solids from secondary effluent. Other proposed treatment applications, however, are not excluded by these criteria, and such proposals will be reviewed on a case-by-case basis.

(2) Other permits. The authority to use hyacinths is contingent upon obtaining a possession permit from the Texas Parks and Wildlife Department.

(3) Location. Uncovered hyacinth basins will be approved only in Cameron, Hidalgo, Kenedy, and Willacy counties. Hyacinth basins elsewhere shall be covered with a greenhouse structure. A variance will be considered for systems which are designed for seasonal operation. Greenhouse design shall provide for adequate dike top width for equipment maneuverability, doors for personnel and equipment access, and openings for ventilation.

(b) Design.

(1) Multiple basins. Multiple basins shall be provided. Capacity to treat the design flow with one basin out of service shall be provided. A variance may be considered for systems which are designed for seasonal operation. Average water depth of basin shall not exceed 36 inches.

(2) Basin sizing and configuration. Multiple surface inlets and outlets shall distribute flow uniformly through the basin. This may be accomplished by a weir, openings in a baffle, by a perforated pipe, or other methods. Basins of one acre or less in size are required. The bottom of the hyacinth basin shall be sloped to facilitate draining. A surge basin or some other method of flow equalization to achieve a more constant rate of inflow to the basin is desirable.

(3) Barrier. A fixed barrier creating a clear zone shall be installed at the outlet to prevent the discharge of hyacinths or hyacinth seed. While screening may be used as a barrier material, a permeable rock barrier is preferred. Water depth within the outlet area shall not be more than 24 inch with the bottom covered by a layer of broken rock or washed gravel.

(4) Loading. Organic loading of hyacinth basins shall not exceed 100 lbs/acre/day of BOD5 unless supplemental aeration is provided to consistently maintain an aerobic surface water layer. The maximum hydraulic loading shall not exceed 0.20 mgd/acre.

(5) Natural aerators and mosquito control. Exclosures shall be placed at intervals along basin edges to provide clear zones for aeration and to enhance fish production for mosquito control. Total area of exclosures should be approximately 20% of total basin area. Exclosures shall have a uniform depth of not more than 24 inches, with bottoms lined with broken rock or washed gravel. Plastic sheeting covered with a layer of broken rock or washed gravel, extending above and below operating water level, shall be placed all along inner basin berms to prevent weed growth and eliminate a mosquito breeding habitat.

(c) Operation.

(1) Harvesting. Adequate provisions for access, removal, and disposal of the hyacinth plants shall be provided. Removal shall be done mechanically.

(2) Cleaning. Each basin shall be cleaned once each year by dewatering and removing plants and sludge.

(3) Coverage. Plant coverage shall be limited to 90% of the basin area.

§317.13. Appendix E–Separation Distances. The following rules apply to separation distances between potable water and wastewater treatment plants, and waterlines and sanitary sewers.

(a) Water line/new sewer line separation. When new sanitary sewers are installed, they shall be installed no closer to waterlines than nine feet in all directions. Sewers that parallel waterlines must be installed in separate trenches. Where the nine-foot separation distance cannot be achieved, the following guidelines will apply.

(1) Where a sanitary sewer parallels a waterline, the sewer shall be constructed of cast iron, ductile iron, or PVC meeting ASTM specifications with a pressure rating for both the pipe and joints of 150 psi. The vertical separation shall be a minimum of two feet between outside diameters and the horizontal separation shall be a minimum of four feet between outside diameters. The sewer shall be located below the waterline.

(2) Where a sanitary sewer crosses a waterline and the sewer is constructed of cast iron, ductile iron, or PVC with a minimum pressure rating of 150 psi, an absolute minimum distance of six inches between outside diameters shall be maintained. In addition, the sewer shall be located below the waterline where possible and one length of the sewer pipe must be centered on the waterline.

(3) Where a sewer crosses under a waterline and the sewer is constructed of ABS truss pipe, similar semi-rigid plastic composite pipe, clay pipe, or concrete pipe with gasketed joints, a minimum two foot separation distance shall be maintained. The initial backfill shall be cement stabilized sand (two or more bags of cement per cubic yard of sand) for all sections of sewer within nine feet of the waterline. This initial backfill shall be from one quarter diameter below the centerline of the pipe to one pipe diameter (but not less than 12 inches) above the top of the pipe.

(4) Where a sewer crosses over a waterline, all portions of the sewer within nine feet of the waterline shall be constructed of cast iron, ductile iron, or PVC pipe with a pressure rating of at least 150 psi using appropriate adapters. In lieu of this procedure the new conveyance may be encased in a joint of 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five feet intervals with spacers or be filled to the springline with washed sand. The encasement pipe should be centered on the crossing and both ends sealed with cement grout or manufactured seal.

(b) Water line/manhole separation. Unless sanitary sewer manholes and the connecting sewer can be made watertight and tested for no leakage, they must be installed so as to provide a minimum of nine feet of horizontal clearance from an existing or proposed waterline. Where the nine-foot separation distance cannot be achieved, a carrier pipe as described in subsection (a)(4) of this section may be used where appropriate.

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 March 26, 1990.

TRD-9003060 Jim Haley
Director
Texas Water Commission

Effective date: September 26, 1989

Proposal publication date: April 16, 1990

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

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Part X. Texas Water Development Board

Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (board) adopts amendments to 31 TAC §§375.2, 375.3, 375.18-375.20, 375.36, 375.38, 375.39, and 375.72; and new §§375.73 and 375.74. Section 375.73 is adopted with changes to the proposed text as published in the February 9, 1990, issue of the *Texas Register* (15 TexReg 687). Sections 375.2, 375.3, 375.18-375.20, 375.36, 375.38, 375.39, 375.72, and 375.74 are adopted without changes and will not be republished.The amendments establish a reserve to provide financial assistance for hardship applications and clarify procedures for applying for such assistance; authorize the provision of financial assistance for nonpoint source pollution control projects and establish procedures for applying for such assistance; and modify the requirements for loan closing, delivery of funds, and release of funds for financial assistance from the State Water Pollution Control Revolving Fund (SRF). The changes to §375.73 will correctly cite to §375.72(c) rather than §375. 72(d) as originally published. The sections as adopted also include language changes which result from the previous adoption of amendments to Chapter 375 which became effective after the February 9, 1990, proposal of these sections.

The board received only one comment on the sections, which expressed support of the proposal by the Greater Texoma Utility Authority.

Introductory Provisions

• 31 TAC §375.2, §375.3

The amendments are adopted under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties, and under Texas Water Code, §15.605, which requires the board to adopt rules necessary for the SRF.

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 March 22, 1990.

TRD-9003110 Suzanne Schwartz
General Counsel
Texas Water Development Board

Effective date: April 13, 1990

Proposal publication date: February 9, 1990

For further information, please call: (512) 463-7855

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Program Requirements

• 40 TAC §§375.18-375.20

The amendments are adopted under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties, and under Texas Water Code, §15.605, which requires the board to adopt rules necessary for the SRF.

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 March 22, 1990.

TRD-9003111 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

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Applications for Assistance

• 31 TAC §§375.36, 375.38, 375.39

The amendments are adopted under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties, and under Texas Water Code, §15.605, which requires the board to adopt rules necessary for the SRF.

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.

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TRD-9003112 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

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Prerequisites to Release of Funds

• 31 TAC §375.72

The amendment is adopted under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties, and under Texas Water Code, §15.605, which requires the board to adopt rules necessary for the SRF.

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.

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TRD-9003113 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

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Prerequisites to Release of Funds

• 31 TAC §375.73, §375.74

The new sections are adopted under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties, and under Texas Water Code, §15.605, which requires the board to adopt rules necessary for the SRF.

§375.73. Delivery of Funds.

(a) Delivery of funds prior to completion of design. In accordance with §375.72(c) of this title (relating to Loan Closing), the executive administrator may authorize the delivery of funds prior to completion of design for an amount not to exceed the total estimated cost of the engineering planning and design and cost of issuance associated with the loan. Prior to delivery of funds prior to completion of design, the applicant shall submit for approval to the executive administrator the following documents:

(1) a statement as to sufficiency of funds, including proceeds to be derived from the sale of bonds to the board and to others and any other available funds to complete the project;

(2) bonds delivered in proper form to the office of the state treasurer, Austin, or other place specified by the executive administrator, accompanied by written instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the funds shall be delivered; and

(3) other instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require.

(b) Delivery of funds for building purposes. Prior to the delivery of funds for building purposes, the applicant shall submit for approval to the executive administrator the following documents:

(1) the contract documents approved in accordance with §375.63 of this title (relating to Approval of Contract Documents);

(2) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(3) two original copies of each contingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, wage rates, and other documents required by §375.62 of this title (relating to Contract Documents);

(4) other or additional engineering data and information, if deemed necessary by the board's staff;

(5) a statement as to sufficiency of funds, including proceeds to be derived from the sale of bonds to the board and to others and any other available funds to complete the project;

(6) bonds delivered in proper form to the office of the state treasurer, Austin, or other place specified by the executive administrator, accompanied by written instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the funds shall be delivered;

(7) other instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require; and

(8) those closing instruments not previously submitted pursuant to the exceptions of §375.72(c) of this title (relating to Loan Closing).

(c) Delivery of funds for loans which will construct two or more projects. For loans which will construct two or more distinct projects, the executive administrator may approve delivery of funds for all or a portion of the engineering planning and design and costs of issuance for the loan provided all requirements of subsection (b) of this section have been met for at least one of the contracts on one of the projects.

(d) Delivery of funds for projects constructed through two or more construction contracts. For projects constructed through two or more construction contracts the executive administrator may approve delivery of funds for all or a portion of the estimated project cost, provided all requirements of subsection (b) of this section have been met for at least one of the construction contracts.

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 March 22, 1990.

TRD-9003114 Suzanne Schwartz
General Counsel
Texas Water Development Board

Effective date: April 13, 1990

Proposal publication date: February 9, 1990

For further information, please call: (512) 463-7855

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Part XIV. Texas Board of Irrigators

Chapter 429. Violation of Statute or Board Rule

Complaint Process

• 31 TAC §429.7

The Texas Board of Irrigators adopts an amendment to §429.7, without changes to the proposed text as published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 321).

The section was amended to clarify current complaint investigation procedures and to provide for direct referral of complaints to the Attorney General in cases requiring immediate legal action to enforce Texas Civil Statutes, Article 8751, and the rules of the board.

