

# Texas Register

Volume 15, Number 27, April 6, 1990

Pages 1905-1982

## In This Issue...

### **Office of the Governor**

Appointments Made March 26, 1990

1915-Texas Workers' Compensation Commission  
Appointments Made March 27, 1990

1915-Hospital Licensing Advisory Council

### **Attorney General**

Opinions

1917-JM-1147 (RQ-1813)

1917-JM-1148 (RQ-1811)

1917-JM-1149 (RQ-1889)

1917-JM-1150 (RQ-1892)

Request for Opinions

1917-RQ-1943

1917-RQ-1944

1917-RQ-1945

1917-RQ-1946

1917-RQ-1947

1917-RQ-1948

1917-RQ-1949

1917-RQ-1950

1917-RQ-1951

1917-RQ-1952

1917-RQ-1953

1917-RQ-1954

1918-RQ-1955

1918-RQ-1956

1918-RQ-1957

1918-RQ-1958

1918-RQ-1959

1918-RQ-1960

1918-RQ-1961

1918-RQ-1962

1918-RQ-1963

1918-RQ-1964

1918-RQ-1965

### **Emergency Sections**

Texas Department of Licensing and  
Regulation

1919-Industrialized Housing and Buildings  
Texas State Board of Public  
Accountancy

1921-Certification as CPA  
Texas Workers' Compensation  
Commission

1922-Practice and Procedure  
State Department of Highways and  
Public Transportation

1922-Maintenance and Operations Division

### **Proposed Sections**

Texas Department of Licensing and  
Regulation

1925-Industrialized Housing and Buildings  
Texas Funeral Service Commission

## Texas Register

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

Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

**How To Cite:** Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3."

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

## Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



## Texas Register Publications

a section of the  
Office of the Secretary of State  
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Subscriptions—one year (96 regular issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$4 per copy.

1925-Licensing and Enforcement-Specific Substantive Rules

Texas State Board of Public Accountancy

1926-Certification as CPA

1926-Registration

1927-Continuing Professional Education

Texas Real Estate Commission

1927-Provisions of the Real Estate License Act

Texas Department of Health

1930-Solid Waste Management

State Board of Insurance

1933-Corporate and Financial Regulation

Texas Workers' Compensation Commission

1934-Practice and Procedure

Texas Air Control Board

1934-Control of Air Pollution from Municipal Solid Waste Facilities

Texas Water Commission

1935-Underground and Aboveground Storage Tanks

Comptroller of Public Accounts

1951-Tax Administration

Texas Department of Human Services

1951-Family Self-Support Services

1953-Family Planning

### **Withdrawn Sections**

Texas Department of Human Services

1955-Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

### **Adopted Sections**

Texas Department of Licensing and Regulation

1957-Personnel Employment Services

1959-Auctioneers

1960-Talent Agencies

1063-Tow Trucks

Texas Department of Human Services

1963-Community Care for Aged and Disabled

Texas Department on Aging

1967-State Delivery Systems

### **Open Meetings**

1969-Texas Department of Agriculture

1969-Texas Department of Commerce

1969-Texas Department of Criminal Justice Board of Pardons and Paroles

1969-Daughters of the Republic of Texas

1969-Texas Education Agency

1970-Texas Employment Commission

1970-General Land Office

1970-Governor's Educational Excellence

1970-State Board of Insurance

1970-Public Utility Commission of Texas

1971-Texas Racing Commission

1971-Railroad Commission of Texas

1971-Texas Real Estate Commission

1972-House of Representatives

1972-Texas Southern University

1972-Texas State University System

1972-University Interscholastic League

1972-Texas Water Commission

1973-Regional Meetings

### **In Addition**

Texas Air Control Board

1975-Notice of Public Hearing

Ark-Tex Council of Governments

1975-Request for Proposal

Texas Department of Commerce

1976-Bi-Weekly Report on the 1990 Allocation of the State Ceiling on Certain Private Activity Bonds

Office of Consumer Credit Commissioner

1976-Notices of Rate Ceilings

Texas Education Agency

1978-Request for Public Comment

Texas Department of Health

1979-Correction of Errors

Texas Housing Agency

1979-Request for Proposals

**Texas of Human Rights**

1979-Correction of Error

**Texas Department of Human Services**

1980-Public Notice of Pilot Project-Request for Proposals

1980-Request for Consultant Proposals

**Middle Rio Grande Development Council**

1980-Consultant Proposal Request

**Texas Parks and Wildlife Department**

1981-Texas Review and Comment System

**Texas Department of Public Safety**

1981-Correction of Error

**Texas Racing Commission**

1981-Correction of Error

**Texas A&M University System**

1981-Consultant Proposal Request-Strategic Information  
Reporting System

**Texas Water Commission**

1982-Enforcement Orders



Name: Cassandra Garcia

Grade: 11

School: La Porte High School, La Porte



Name: Joe Black

Grade: 9

School: La Porte High School, La Porte

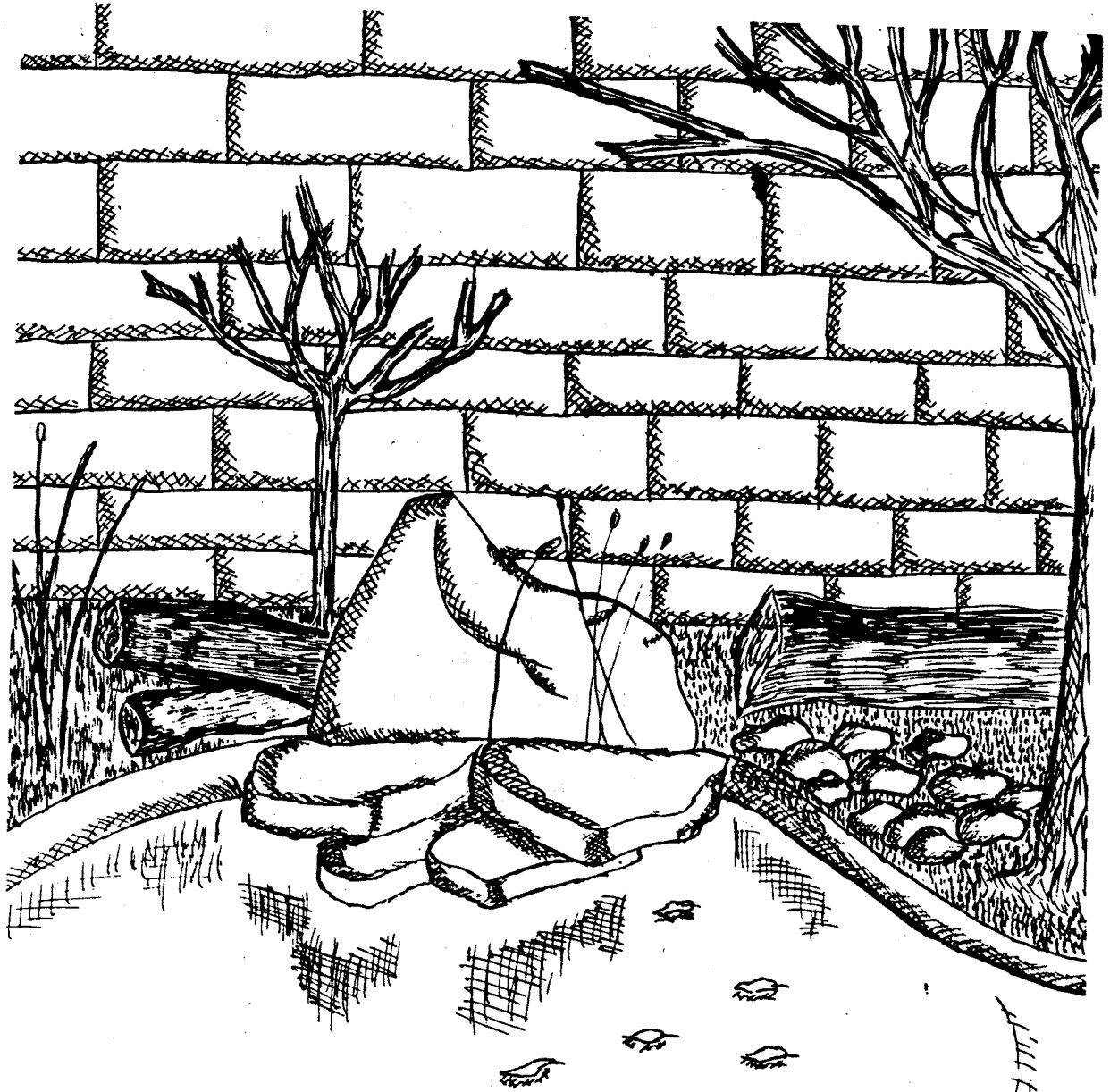


Name: Tim Smith

Grade: 10

School: La Porte High School, La Porte





Name: Jason Young

Grade: 10

School: La Porte High School, La Porte



# TAC Titles Affected

## TAC Titles Affected—April

The following is a list of the administrative rules that have been published this month.