The amendment clarifies existing procedures and helps avoid delays in the enforcement process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Licensed Irrigators Act, Texas Civil Statutes, Article §8751, §7, which provides the board with the authority to adopt, prescribe, promulgate, and enforce all rules reasonably necessary to effectuate provisions of the 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 March 22, 199

TRD-9003154 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: April 16, 1990

Proposal publication date: January 23, 1990

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

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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 §§15.432-15.433

The Texas Department of Human Services adopts amendments to §15.432, and §15.433, concerning the expansion of transfer of resources penalty. The amendments are the result of a federal mandate that applies to transfers by the community-based spouse occurring after December 19, 1989

The amendments are justified to comply wit federal requirements.

The amendments will function by applying the penalty when the community-based spouse transfers, for less than fair market value, assets that were previously transferred from the institutionalized spouse.

'he amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. To comply with federal requirements, the amendments are adopted effective December 19, 1989.

§15.432. Exceptions to Transfer of Resources--July 1, 1988, and After.

(a) Transfer of the client's home does not affect his eligibility when the title is transferred to his:

(1) spouse, who lives in the home (After December 19, 1989, the transfer penalty applies when the community-based spouse transfers, without full compensation, the home previously transferred from the institutionalized spouse);

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

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

§15.433. Transfer of Resources Penalty Period.

(a) The penalty period for transfers on or after July 1, 1988, runs separately but concurrently with penalties for transfers between March 1, 1981, and June 30, 1988. The penalty period begins with the month the transfer occurred. The penalty applies only to nursing facility care and home/community-based waiver services (Type Program 19). If a transfer occurred with the client's knowledge and consent, the department considers the fair market value of the resource at the time of transfer. The client remains eligible for all other Medicaid benefits and continues to receive a monthly identification card. Both the client and the service provider are notified of the penalty period. SSI clients or clients in the community who are eligible under Type Program 03, 11, 18, or 22 or Waiver V may transfer resources without penalty provided they do not become institutionalized. For community- based MAO clients, except Type Program 19, the department gathers information about transfers occurring on or after July 1, 1988, and notifies the client of potential penalty if he is institutionalized. Type Program 19 clients may be ineligible for home/community-based waiver services for up to 30 months if the transfer results in any uncompensated value.

(b) The Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) expanded the transfer penalty so that it also applies when the community-based spouse transfers (for less than fair market value) assets previously transferred from the institutionalized spouse. This penalty applies to transfers by the community-based spouse that occur after December 19, 1989.

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 March 26, 1990.

TRD-9003163 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: December 19, 1989

Proposal publication date: N/A

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

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Subchapter E. Income

• 40 TAC §15.455

The Texas Department of Human Services adopts an amendment to §15.455, concerning the value of domestic commercial transportation tickets. The amendment is a result of a federal mandate that further describes what is considered income in the Medicaid program.

The amendment is justified to comply with federal requirements.

The amendment will function by not considering the value of domestic commercial transportation tickets that are given as gifts as income unless converted to cash.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with authority to administer public and medical assistance programs. To comply with federal requirements, the amendment is adopted effective March 1, 1990.

§15.455. Unearned Income.

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

(e) Other unearned income. Other sources of unearned income include

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

(5) gifts, inheritances, support, and alimony. Expenses involved in obtaining the income are excluded.

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

(C) The value of domestic commercial transportation tickets (given as a gift to the client or spouse) is not income unless converted to cash. Domestic transportation is limited to the 50 states, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and Northern Islands.

(6)-(9) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 26, 1990.

TRD-9003164 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: March 1, 1990

Proposal publication date: N/A

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

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Subchapter F. Budget and Payment Plans

• 40 TAC §15.503

The Texas Department of Human Services (DHS) adopts an amendment to §15. 503, concerning 1990 income and resource levels for spousal impoverishment, in its Medicaid Eligibility chapter. The amendment is necessary to comply with requirements of the Medicaid Catastrophic Coverage Act of 1988. Effective January 1, 1990, the income and resource levels for spousal impoverishment have increased, based on a 4.3% adjustment in the Consumer Price Index.

The amendment is justified by increasing the protected monthly income to $1, 565 for the community spouse and protecting a minimum of $12,516 in resources. This amendment applies only to individuals who begin continuous periods of institutionalization on or after January 1, 1990.

The amendment will function by providing protection of income and resources for the community spouse to prevent impoverishment when the other spouse is institutionalized.

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 amendment is adopted effective January 1, 1990, to comply with federal law.

§15.503. Protection of Spousal Income and Resources. Public Law 100-360 provides for the protection of income and resources for the community spouse to prevent impoverishment when the other spouse is institutionalized. When determining the amount the institutionalized spouse (client) must pay toward his care, the Department of Human Services protects up to $1,565 monthly income for the community spouse; a minimum of $12,516 in resources is also protected. This applies only to individuals who begin continuous periods of institutionalization on or after January 1, 1990.

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 March 26, 1990.

TRD-9003159 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: January 1, 1990

Proposal publication date: N/A

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

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• 40 TAC §15.515

The Texas Department of Human Services (DHS) adopts an amendment to §15. 515, concerning Medicare skilled nursing facilities in its Medicaid eligibility chapter.

The purpose of the amendment is to comply with Public Law 101-234, the Medicare Catastrophic Coverage Repeal Act of 1989, which reinstates the policies in effect before the Medicare Catastrophic Coverage Act of 1988.

The amendment specifies that Medicare covers the entire cost of the client's stay in a skilled nursing facility for days one through 20. For days 21 through 100, Medicaid pays coinsurance vendor payments if the client's stay continues to be covered by Medicare.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The amendment is adopted effective January 1, 1990, in compliance with federal requirements.

§15.515. Medicare Skilled Nursing Facilities.

(a) For a Medicaid applicant or cli ent who is certified for Medicare payments while in a Title XVIII skilled nursing facility (SNF), Medicare pays the entire bill for the first through the 20th day. There is no coinsurance for that period. The client is eligible for coinsurance vendor payment beginning on the 21st day. Coinsurance continues through the 100th day if the client's stay is covered by Title XVIII.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 26, 1990.

TRD-9003161 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: January 1, 1990

Proposal publication date: N/A

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

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Chapter 29. Purchased Health Services

Subchapter L. General Administration

• 40 TAC §29.1109

The Texas Department of Human Services (DHS) adopts an amendment to §29. 1109, concerning coordination of Title XIX with Parts A and B of Title XVIII, in its Purchased Health Services rule chapter. The amendment is adopted effective April 1, 1990, to make DHS's rules consistent with §6102 of the Omnibus Budget Reconciliation Act of 1989. Section 6102 requires Medicare assignment for Medicare payment of physician services provided to Medicare/Medicaid eligible individuals. Therefore §29.1109 is amended to require Medicare assignment for Medicaid payment of Medicare deductible and coinsurance liabilities on claims for physician services.

The amendment is justified to ensure that DHS' rules are consistent with federal law.

The amendment will function by specifying requirements for Medicaid payment of Medicare deductible and coinsurance liabilities.

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 amendment is adopted to ensure consistency with federal requirements to be effective April 1, 1990.

§29.1109. Coordination of Title XIX with Parts A and B of Title XVIII.

(a) If a Medicaid recipient is eligible for Medicare coverage, the department or its designee pays the recipient's Medicare deductible and coinsurance liabilities as specified in this section. Payment of deductible and coinsurance liabilities is subject to the reimbursement limitations of the Texas Medical Assistance Program.

(1) For qualified Medicare beneficiaries as defined in §1905(p) of the Social Security Act, the department or its designee pays the recipient's Part A and Part B deductible and coinsurance liabilities on valid Medicare claims. Benefits for individuals eligible for Medicaid only as qualified Medicare beneficiaries are limited to medical assistance for Medicare deductible and coinsurance liabilities. For services provided on or after April 1, 1990, physicians must accept Medicare assignment for Medicaid payment of Part B deductible and coinsurance liabilities.

(2) (No change.)

(b) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 26, 1990.

TRD-9003160 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: April 4, 1990

Proposal publication date: N/A

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

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Chapter 35. Pharmacy Services

Subchapter B. Administration

• 40 TAC §35.201

The Texas Department of Human Services adopts an amendment to §35.201 with changes to the proposed text as published in the September 29, 1989, issue of the *Texas Register* (14 TexReg 5166).

The amendment is justified because it provides for appropriate utilization of certain medications.

The amendment will function by clarifying coverage limitations on medications listed in the Texas Drug Code Index (TDCI).

The department received two written comments regarding the adoption of the amendment. The Texas Health Care Association (THCA) and the Texas Medical Association (TMA) both commented on the proposed §35.201(c).

The TMA expressed concern that physicians' flexibility would be limited (adversely affecting patient care) and that physicians would not be aware of the actual limitations. The association suggested that physicians needed more input and education before this kind of policy was implemented.

In an effort to resolve the concerns expressed in the comments, department staff met with TMA representatives. Physicians had previously provided input concerning this section through the Vendor Drug Formulary Advisory Committee, as well as through individual contacts. The department also had previously shared with physicians through statewide publications and the representatives of the drug manufacturers information concerning the need to limit payment for drugs that are inappropriately prescribed. The department will continue to work with TMA staff to ensure that physicians are aware of any procedures implemented under this section that limit coverage of specific drugs.

The THCA also expressed concern about physician education. Because nursing home staff are responsible for following physician orders, THCA representatives were concerned that the lack of physician understanding would result in penalizing the nursing homes. As previously stated, the department is and will continue to work with physicians and their representatives to ensure awareness concerning specific drug limitations.

In addition, THCA was also concerned that the limitations on drugs would be based on inappropriate FDA guidelines, which are developed for a younger, healthier population than what nursing homes generally serve.

While this section does not contain reference to a specific drug, drug group, or set of limitations, the department has limited drug usage when usage exceeded manufacturers' recommendations. Justifications for large quantities, prices, or dosages of medications currently require special processing, including department receipt of a copy of the physician's prescription. The department anticipates the continued use of similar procedures under this section.

THCA expressed concern about limiting the days' supply of full dosage therapy for the Histamine antagonist/Carafate category to two 31-days' supplies. This in turn would exacerbate existing problems caused by the department's three-prescription-per-month limitation by not allowing larger supplies of these drugs to be prescribed.

Current department policy allows for a six-month supply of maintenance medications to be paid under the Vendor Drug Program. Current policy also allows the prescriptions mentioned in this comment to be staggered. This section is based on the expectations that drugs prescribed in these larger quantities will, in fact, be drugs appropriate for maintenance of health rather than remediation of an acute condition. It is the department's position to prevent the inappropriate use of acute dosage forms as maintenance dosages. Once the dosage of the drugs in question was reduced to a maintenance level, longer days' supplies would continue to be allowed. The department anticipates very little effect on patient ability to receive appropriate quantities of drugs under this section, particularly because our records show drugs in the Histamine antagonist/Carafate category are currently prescribed in less than two months' supply more than 90% of the time.

Finally, the department regrets that it must not adopt the part of subsection (b) concerning the coverage of prenatal vitamins. More recent budgetary information indicates constraints on funding make additional spending for these vitamins impossible during the current state fiscal year. If funds become available, coverage of prenatal vitamins will be reconsidered.

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.

§35.201. Covered Drugs.

(a) (No change.)

(b) Except for vitamins K and D3, fluoride for children, and products containing iron in its various salts, the department does not reimburse for vitamins and legend and nonlegend multiple ingredient antianemia products.

(c) The department may limit coverage of drugs listed in the Texas Drug Code Index (TDCI). Procedures used to limit utilization may include prior approval, cost containment caps, or adherence to specific dosage limitations recommended by manufacturers. Limitations placed on the specific drugs are indicated in the TDCI.

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 March 23, 1990.

TRD-9002844 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: May 1, 1990

Proposal publication date: September 29, 1989

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

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Chapter 49. Child Protective Services

Subchapter C. Eligibility for Child Protective Services

• 40 TAC §49.311

The Texas Department of Human Services (DHS) adopts an amendment to §49. 311, with changes to the proposed text as published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 325).

The amendment is justified to increase DHS's ability to protect children at risk of maltreatment by making child protective services more effective and efficient and increasing equity of services to child protective services clients.

The amendment will function by providing eligibility consistent with a risk-based service delivery system, the Child at Risk Field (CARF), which is being pilot-tested in DHS's Region 09 for one year: February 1, 1990-January 31, 1991. The amendment limits the new criteria to Region 09 and to the period of the pilot test.

The department received one written comment on the proposed amendment during the public comment period. The commenter represented the Center for the Retarded, Incorporated, of Houston. A summary of the comments and the department's responses follows.

The commenter suggested that the word "further" in §49.311(a) be changed to "future." The commenter's rationale was that the change would make services available to parents at risk for abusing their children but who have not done so already. This rationale is consistent with the department's intent in piloting the child at risk field risk assessment system, and the department has therefore changed the wording of the rule accordingly.

The commenter also suggested that services be mandatory for parents found to be at risk for abusing their children. This recommendation is beyond the scope of the department's statutory authority and is not being adopted.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 41, which provides the department with the authority to enforce laws for the protection of children. The amendment is also adopted under the Texas Family Code, Title 2, which provides the department with the authority to enforce laws and regulations governing the parent-child relationship.

§49.311. Eligible Individuals.

(a) Except as specified in subsection (c) of this section, children and their families are eligible for services to prevent future abuse/neglect or removal, services to remove children in danger of future harm, or services to reunify families if:

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

(b) (No change.)

(c) From February 1, 1990-January 31, 1991, children and their families in DHS Region 09 are eligible for services if there is a risk of future abuse or neglect to a child in the family. Risk is the likelihood of abuse or neglect and is determined through the worker's assessment of the presence and interaction of positive and negative influences attending each of five forces operating within the family:

(1) the child force, including: how the child is viewed by the parent, the child's behavior and/or emotions, current status, and vulnerability;

(2) the parent force, including: pervasive behaviors, feelings, levels of adaptation, history, parenting practices, and how the parent relates to others outside the home;

(3) the family force, including: demographics, family functioning, interaction, and communication, and environmental support;

(4) the maltreatment force, including: the nature of the abuse and/or neglect, surrounding circumstances, the form of abuse and/or neglect, and the effects; and

(5) the intervention force, including: family response to intervention, and external barriers to intervention effectiveness.

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 March 26, 1990.

TRD-9003162 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: April 15, 1990

Proposal publication date: January 23, 1990

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

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Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Area Agency Designation

• 40 TAC §255.37

The Texas Department on Aging adopts an amendment to §255.37, without changes to the proposed text as published in the December 15, 1989, issue of the *Texas Register* (14 TexReg 6544).

Information in the amendment explains the second year requirements for a service provided under rules of unit rate contracting. Specifically, the new material discusses instances where the "at risk" unit rate in effect after the introductory year can be adjusted, and is in response to numerous requests from the aging network to provide guidance in this regard.

The amendment will provide additional information to service providers regarding situations which may arise where renegotiation of unit rates may be appropriate.

Comments received were generally editorial in nature and did not propose additions or deletions which effect the intent of the section. The section as originally written and as altered by the amendment, is written to complement the inauguration of contracting processes heretofore not generally in practice by service providers in the aging network. In writing the original section and in developing the amendment, the department has endeavored to supplement existing instructions by inserting explanations and examples in the format of the original text. From an editorial standpoint, we concur that in some instances this may appear inartfully accomplished. For the sake of continuity, however, we believe that the best possible placement of the additional instructions and information has been made. Regarding comments of a technical nature, the department stresses that the recommendations for deletion of certain words and phrases would be more appropriate when the section is completely rewritten at a future date. At that time, there will be no need to perpetuate current language regarding initiation and follow-on years, and much of the explanatory wording can be deleted. Regarding the suggestion that information and referral should continue to be a service reimbursed at a unit rate, the department has concluded, after much consultation with knowledgeable persons on area agency staff, and the TDoA board and advisory council, that the needs of the network and the elderly are best met by reimbursing information and referral on an actual expense basis. The department concurs with the suggestion that a definition should be incorporated into the section and has acted accordingly on this recommendation.

Commenting against the amendment was the Texas Association of Home Health Agencies Visiting Nurses Association.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation 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 March 15, 1990.

TRD-9002991 O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Effective date: April 11, 1990

Proposal publication date: December 15, 1989

For further information, please call: (512) 447-2201

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Part XI. Texas Commission on Human Rights

Chapter 335. General Provisions

• 40 TAC §§335.1-335.7

(Editor's Note: The Texas Commission on Human Rights adopts new §§335.1-335.7 on an emergency basis simultaneously. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§335.1-335.7, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 835).

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The new sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these new sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections is adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003097 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 336. Commission

• 40 TAC §336.1

(Editor's Note: The Texas Commission on Human Rights adopts new §336. 1 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §336.1, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 837).

The purpose of the new section is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

This section will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Fair Housing Act, Article II, §2. 02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003096 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 337. Referral to Municipalities

• 40 TAC §§337.1-337.3

(Editor's Note: The Texas Commission on Human Rights adopts new §§337. 1-337.3 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §337.1-337.3, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 837).

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The new sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003095 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 338. Exempted Residential Real Estate-Related Transactions

• 40 TAC §§338.1-338.8

(Editor's Note: The Texas Commission on Human Rights adopts new §§338.1-338.8 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§338.1-338.8, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 838).

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The new sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003094 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 339. Discriminatory Housing Practices

• 40 TAC §§339.1-339.18

(Editor's Note: The Texas Commission on Human Rights adopts new §§339.1-339.18 on an emergency basis simultaneously. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§339.1-339.18, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 840).

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

These sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provide the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003093 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 340. Administrative Enforcement

• 40 TAC §§340.1-340.28

(Editor's Note: The Texas Commission on Human Rights adopts new §§340.1-340.28 on an emergency basis simultaneously. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts the new §§340.1-340.28, with changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 845).

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The new sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988. Also, the new sections shall establish consistent and uniform interpretations by the

commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003090 William M. Hale
Executive Director
Texas Commission on
Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 341. Administrative Hearing Proceedings

• 40 TAC §§341.1-341.68

(Editor's Note: The Texas Commission on Human Rights adopts new §§341.1-341.68 on an emergency basis simultaneously. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§341.1-341.68, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 849)

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The new sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003092 William M. Hale
Executive Director
Texas Commission on
Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 342. Prompt Judicial Action

• 40 TAC §§342.1-342.3

(Editor's Note: The Texas Commission on Human Rights adopts new §§342.1-342.3 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§342.1-342.3, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 857).

The purpose of the new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The new sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, the new sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003091 William M. Hale
Executive Director
Texas Commission on
Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 343. Enforcement by Private Persons

• 40 TAC §§343.1-343.5

(Editor's Note: The Texas Commission on Human Rights adopts new §§343.1-343.5 on an emergency basis simultaneously. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§343.1-343.5, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 858).

The purpose of these new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

These sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003089 William M. Hale
Executive Director
Texas Commission on
Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 344. Other Action by the Commission

• 40 TAC §§344.1-344.3

(Editor's Note: The Texas Commission on Human Rights adopts new §§344.1-344.3 on an emergency basis simultaneously. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §§344.1-344.3, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 859).

The purpose of these new sections is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

These sections will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, these sections shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Fair Housing Act, Article II, §2.02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003087 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 345. Prevailing Party

• 40 TAC §345.1

(Editor's Note: The Texas Commission on Human Rights adopts new §345. 1 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §345.1, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 859).

The purpose of this new section is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

This section will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Fair Housing Act, Article II, §2. 02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003084 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 346. Fair Housing Fund

• 40 TAC §346.1

(Editor's Note: The Texas Commission on Human Rights adopts new §346. 1 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §346.1, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 860).

The purpose of the new section is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

The section will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Fair Housing Act, Article II, §2. 02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003088 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

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Chapter 347. Statutory Authority

• 40 TAC §347.1

(Editor's Note: The Texas Commission on Human Rights adopts new §347. 1 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §347.1, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 860).

The purpose of the new section is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

This section will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section shall establish consistent and uniform interpretations by the commission as to

what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Fair Housing Act, Article II, §2. 02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003086 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

Chapter 348. Effective Date

• 40 TAC §348.1

(Editor's Note: The Texas Commission on Human Rights adopts new §348. 1 on an emergency basis simultaneously. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on Human Rights adopts new §348.1, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 861).

The purpose of the new section is to establish procedures for processing complaints alleging discriminatory housing practices by the Texas Commission on Human Rights and exercising its powers pursuant to the Texas Fair Housing Act.

This section will establish uniform and consistent procedures for processing complaints filed under the Texas Fair Housing Act and complaints referred to the Texas Commission on Human Rights by the United States Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Also, this section shall establish consistent and uniform interpretations by the commission as to what constitutes discriminatory housing practices.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Fair Housing Act, Article II, §2. 02, which provides the Texas Commission on Human Rights with the authority to adopt rules necessary to implement this Act, provided that substantive rules adopted by the commission shall impose obligations, rights, and remedies which are the same as provided in federal fair housing regulations. The commission may adopt procedural rules to implement this chapter.

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 March 22, 1990.

TRD-9003085 William M. Hale
Executive Director
Texas Commission on Human Rights

Effective date: April 13, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 837-8534

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register.*

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register.*

Texas Department on Aging

Wednesday, April 4, 1990, 1 p.m. The Texas Board on Aging Committee to Review Requests for Proposals and Award Funding for the Options for Independent Living Program of the Texas Department on Aging will meet in the Third Floor Conference Room, 1949 South IH 35, Austin. According to the complete agenda, the board will review/approve area agencies on aging's requests for proposals and TDOA staff recommendations on options for independent living program projects; and award of state funding to area agencies on aging for options for independent living program projects.

Contact: Jebron Hopper, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: March 23, 1990, 3:51 p.m.

TRD-9003122

Thursday, April 5, 1990, 9:30 a.m. The Texas Board on Aging of the Texas Department on Aging will meet in the Third Floor Conference Room, 1949 South IH 35, Austin. According to the complete agenda, the board will receive public testimony on all agenda items; executive session to review and consider staff salary adjustments and staffing levels; and procedures and policy regarding the job posting of the vacant executive director position; review of the state foundation on aging; status of 1991 White House Conference on Aging and status of Texas White House Conference on Aging and review of conference budget; progress report on the development of a program on the reuse of rural hospitals for senior housing; and general announcements.

Contact: Jebron Hopper, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: March 23, 1990, 3:49 p.m.

TRD-9003121

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Texas Department of Agriculture

Tuesday, April 3, 1990, 7 p.m. The Southern Rolling Plains Cotton Producers Board of the Texas Department of Agriculture will meet at Miles Co-operative Gin, Board Room, 1 1/2 miles northwest of Miles, on FM 1692, Miles. According to the agenda summary, the board will hear the reading and approval of minutes; treasurer's report; report of activities; committee reports; old and new business.

Contact: Kenneth Gully, P.O. Box 30036, San Angelo, Texas 76903, (915) 469-3638.

Filed: March 23, 1990, 2:35 p.m.

TRD-9003109

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State Board of Barber Examiners

Tuesday, April 3, 1990, 8:30 a.m. The Board Members of the State Board of Barber Examiners will meet at 9101 Burnet Road, Suite 103, Austin. According to the revised agenda summary, the board will consider a proposed curriculum for the barber refresher course. The board will review §51.53 of the general rules of practice and procedure, concerning out-of-state applicants for licensure.

Contact: Jo King McCrorey, 9101 Burnet Road, Suite 103, Austin, Texas 78758.

Filed: March 22, 1990, 1:58 p.m.

TRD-9003046

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Texas Board of Chiropractic Examiners

Thursday, March 29, 1990, 9 a.m. The Texas Board of Chiropractic Examiners met at 8716 MoPac Expressway North, Suite 301, Austin. According to the revised agenda summary, the Enforcement Committee discussed recommendations on cases heard and handled by the committee. (specifically case numbers: 90-65; 90-84; 90-38; 90-30; 90-39; 90-99; 90-47.)

Contact: Jennie Smetana, 8716 MoPac Expressway North, Suite 301, Austin, Texas 78759.

Filed: March 26, 1990, 12 p.m.

TRD-9003170

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Texas Department of Criminal Justice Board of Pardons and Paroles

Monday-Friday, April 2-6, 1990, 10 a.m. The Texas Department of Criminal Justice Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, a panel (composed of 3 board members) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: March 23, 1990, 10:37 a.m.

TRD-9003067

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Texas Education Agency

Tuesday, April 3, 1990, 9 a.m. The School Facilities Advisory Committee of the Texas Education Agency will meet at 1701 North Congress, W. B. Travis Building, Room 8-101, Austin. According to the complete agenda, the committee will discuss approval of minutes for March 7, 1990 meeting; impact of special session legislation on school facilities study; committee discussion of standard setting procedures; committee discussion of state role options; status of staff work; and determination of future meeting date(s).]

Contact: Joe Wisnoski, 1701 North Congress Avenue, Room 3-101, Austin, Texas 78701, (512) 463-9704.

Filed: March 23, 1990, 3:59 p.m.

TRD-9003123

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Advisory Commission of State Emergency Communications

Wednesday, April 4, 1990, 9:30 a.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at the Advisory Commission Offices, 1101 Capital of Texas Highway S, Suite B-100, Austin. According to the agenda summary, the committee will hear public comment; consider proposed wording on uncollectible factor in the remittance of 9-1-1 revenues; consider proposed wording for rulemaking on the reporting mechanism related to 9-1-1 service fee revenues; hear staff reports; discuss long-term goals and objectives; discuss vice-chairman position; consider possible executive session for personnel issues; and any new business.

Contact: Glenn Roach, 1101 Capital of Texas Highway S, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 26, 1990, 4:14 p.m.

TRD-9003196

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Texas Employment Commission

Tuesday, April 3, 1990, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket 14; and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: March 26, 1990, 1:49 p.m.

TRD-9003172

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Texas Department of Health

Friday, March 30, 1990, 2 p.m. The Budget Committee of the Texas Board of Health of the Texas Department of Health will meet in the De Zavala Room, Doubletree Hotel, 6505 IH 35 North, Austin. According to the agenda summary, the committee will discuss approval of transfer of funds to the chronically ill and disabled children's services program; approval to purchase an automated system for the WIC program; approval to purchase a cache disk controller and disk for the department; approval to purchase a processor for automated data processing for the department; and adoption under federal mandate of change to the rule concerning the schedule of fees for clinical health services.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 22, 1990, 4:16 p.m.

TRD-9003052

Friday, March 30, 1990, 3 p.m. The Alternate Care Committee of the Texas Department of Health will meet at the Dewitt Room, Doubletree Hotel, 6505 IH 35, Austin. According to the agenda summary, the board will consider proposed rules (certification of medical radiologic technologists; diabetic eye disease detection initiatives; registry for providers of health related services; home health aide training, qualifications and duties; abortion facility licensing standards); final rules on licensure standards for4 home health agencies; work experience and examination for home health dialysis technicians.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 22, 1990, 4:11 p.m.

TRD-9003049

Friday, March 30, 1990, 4 p.m. The Emergency and Disaster Committee of the Texas Board of Health of the Texas Department of Health will meet in the De Zavala Room, Doubletree Hotel, 6505 IH 35 North, Austin. According to the complete agenda, the committee will report on the trauma technical advisory committee and briefing with the State Highway Commission.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 22, 1990, 4:17 p.m.

TRD-9003053

Friday, March 30, 1990, 5 p.m. The Hospitals Committee of the Texas Board of Health of the Texas Department of Health will meet in the De Zavala Room, Doubletree Hotel, 6505 IH 35 North, Austin. According to the complete agenda, the committee will discuss proposed amendments to the rules concerning special care facilities.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 22, 1990, 4:13 p.m.

TRD-9003050

Friday, March 30, 1990, 5 p.m. The Environmental Health Committee of the Texas Board of Health of the Texas Department of Health will meet in the Dewitt Room, Doubletree Hotel, 6505 IH 35 North, Austin. According to the agenda summary, the committee will consider proposed rules (tanning facilities; on-site sewerage facilities on the recharge zones of the Edwards Aquifer; public water systems concerning third party additives certification; special waste from health care related facilities; disposal of special wastes and management of medical wastes; Texas Regulations for control of radiation concerning fees for certificates of registration, radioactive materials licenses, emergency planning and implementation and other regulatory services; municipal solid waste management regulations concerning the Texas Air Control Board; issuing narcotic drug permits to sponsors of narcotic drug treatment clinics and regulation of the clinics holding permits); final rules on municipal solid waste facility fees and reports; and appointments to the municipal solid waste management and resource recovery advisory council.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78750, (512) 458-7484.

Filed: March 22, 1990, 4:15 p.m.

TRD-9003051

Saturday, March 31, 1990, 8 a.m. The Disease Control Committee of the Board of Health of the Texas Department of Health will meet at 1100 West 49th Street, Room M-741, Commissioner's Conference Room, Austin. According to the agenda summary, the committee will discuss proposed rules on immunizations; HIV services grants; reports from associate commissioner concerning advisory committees.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:16 p.m.

TRD-9003142

Saturday, March 31, 1990, 8:30 a.m. The Chronically Ill and Disabled Children's Services and Maternal and Child Health Committee of the Board of Health of the Texas Department of Health will meet at 1100 West 49th Street, Room M-652, Austin. According to the agenda summary, the committee will consider adoption of WIC rules under federal mandate; proposed rules on WIC state plan of operation; final rules on chronically ill and disabled children's services program; emergency and proposed rules on chronically ill and disabled children's services program concerning financial eligibility; fiscal update on chronically ill and disabled children's services bureau; release of bid specification for the WIC infant formula rebate program; report from associate commissioner concerning advisory committees.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:16 p.m.

TRD-9003144

Saturday, March 31, 1990, 9 a.m. The Nursing Homes Committee of the Board of Health of the Texas Department of Health

will meet at 1100 West 49th Street, Room M-721, Austin. According to the agenda summary, the committee will consider final rules on administrative penalties for nursing homes; appointments to advisory committee for mental retardation facilities; proposed new rule concerning minimum licensing standards for personal care facilities, including repeal of existing rules; proposed rules on remedies; report from associate commissioner concerning advisory committees.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:17 p.m.

TRD-9003145

Saturday, March 31, 1990, 9:30 a.m. The Strategic Planning Committee of the Board of Health of the Texas Department of Health will meet at 1100 West 49th Street, Room M-741, Austin. According to the agenda summary, the committee will discuss items submitted by Board of Health members and Texas Department of Health staff for inclusion in agenda for Board of Health workshop during April 1990.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:17 p.m.

TRD-9003146

Saturday, March 31, 1990, 10:30 a.m. The Personnel Committee of the Board of Health of the Texas Department of Health will meet at 1100 West 49th Street, Room M-721, Austin. According to the agenda summary, the committee will have executive session to discuss appointments to the children's vision screening advisory committee; asbestos advisory committee; kidney health program advisory committee; chronically ill and disabled children's services cardiovascular committee; maternal and child health advisory committee; discuss in open meeting appointments to children's vision screening advisory committee; kidney health program advisory committee; CIDCS cardiovascular advisory committee; maternal and child health advisory committee; municipal solid waste management and resource recovery advisory council; and advisory committee for mental retardation facilities.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:20 p.m.

TRD-9003147

Saturday, March 31, 1990, noon. The Legislative Committee of the Board of Health of the Texas Department of Health will meet at 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the legislative committee will consider concepts for draft legislation.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:16 p.m.

TRD-9003143

Saturday, March 31, 1990, noon. The Texas Board of Health of the Texas Department of Health will meet in Room M-739, 1100 West 49th Street, Austin. According to the agenda summary, the board will approve minutes of previous meeting; hear commissioner's report and AIDS update; approve resolution; hear committee reports; consider and may act on proposed rules (medical readiologic technologists; diabetic eye disease detection; registry for providers of health related services; WIC state plan; immunizations; HIV services grants; tanning facilities; on-site sewerage facilities; public water systems; disposal of special waste; radiation; final rules (home health agency standards; home dialysis technicians; fees for clinical health services under federal mandate; WIC rules under federal mandate; WIC state plan; comprehensive cleft/craniofacial teams; municipal solid waste facility fees and reports; administrative penalties for nursing homes); emergency and proposed rules on chronically ill and disabled children's services concerning financial eligibility; transfer of funds to chronically ill and disabled children's services program; purchase automated system for WIC, cache disk controller and disk, processor for automated data processing; appointments to committees; approval of concepts for draft legislation; executive session on reassignment of duties of deputy commissioner for management and administration and deputy commissioner for professional services; announcements and comments not requiring board action; next meeting date.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 23, 1990, 4:15 p.m.

TRD-9003141

Sunday, April 8, 1990, 9 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet at the Comanche Peak Steam Electric Generating Station, Glen Rose. According to the agenda summary, the board will approve minutes of previous meeting; hear chairman's report; update on Texas Low Level Radioactive Waste Disposal Authority activities; committee reports (executive; medical; fee); rules and regulatory guide update; program activities (general activity; Division of Compliance and Inspection; Division of Licensing, Registration and Standards); and set next meeting date.

Contact: L.D. Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 835-7000.

Filed: March 22, 1990, 10:34 a.m.

TRD-9003040

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Texas Health and Human Services Coordinating Council

Wednesday, April 11, 1990, 10 a.m. The State I & R Task Force of the Texas Health and Human Services Coordinating Council will meet at the Brown-Heatley Building, Public Hearing Room, 4900 North Lamar, Austin. According to the complete agenda, the task force will discuss charge to the task force; review of project calendar; roundtable discussion of current initiatives; components of a generic I&R system; identification of basic I&R concepts and current issues; distribution of selected readings; and public comment.

Contact: Carol Price, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: March 23, 1990, 2:19 p.m.

TRD-9003107

Wednesday, April 18, 1990, 10 a.m. The Child Abuse Program Evaluation Group Commission on Children, Youth, and Family Services of the Texas Health and Human Services Coordinating Council will meet at the Child Advocacy, Inc., Suite 300, 2515 West Main, Houston. According to the complete agenda, the commission will discuss old business: approval of minutes, introduction of members and individual reports; strategic plan of action; and new business: selection of next meeting, date site.

Contact: Robin, Child Advocates, Inc., 2515 West Main, Suite 300, Houston, Texas, (713) 529-1396.

Filed: March 23, 1990, 2:19 p.m.

TRD-9003108

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Texas Department of Human Services

Monday, April 2, 1990, 3 p.m. The Board of the Texas Department of Human Services will meet at 701 West 51st Street, East Tower, First Floor, Public Hearing Room, Austin. According to the complete agenda, the board will hear report on the Senate Health and Human Services Committee meeting; fiscal year 1990 mid-year budget report; reimbursement rates; direct reimbursement for certified registered nurse anesthetist's services; and commissioner's report.

Contact: Bill Woods, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3047.

Filed: March 23, 1990, 5:35 p.m.

TRD-9003150

Tuesday, April 3, 1990, 9:30 a.m. The Hospital Payment Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the committee will hear deputy commissioner's comments; continuation of the discussion of hospital disproportionate share qualification criteria alternatives; calculation of standard dollar amount; planned hospital claims payments edits; open discussion by members; and selection of next meeting date.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: March 26, 1990, 4:17 p.m.

TRD-9003198

Wednesday, April 4, 1990, 9:30 a.m. The Client Self-Support Services Advisory Council of the Texas Department of Human Services will meet at the Thompson Conference Center, 26th and Red River Streets, Room 3.122, Austin. According to the complete agenda, the council will discuss approval of minutes; report on federal legislation; report on status of AFDC quality control reform effort; report on DHS budget; title XX family planning eligibility rule changes; family planning training for client self-support services staff; report on JOBS implementation; report on child care concept design; report from child care committee; liability insurance for day care vendors under ccms; 1115 waiver to disregard income earning through short-term employment; report on the HIPPY program; proposed comprehensive Texas teen pregnancy prevention program; and open discussion.

Contact: Cindy Marler, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3662.

Filed: March 26, 1990, 4:17 p.m.

TRD-9003197

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Industrial Accident Board

Tuesday, March 27, 1990, 9:30 a.m. The Industrial Accident Board met at the Bevington A. Reed Building, 200 East Riverside Drive, First Floor, Room 107, Austin. According to the complete agenda, the board will hold an opening meeting to discuss and consider: emergency adoption of amended board rule §64.10 concerning attorney fees; proposed amendment of board rule §64. 10 concerning attorney fees; adoption of procedures under board rule §64.10; and revision of contract of representation.

Contact: George E. Chapman, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: March 23, 1990, 4:18 p.m.

TRD-9003133

Thursday, March 29, 1990, 1 p.m. The Committee of the Industrial Accident Board will meet in the Bevington A. Reed Building, 200 East Riverside Drive, First Floor, Room 107, Austin. According to the complete agenda, the committee will hold under the Open Meetings Act, Article 6252-17, Texas Civil Statutes, a meeting of the special advisory committee on hospital care for the purposes of discussion and making recommendations for the implementation of Article 8. Medical Services of Senate Bill 1. Discussion and recommendation will pertain to the following issues: criteria for conducting and list of procedures requiring preauthorization of medical care; procedures for third party review of hospital bills; ranking of prohibited practices; public education and information on TWCC's medical policies and procedures; and definition of medical review division's data base.

Contact: Ellen C. English, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7974.

Filed: March 23, 1990, 4:18 p.m.

TRD-9003134

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State Board of Insurance

Tuesday, April 3, 1990, 10 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will discuss petition for separate workers' compensation rates for codes 7997 and 8046. Ratification of emergency extension and permanent adoption of amendments to workers' compensation rules concerning ownership and rejected risks. Emergency and proposed action on amendment to 28 TAC §15.27. Discussion of rules pursuant to Senate Bill 911. Commercial general liability filings by insurance services office emergency extensions of 28 TAC §§1.408, 7. 32, 7.50, 28.1, and 28.2, and of amendments to §1.304. Board orders on several different matters as itemized on the complete agenda. Decisions in the appeals of Charles S. Lloyd and Richard Cano from actions of the Texas Catastrophe Property Insurance Association. Personnel matters; litigation; solvency matters; internal audit matters; and appointment of members to the agent's conduct advisory committee.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: March 26, 1990, 2:36 p.m.

TRD-9003174

Wednesday, April 4, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Richard Norman Leggett, Bedford, who holds a group II, insurance agent's license issued by the board. Docket Number 10718.

Contact: Wendy Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003184

Wednesday, April 4, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Carol Ann Salkowski, Wichita Falls, who holds a local recording agent's license issued by the board. Docket Number 10743.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003183

Friday, April 6, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of TEXOP Bancshares, II, Inc., to acquire control of Texas American Life Insurance Company, Fort Worth. Docket Number 10767.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003182

Friday, April 6, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Larry Guy Sparkman, Tyler, who holds a group I, legal reserve life insurance agent's license and a group II, insurance agent's license issued by the board. Docket Number 10748.

Contact: Wendy Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003181

Friday, April 6, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to

consider whether disciplinary action should be taken against Leland Kenyon Merwin doing business as Inter-Ocean Marine and Energy, Houston, who holds a group II, insurance agent's license, a local recording agent's license and a surplus lines insurance agent's license issued by the board. Docket Number 10763.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003180

Monday, April 9, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of the Mutuelles Unies, Compagnie Financiere Droust, Le Patrimoine Participations, Compagnie Du Midi, Axa Midi Assurances, La Paterelle Risques Divers, and Finanxa France (Orsay Finance), Paris, France; Faraxa Holdings B.V., The Netherlands, Finaxa Corporation and Faraxa Corporation, Delaware corporations, to acquire control of Farmers Group, Inc., a Nevada corporation, and its affiliates, Farmers Texas County Mutual Insurance Company, Texas Farmers Insurance Company, and Mid-Century Insurance Company of Texas, Austin, pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §5; and to consider the Disclaimer of Control of Compagnie Financiere de Paribas, S.A., Paris France, and the Disclaimer of Control of Assicurazioni Generali S.p.A. Trieste, Italy, submitted as Exhibits MM-1 and MM-2, respectively, to the above-referenced application to acquire control of domestic insurers. Docket Number 10717.

Contact: O. A. Cassity, III and Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003179

Monday, April 9, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Hoylake Investments Limited, a Bermuda company, and Anglo Group plc, a company incorporated in England, to acquire control of B.A.T. Industries, PLC, a company incorporated in England, and its affiliates, Farmers Group, Inc., a Nevada corporation, Farmers Texas County Mutual Insurance Company, Texas Farmers Insurance Company, and Mid-Century Insurance Company of Texas, Austin, pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §5. Docket Number 10716.

Contact: O. A. Cassity, III and Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: March 26, 1990, 3:10 p.m.

TRD-9003178

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Mental Health Mental Retardation Center of East Texas

Monday, March 26, 1990, 4 p.m. The Board of Trustees of the Mental Health Mental Retardation Regional Center of East Texas held an emergency meeting at 2323 West Front Street, Tyler. According to the complete agenda, the board will discuss acceptance of planning and marketing project. The emergency status was necessary because of acceptance of planning and marketing project.

Contact: Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75701, (214) 597-1351.

Filed: March 23, 1990, 2:47 p.m.

TRD-9003117

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Texas National Guard Armory Board

Saturday, March 31, 1990, 2 p.m. The Texas National Guard Armory Board will meet at the Executive Board Room, Adam's Mark Hotel, 2200 Briarpark Drive, Houston. According to the agenda summary, the board will approve minutes of previous meeting; administrative matters; construction, renovation, maintenance update; property leases and establish date of next meeting.

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 451-6394/6143.

Filed: March 22, 1990, 10:50 a.m.

TRD-9003042

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State Pension Review Board

Thursday, April 5, 1990, 10 a.m. The Investment Policy Working Committee of Investment Review Committee of the State Pension Review Board will meet at the Teacher Retirement System Building, East, 1000 Red River, Room E-420, Austin. According to the complete agenda, the committee will discuss and prepare final report of working committee's recommendation to the full committee. An emergency revised agenda was filed to correct meeting room loaction.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: March 22, 1990, 10:46 a.m.

TRD-9003041

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Polygraph Examiners Board

Thursday-Friday, April 5-6, 1990, 9 a.m. The Polygraph Examiners Board will meet at the Inn of the Hills, Guadalupe Room, 1001 Junction Highway, Kerrville. According to the complete agenda, the board will, on Thursday, administer phase II of licensing exam; 1 p.m., phase III of licensing exam–meeting will be closed for the administration of licensing exam; chairman's report; approval of October 1989 meeting minutes; approval of January 1990 meeting minutes; hearing complaint number C-02-90. On Friday, hearing complaint number C-03-90; hearing complaint number C-04-90; hearing complaint number C02-03-FY88; consideration of amendment to regulation 391.3(13); update of agency activities; appearance of Don Glenn Woods, Jr.; consideration of any other polygraph related business that may come before the board.

Contact: Bryan M. Perot, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: March 26, 1990, 10:34 a.m.

TRD-9003169

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Public Utility Commission of Texas

Thursday, May 10, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits for Docket Number 9440: complaint of Vina McCool against Livingston Telephone Company,.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 23, 1990, 3:01 p.m.

TRD-9003115

Wednesday, June 20, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits on Docket Number 8289: petition of the City of Panorama Village, for termination of mandatory extended area service between the cities of Panorama Village and New Waverly.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1990, 2:52 p.m.

TRD-9003048

Monday, September 10, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800

Shoal creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits for Docket Number 9305: application of Central Power and Light Company for a certificate of convenience and necessity for a proposed 345KV transmission line in Nueces, San Patricio, Bee, and Goliad Counties.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1990, 2:50 p.m.

TRD-9003047

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State Purchasing and General Services Commission

Thursday, March 29, 1990, 8:30 p.m. The Texas School Bus Committee of the State Purchasing and General Services Commission held an emergency meeting at 1711 San Jacinto Street, Central Services Building, Room 200B, Austin. According to the complete agenda, the committee discussed school bus body and chassis specifications. The emergency status was necessary because consideration of this matter on an emergency basis was necessary to assure that acquisition of public school buses to transport school children will not be delayed.

Contact: Troy Martin, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3415.

Filed: March 26, 1990, 2:37 p.m.

TRD-9003175

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Texas Racing Commission

Monday, April 9, 1990, 1 p.m. The Horse Racing Section of the Texas Racing Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the section will hold an administrative hearing on a request by Heart of Texas Racing, Inc. doing business as G. Rollie White Downs for revised race dates. A vote will be taken.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

Filed: March 26, 1990, 1:44 p.m.

TRD-9003171

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Railroad Commission of Texas

Monday, April 2, 1990, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room 12-126, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedure, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: March 23, 1990, 10:41 a.m.

TRD-9003102

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: March 23, 1990, 10:41 a.m.

TRD-9003103

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Cril Payne, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7274.

Filed: March 23, 1990, 10:38 a.m.

TRD-9003104

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78753, (512) 463-6710.

Filed: March 23, 1990, 10:39 a.m.

TRD-9003100

The commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: March 23, 1990, 10:41 a.m.

TRD-9003101

The commission will hear oral argument on transportation docket numbers 037402A1N and 037417A1N application of Trux, Inc.

Contact: Karen Kornell, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7094.

Filed: March 23, 1990, 10:36 a.m.

TRD-9003106

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B) 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: March 23, 1990, 10:39 a.m.

TRD-9003099

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline, and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: March 23, 1990, 10:37 a.m.

TRD-9003105

The commission will consider various matters within the regulatory jurisdiction of the commission. 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 scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: March 23, 1990, 10:47 a.m.

TRD-9003098

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Texas Real Estate Commission

Monday, April 2, 1990, 8:30 a.m. The Texas Real Estate Appraiser Certification Committee of the Texas Real Estate Commission will meet at the Conference Room TREC Headquarters, 1101 Camino La Costa, Austin. According to the agenda summary, the committee will discuss the minutes of March 5, 1990 committee meeting; update on Title XI, Real Estate Appraisal Reform Amendments of 1989; discussion of proposed guidelines for state certification and licensing of real estate appraisers by the appraisal subcommittee of the federal financial institutions examina-

tion council; report on hearing before house committee on financial institutions; discussion and possible action to respond to proposed interpretations of appraiser qualifications criteria by the appraiser qualifications board; discussion and possible action to respond to amendments to uniform standards of professional appraisal practice proposed by the appraisal standards board; discussion and possible action to approve recommendations as to experience, education or examination required for appraiser certification; discussion of proposed application forms and draft rules concerning certification of appraisers; discussion of business valuation practices; selection of date and place of subsequent meetings.

Contact: Mark A. Moseley, 1101 Camino La Costa, Austin, Texas 78752, (512) 465-3960.

Filed: March 23, 1990, 10:31 a.m.

TRD-9003069

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School Land Board

Tuesday, April 3, 1990, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; opening and consideration of bids received for the April 3, 1990 oil, gas and other minerals lease sale; pooling applications, Green Fox East Field, Marion County; Stemmel Field, Wharton County; Coastal public lands-commercial lease amendment, Packery Point, Nueces County; commercial lease renewals, Neches River and Sabine Pass Channel, Jefferson County; Old Brazos River, Brazoria County; Galveston Bay, Galveston County; commercial lease applications, Laguna Madre, Cameron County; Corpus Christi Bay, Nueces County; structure permit requests, Laguna Madre, Kleberg County; Bastrop Bay, Brazoria County; structure permit terminations, Laguna Madre, Kleberg County; Bastrop Bay, Brazoria County; structure permit renewals, Titlum-Tatlum Bayou, Brazoria County, Laguna Madre, Kleberg and Willacy Counties; executive session-pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 26, 1990, 3:43 p.m.

TRD-9003186

Tuesday, April 3, 1990, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the revised agenda summary, the board will discuss Village Area of the Kennedy Causeway Tenants' Association maintenance and covenant enforcement agreement.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 26, 1990, 4:48 p.m.

TRD-9003199

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Senate of the State of Texas

Friday, April 6. 1990, 2 p.m. The Select Committee on Legislative Redistricting of the Senate of the State of Texas will meet in Room 223, Bayfront Convention Center, Corpus Christi. According to the complete agenda, the committee will take written and oral testimony on congressional, legislative, and State Board of Education redistricting, with special emphasis on redistricting in Nueces County and surrounding area. The hearing is one of a series of joint regional hearings being conducted by the Senate Select Committee on legislative redistricting and the House Redistricting Committee to gather information from around the state to assist the legislature in redistricting after publication of the 1990 census.

Contact: Doris Boedeker, P.O. Box 12128, Austin, Texas 78711, (512) 463-0395.

Filed: March 23, 1990, 4:11 p.m.

TRD-9003129

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Board for Lease of State-Owned Lands

Tuesday, April 3, 1990, 3 p.m. The Board for Lease of Texas Parks and Wildlife Lands of the Board for Lease of State-Owned Lands will meet in the General Land Office, Stephen F. Austin Building, Room 833, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; consideration and approval of bids received at the April 3, 1990 oil, gas and other minerals lease sale; consideration of pipeline easement applications, Sea Rim State Park, Jefferson County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 26, 1990, 3:44 p.m.

TRD-9003187

Wednesday, April 4, 1990, 2 p.m. The Board for Lease of Texas Department of Criminal Justice of the Board for Lease of State-Owned Lands will meet in the General Land Office, Stephen F. Austin Building, Room 833, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; consideration and approval of bids received at the April 3, 1990 oil, gas and other minerals lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 26, 1990, 3:42 p.m.

TRD-9003185

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University Interscholastic League

Wednesday, March 28, 1990, 8:30 a.m. The Officials Problems and Solutions Committee of the University Interscholastic League met at the Doubletree Hotel, 6505 North IH 35, Austin. According to the agenda summary, the committee will hear problems arising at athletic competitions and to propose solutions and penalties to help control the problems at Junior and High School competitions in Texas.

Contact: Dr. Bill Farney, P.O. Box 8028, UT Station, Austin, Texas 78713-8028, (512) 471-5883.

Filed: March 22, 1990, 10:16 a.m.

TRD-9003039

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Texas Water Commission

Wednesday, April 4, 1990, 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 various matters within the jurisdiction of the commission. 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 scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8040.

Filed: March 26, 1990, 3:54 p.m.

TRD-9003192

Wednesday, April 11, 1990, 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 various matters within the jurisdiction of the commission. 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 scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8040.

Filed: March 26, 1990, 3:54 p.m.

TRD-9003191

Wednesday, April 11, 1990, 1 p.m. The Texas Water Commission will meet in Room 123, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, . According to the agenda summary, the commission will consider the executive director's report and briefing on agency administration and budget procedures.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8040.

Filed: March 26, 1990, 3:55 p.m.

TRD-9003188

Wednesday, April 11, 1990, 3 p.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 various matters within the jurisdiction of the commission. 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 scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8040.

Filed: March 26, 1990, 3:55 p.m.

TRD-9003189

Tuesday, May 15, 1990, 9 a.m. The Texas Water Commission will meet at the Environmental Pollution Control Office, Air Pollution Classroom, 7411 Park Place, Houston. According to the agenda summary, the commission will consider the application for a hazardous waste storage and processing facility permit number HW-50195 for NSSI/Recovery Services, Inc. The purpose of the hearing will be to receive evidence on the conditions, if any, under which the permit may be issued. **Facility is located on 18 city lots in a mixed** commercial, residential and industrial area at 5711 Etheridge, Houston, Harris County.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: March 26, 1990, 3:55 p.m.

TRD-9003190

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Regional Meetings

Meetings Filed March 22, 1990

The Austin-Travis County Mental Health Mental Retardation Center Operations and Planning Committee met at 1430 Collier Street, Conference Room 1, Austin, March 29, 1990, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141.

The Gulf Bend Mental Health Mental Retardation Center Board of Trustees met at 1404 Village Drive, Victoria, March 28, 1990, at 2 p.m. Information may be obtained from Bill Dillard, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611.

The Leon County Central Appraisal District Board of Directors met at the District Office, on March 26, 1990, at 7 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The Lubbock Regional Mental Health Mental Retardation Center Board of Trustees met at 3801 Avenue J, Board Room, Lubbock, March 26, 1990 at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

The Middle Rio Grande Development Council Board of Directors met at the County Commissioners Courtroom, 101 Courthouse Square, Cotulla, March 27, 1990, at 1 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees met at 104 Charles Street, Granbury, March 28, 1990, at 8 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

TRD-9003038

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Meetings Filed March 23, 1990

The Austin Transportation Study Policy Advisory Committee met at the Austin Central Public Library Auditorium, 800 Guadalupe, Austin, March 27, 1990, at 5:30 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs Road, Suite 700, Austin, Texas 78704, (512) 472-7383.

The Capital Area Rural Transportation System (CARTS) Board of Directors met at 5111 East First Street, Conference Room, Austin, March 29, 1990, at 9:30 a.m. Information may be obtained from Edna Burroughs, 2201 Post Road, Suite 103, Austin, Texas 78704, (512) 385-7373.

The Dallas Area Rapid Transit Minority Affairs Committee met at 601 Pacific Avenue, Board Room, Dallas, March 27, 1990, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Governmental Relations Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, March 27, 1990, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Arts Committee met at 601 Pacific Avenue, 7A Conference Room, Dallas, March 27, 1990, at 10:30 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Board of Directors met at 601 Pacific Avenue, Board Room, Dallas, March 27, 1990, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, March 29, 1990, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth, Lampasas, March 28, 1990, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The Lower Neches Valley Authority Board of Directors Insurance and Finance Committees met at the LNVA Office Building, 7850 Eastex Freeway, Beaumont March 29, 1990, at 10 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Middle Rio Grande Development Council Texas Review and Comment System held an emergency meeting at the County Commissioners Courtroom, 101 Courthouse Square, Cotulla, March 27, 1990, at noon. The emergency status was necessary because applications needed to be reviewed before April 15, 1990 and several of the TRACS committee members would have been in another meeting on this date. Information may be obtained from Dora T. **Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.**

The Sabine Valley Regional Mental Health Mental Retardation Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Longview, April 9, 1990, at 7 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 758-2471.

The Tarrant County Appraisal District Board of Directors will meet at 2301 Gravel Road, Fort Worth, March 30, 1990, at 9 a.m. Information may be obtained from Olive Miller, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005.

TRD-9003054

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Meetings Filed March 26, 1990

The Dallas Area Rapid Transit Board of Directors held an emergency meeting at 601 Pacific Avenue, Board Room, Dallas, March 27, 1990, at 6:30 p.m. The emergency status was necessary because it was of the upmost importance that the DART Board of Directors take immediate action in implementing the DART Service Plan. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The 24th Judicial District Community Justice Council will meet at 108 East Forrest Street, McFaddin Building, Victoria, April 10, 1990, at 7 p.m. Information may be obtained from J. W. Hutcherson, 108 East Forrest, Victoria, Texas 77901, (512) 575-0201.

The Nortex Regional Planning Commission General Membership Committee met at the Wichita Falls Activities Center Room 214, 10th and Indiana, Wichita Falls, March 29, 1990, at noon. Information may be obtained from Dennis Wilde, 2101 Kemp Boulevard, Wichita Falls, Texas 76307, (817) 322-5281.

The Panhandle Regional Planning Commission Board of Directors met at 2736 West Tenth, PRPC Board Room, Amarillo, March 29, 1990, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257,, (806) 372-3381.

The Region 18 Education Service Center Board of Directors will meet at 2811 La Force Boulevard, Midland, April 5, 1990, at 7:30 p.m. Information may be obtained from Vernon Stoles, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, April 3, 1990, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, Thursday, April 5, 1990, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-9003151

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Meetings Filed March 27, 1990

The Brazos River Authority Lake Management Committee will meet in the Lake Supervisor's Office, Possum Kingdom Lake. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

TRD-9003200

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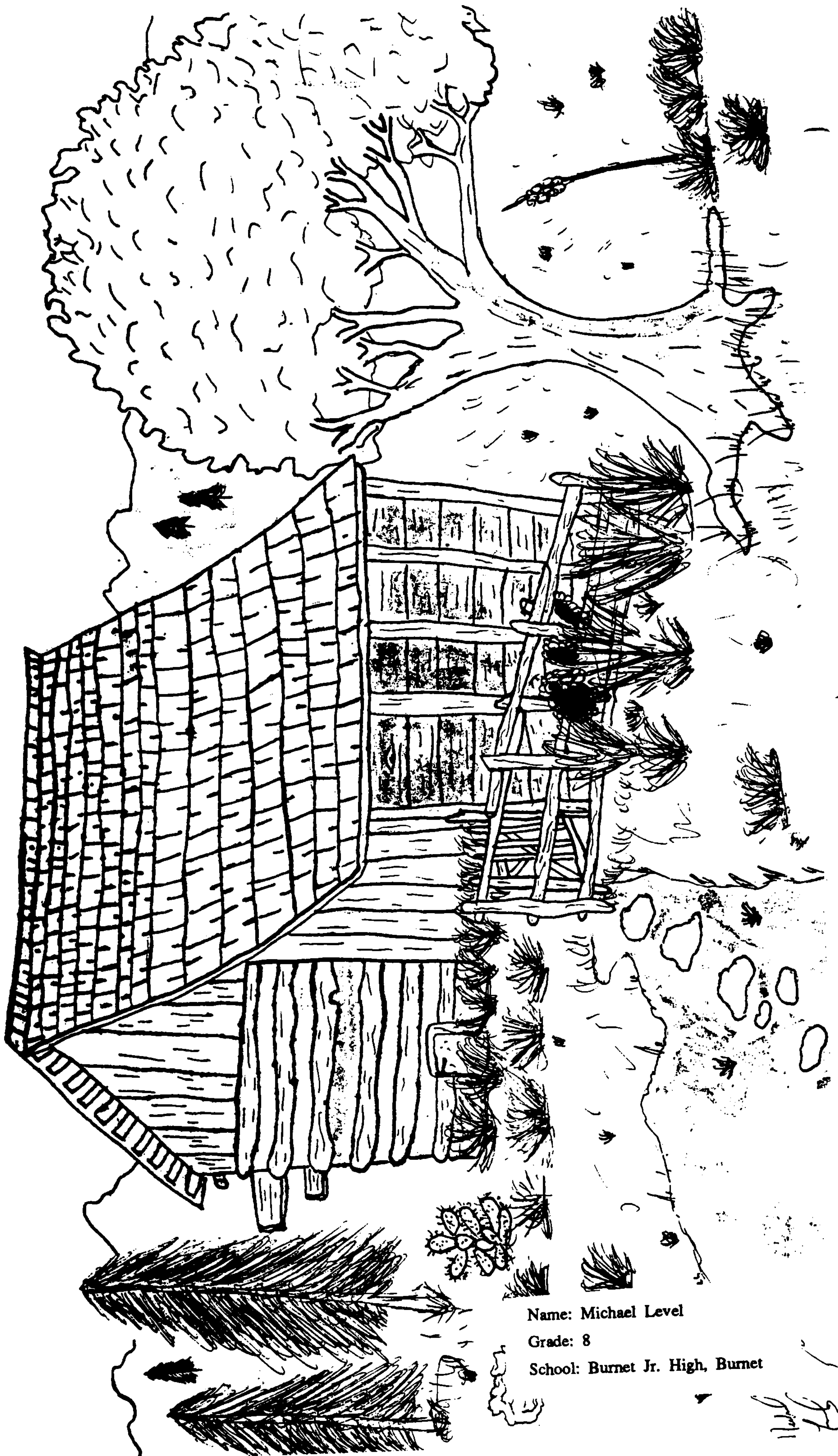

Name: Michael Level

Grade: 8

School: Burnet Jr. High, Burnet

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 Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-4014a, requires any person who intends to buy control of a trust company to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the commissioner.

On March 2, 1990, the banking commissioner received an application to acquire control of Eagle Management and Trust Company, Houston, by Brierley Investments Limited, New Zealand.

On March 19, 1990, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on March 19, 1990.

TRD-9002997 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 21, 1990

For further information, please call: (512) 479-1200

Notice of Hearing

The hearing officer of the Texas Department of Banking will conduct a hearing for the alleged sale of checks without a license in violation of the Sale of Checks Act by Ward's Food Mart, Dallas. The hearing will be held on April 2, 1990, at 9 a.m. at the Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on March 21, 1990.

TRD-9002998 Ann Graham
General Counsel
Texas Department of Banking

Filed: March 21, 1990

For further information, please call: (512) 479-1200

Texas Education Agency

Request for Proposals

Description: This notice is filed pursuant to the Texas Education Code, §14.044. The Texas Education Agency requests proposals in response to RFP #701-90-042, for creation of a center for educational technology (center) at a public college or university or a consortium of colleges and universities. The membership of the center shall consist of the Texas Education Agency, educators, universities, and private companies involved in the development of educational technology-related products. Initial funding for the center has been provided by the legislature through the period ending August 31, 1991. Continued operation of the center will be funded from income generated by the center.

Any person wishing to obtain additional information about the proposal may contact: Dr. Geoffrey H. Fletcher, Assistant Commissioner for Technology, Texas Education Agency, Room 3-112, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Dr. Fletcher can be reached by phone at (512) 463-9087.

The deadline for submitting proposals to the Document Control Center is 5 p.m. (Central Daylight Savings Time) Friday, May 11, 1990.

A copy of the RFP #701-90-042 may be obtained by calling the Document Control Center at (512) 463-9304 or by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Project Amount: Initial funding for the center in the amount of $800, 000 has been provided by the legislature for the period ending August 31, 1991. Continued operation of the center will be funded by income generated by the center.

Date of Project: The contract starting date will be June 20, 1990. The center, once established, will be expected to operate indefinitely.

Eligible Proposers: Proposals will be accepted from a public college or university or a consortium of colleges and universities.

Selection Criteria: The contract will be awarded on the basis of the proposal that is judged by a panel of reviewers and the commissioner of education to fulfill most effectively the specifications outlined in the request for proposal and to provide the most effective services commensurate with the cost.

Issued in Austin, Texas on March 23, 1990.

TRD-9003132 W. N. Kirby
Commissioner of Education
Texas Education Agency

Filed: March 23, 1990

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

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioac-

tive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Houston	Laboratory for Genetic Services	L04380	Houston	0	03/01/
Rockdale	Alcoa Power Plant	L04386	Rockdale	0	02/26/
Throughout Texas	List & Clark Construction Company	L04385	Overland, Kansas	0	03/07/

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Alvin	Phillips Pipe Line Company	L02083	Alvin	7	02/26/
Austin	Allan Shivers Radiation Therapy Center	L01761	Austin	22	02/28/
Burleson	Ranger Scientific, Inc.	L02235	Burleson	9	[illegible]/
Corpus Christi	Everest Exploration, Inc.	L03626	Corpus Christi	8	[illegible]/
Corpus Christi	Spohn Hospital	L02357	Corpus Christi	9	03/05/
Dallas	St. Paul Medical Center	L01065	Dallas	27	02/28/
Denton	Denton Regional Medical Center	L02764	Denton	18	02/28/
El Paso	Johnson & Johnson Medical Inc.	L04178	El Paso	2	03/07/
Euless	I-CON Industries, Inc.	L04066	Euless	1	03/07/
Houston	Exxon Company, U.S.A.	L03900	Houston	4	02/26/
Houston	Gulf Materials Recycling Corporation	L02734	Houston	8	03/07/
Houston	Rice University Chemistry Department	L00104	Houston	14	02/28/
Longview	Texas Eastman Company	L00301	Longview	61	02/26/
Lubbock	Methodist Hospital	L00483	Lubbock	59	03/06/
Midland	Midland Inspection and Engineering Incorporated	L03724	Midland	18	03/09/
Odessa	Shell Oil Company	L01882	Odessa	7	02/27/
Odessa	K. G. Jerry Taylor Company	L02488	Odessa	5	03/07/
Pasadena	Goodyear Tire & Rubber Company	L04321	Pasadena	1	02/26/
Pasadena	Lyondell Polymers Corporation	L02153	Pasadena	13	03/07/
Richardson	EPI Technologies, Inc.	L03706	Richardson	4	03/09/
Rockdale	Richards Memorial Hospital	L03218	Rockdale	8	02/28/
San Antonio	Northeast Medical Center Radiology	L02926	San Antonio	5	02/28/
Sherman	Johnson & Johnson Medical, Inc.	L01870	Sherman	13	03/07/
Snyder	Cogdell Memorial Hospital	L02409	Snyder	13	02/23/
Throughout Texas	MGM Well Services, Inc.	L01559	Corpus Christi	16	02/26/

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Throughout Texas	Five Star Perforator°s, Inc.	L02100	Borger	10	02/26/
Throughout Texas	Core Laboratories, Inc.	L02975	Houston	20	[illegible]/
Throughout Texas	General Inspection Services	L02319	Houston	16	[illegible]3/
Throughout Texas	Reinhart and Associates, Inc.	L03189	Austin	9	02/28/

Location	Name	License#	City	Amendment #	Date of Action
Throughout Texas	G & G X-Ray, Inc.	L03326	Corpus Christi	19	02/28/90
Throughout Texas	Basin Industrial X-Ray, Inc.	L02280	Corpus Christi	27	02/28/90
Throughout Texas	Ultrasonic Specialists, Inc.	L01774	Houston	44	03/01/90
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	53	02/23/90
Throughout Texas	CBI NA-CON, Inc.	L01902	Houston	19	03/03/90
Throughout Texas	Radiographic Specialists, Inc.	L02742	Houston	15	03/03/90
Throughout Texas	Koch Engineering Company Inc.	L03913	La Porte	25	03/08/90
Throughout Texas	ICI Tracerco	L03096	Houston	32	03/08/90
Throughout Texas	Mesquite Wireline Service, Inc.	L03911	Andrews	2	03/05/90
Throughout Texas	ACCO Perforators Inc.	L04121	Corpus Christi	2	03/05/90
Tyler	Women°s Diagnostic Center	L03883	Tyler	5	03/09/90
Woodville	S & T International, Inc.	L03652	Woodville	13	02/23/90

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Throughout Texas	Sharp Radiation Services	L03731	Corpus Christi	6	02/27/90

T[illegible]TIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Austin	Eugene P. Schoch, Jr., M.D.	L00992	Austin	10	02/28/90
El Paso	El Paso Engineering and Testing, Inc.	L01567	El Paso	27	02/27/90
Houston	Core Laboratories, Inc.	L00376	Houston	27	03/07/90
San Marcos	Southwest Texas State University	L03301	San Marcos	7	02/20/90

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation.*

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on March 20, 1990

TRD-9003043 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services

Texas Department of Health

Filed: March 22, 1990

For further information, please call: (512) 835-7000.

Texas Medical Disclosure Panel

Correction of Error

The Texas Medical Disclosure Panel submitted lists of medical treatments and surgical procedures which contained errors as submitted for publication in the February 2, 1990, issue of the *Texas Register* (15 TexReg 610).

On page 15 TexReg 622, the section number "604.4. Radiation Therapy Disclosure and Consent Form." should read "601.4. Radiation Therapy Disclosure and Consent Form."

On page 15 TexReg 623, the form's page number was omitted. The heading should read "Disclosure and Consent for Radiation Therapy-2."

Additional corrections to the lists were published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1253).

Public Utility Commission of Texas

Filing Requirements for Fuel Proceedings

Filing Requirements for Fuel Proceedings. The Public Utility Commission of Texas is considering the adoption of formal filing guidelines/requirements for fuel factor cases and fuel reconciliation cases. Parties wishing to review the filing guidelines may do so and submit written comments to the Public Utility Commission within 30 days of the date of publication of this notice.

Purpose of Filing Guidelines. The commission intends for these guidelines to improve the information exchange among the commission, its staff, the utilities, and the public. The guidelines will help reduce discovery by listing the information which the commission believes to be important for its Staff's analysis, specifying a format for the organization of the information, and indicating the level of detail appropriate for information filed with an application.

These guidelines are a part of a commission project to modify the rule which governs fuel cost recovery by utilities. A modified version of §23.23 of the commission's substantive rules is also being published for public comment. These filing requirements are referenced as part of §23.23(c).

A copy of the filing guidelines is available in the commission's central records. Ask for the filing requirements for fuel proceedings which are in the file for Project Number 8121. Please send 11 copies of your comments to: Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

Issued in Austin, Texas, on March 21, 1990.

TRD-9003116 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 23, 1990

For further information, please call: (512) 458-0100

State Purchasing and General Services Commission

Notice of Rejection of Proposals and Revised Request for Proposals

Pursuant to 1 TAC §125.17(b)(10), and Section 2.6 of RFP 1-0190AF, the Travel and Transportation Division of the State Purchasing and General Services Commission (commission) has rejected all proposals submitted in response to RFP 1-019AF. A revised request for proposals (RFP 2-049OAF) will be issued on April 3, 1990.

Notice is hereby given to all interested parties pursuant to Texas Civil Statutes, Article 601b, Article 14, and 1 TAC §125.17, the State Purchasing and General Services Commission is soliciting proposals for the provision of contract commercial airline fares for use by state employees traveling on official state business. The request for proposals containing all requirements necessary for an appropriate response may be obtained on or after April 3, 1990, from: State Purchasing and General Services Commission, Travel and Transportation Division, Central Services Building, Room 101, 1711 San Jacinto Boulevard, Austin, Texas 78711, Attention: Cassie G. Carlson, Director, (512) 463-3557.

The closing date and time for receipt of proposals is 5 p.m., April 10, 1990. The commission will hold a pre-proposal conference on April 3, 1990, from 3 p.m. -5 p.m., in Room 1-100 of the William B. Travis State Office Building, 1701 North Congress Avenue, Austin, for the purpose of addressing questions posed by interested vendors.

Proposals submitted will be evaluated and awards will be made pursuant to the provisions of 1 TAC §125.17(b).

Issued in Austin, Texas, on March 26, 1990.

TRD-9003156 John R. Neel
General Counsel
State Purchasing and General Services Commission

Filed: March 26, 1990

For further information, please call: (512) 463-3446

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 enforcement order was issued to Odessa Drum Company, SWR Number 31481, on March 14, 1990, assessing $201,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William W. Thompson, III, Staff Attorney, Texas Water Commission, P.O. Box 13087, Houston, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 23, 1990.

TRD-9003131 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 23, 1990

For further information, please call: (512) 463-7906.

Meeting Notice

A meeting of the Scientific/Technical Advisory Committee of the Galveston Bay National Estuary Program is scheduled for: Thursday, April 5, 1990, 10 a.m., Forest Room-Bayou Building, University of Houston-Clear Lake, 2700 Bay Area Boulevard, Houston.

STAC will discuss and develop a work scope for the mapping of oyster reefs in Galveston Bay. STAC will also hold discussions concerning development of FY91 technical studies during the Characterization Phase of the Management Conference.

Issued in Houston, Texas, on March 22, 1990.

TRD-9003010 Frank S. Shipley, Ph.D.
Program Manager
Galveston Bay National Estuary Program

Filed: March 21, 1990

For further information, please call: (713) 283-3950

profiles

A Guide to Texas State Agencies

State Commission on Judicial Conduct

The State Commission on Judicial Conduct was created by amendment to the Texas Constitution in 1965. At that time, Texas was only the second state to perceive the need for a judicial disciplinary authority.

The commission is responsible for taking action against "any judge who has willfully or persistently violated rules promulgated by the Supreme Court of Texas; is incompetent in the performance of the duties of office; has willfully violated the Code of Judicial Conduct; or has acted in a willful or persistent manner that is inconsistent with the proper performance of duties or casts public discredit upon the judiciary or the administration of justice." Its goals are to preserve and encourage the integrity of all judges in the state and ensure public confidence in the judiciary.

Initially, the agency reviews each complaint alleging judicial misconduct. After concluding its investigation, the commission may dismiss the charge; order a public or private admonition, warning or reprimand; or require the judge to obtain additional training or education. It also may require a judge to undergo physical or psychiatric examination. A judge charged with a felony offense or a misdemeanor involving misconduct in office may be suspended with or without pay. Ultimately, the agency may seek removal or censure of a judge through formal proceedings.

The commission currently exercises jurisdiction over more than 3,000 judges and judicial officers throughout the state. This includes appellate judges, district judges, county judges, justices of the peace, municipal court judges, masters, magistrates, and retired and former judges who are available for assignment as visiting judges.

In recent years, the commission has experienced a significant increase in the number of complaints filed regarding judicial misconduct. In fiscal year 1983, for example, the office received 275 complaints. By fiscal year 1988, that number had doubled to almost 550. The commission has also received an increasing number of public requests for information and advice concerning the judiciary and the judicial system.

The commission is made up of two attorneys, four citizen members and five judicial officers. Eight of the commissioners must reside in different judicial administrative districts. The agency is located in Austin and may be contacted at (512) 463-5533.

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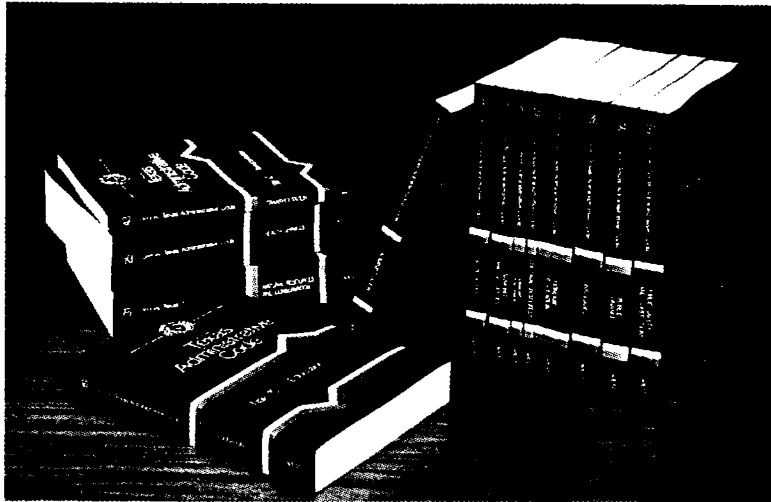

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