### TITLE 4. AGRICULTURE

#### *Part I. Texas Department of Agriculture*

4 TAC §11.2—1877

### TITLE 16. ECONOMIC REGULATION

#### *Part I. Railroad Commission of Texas*

16 TAC §§5.581-5.582, 5.584-5.590—1895

#### *Part II. Public Utility Commission of Texas*

16 TAC §21.141—1883

16 TAC §§21.201-21.208—1883

#### *Part IV. Texas Department of Licensing and Regulation*

16 TAC §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, 63.90-63.94—1957

16 TAC §§67.1-67.28—1959

16 TAC §§67.1, 67.10, 67.20-67.23, 67.30, 67.40, 67.60, 67.61, 67.70, 67.80-67.83, 67.90-67.92, 67.94, 67.100-67.105—1050

16 TAC §§70.78, 70.90-70.95, 70.120—1919, 1925

16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.60, 78.70-78.76, 78.80-78.82, 78.90-78.94—1960

16 TAC §§80.1-80.5, 80.8-80.10—1963

16 TAC §§80.1, 80.10, 80.20, 80.30, 80.40, 80.60, 80.70, 80.80-80.82, 80.90, 80.91, 80.94, 80.100-80.103—1963

### TITLE 22. EXAMINING BOARDS

#### *Part XXII. Texas State Board of Public Accountancy*

22 TAC §511.122—1921, 1926

22 TAC §513.22—1926

22 TAC §513.47—1927

22 TAC §523.27—1927

#### *Part XXIII. Texas Real Estate Commission*

22 TAC §535.67—1927

22 TAC §535.68—1928

22 TAC §535.94—1928

22 TAC §535.112—1929

22 TAC §535.153—1929

22 TAC §535.154—1929

#### *Part X. Texas Funeral Service Commission*

22 TAC §203.3—1925

### TITLE 25. HEALTH SERVICES

#### *Part I. Texas Department of Health*

25 TAC §325.5, §325.6—1930

25 TAC §325.75—1931

25 TAC §325.92—1931

25 TAC §§325.143, 325.150, 325.151—1931

25 TAC §325.185—1932

25 TAC §325.484—1932

25 TAC §§325.701, 325.702, 325.705, 325.706—1933

25 TAC §325.706—

### TITLE 28. INSURANCE

#### *Part I. State Board of Insurance*

28 TAC §1.601—1885

28 TAC §§1.901-1.911—1895

28 TAC §3.3819—1895

28 TAC §§5.1301-5.1309—1877

28 TAC §§5.1501-5.1503—1880

28 TAC §7.50—1881, 1933

28 TAC §28.1, §28.2—1881

#### *Part II. Industrial Accident Board*

28 TAC §64.10—1887

#### *Part II. Texas Workers' Compensation Commission*

28 TAC §41.1—1922, 1934

28 TAC §41.70—1922, 1934

### TITLE 31. NATURAL RESOURCES AND CONSERVATION

#### *Part III. Texas Air Control Board*

31 TAC §§121.1, 121.3, 121.15, 121.21—1934

#### *Part IX. Texas Water Commission*

31 TAC §334.1—1935

31 TAC §§334.2, 334.3, 334.5-334.7—1939

31 TAC §334.13—1941

31 TAC §§334.21-334.23—1941

31 TAC §§334.42, 334.44, 334.47, 334.50, 334.51—1942

31 TAC §§334.121-334.132—1946

## TITLE 34. PUBLIC FINANCE

### *Part I. Comptroller of Public Accounts*

34 TAC §3.182—1951

34 TAC §5.123—1887

### *Part VII. State Property Tax Board*

34 TAC §155.4—1887, 1893

34 TAC §155.38—1893

34 TAC §155.45—1888, 1893

34 TAC §161.201—1888

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### *Part I. Texas Department of Human Services*

40 TAC §§10.3501-10.3506—1951

40 TAC §15.200, §15.210—1889

40 TAC §16.1502, §16.1503—1955

40 TAC §16.1601—1955

40 TAC §§16.1902, 16.1905, 16.1908, 16.1909—1055

40 TAC §48.2101, §48.2109—1889

40 TAC §§48.2701-48.2708, 48.2710, 48.2711—1963

40 TAC §48.9808—1967

40 TAC §56.701—1953

### *Part IX. Texas Department on Aging*

40 TAC §255.39—1967

### *Part II. Texas Rehabilitation Commission*

40 TAC §101.11—1891

## TITLE 43. TRANSPORTATION

### *Part I. State Department of Highways and Public Transportation*

43 TAC §25.91—1922

# The Governor

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

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## Appointments Made March 26, 1990

On March 8, 1990, I submitted the following nominations for appointment to the Texas Workers' Compensation Commission: Jack Garey, Joe L. Hanson, Dewey Mark, Edward K. Hayse, Jr., On March 19, 1990, I nominated for this commission: Dean D. Bernal, O.D. Kenemore. It is my request that the Senate return these six appointments to me.

## Appointments Made March 27, 1990

On March 1, 1990, I nominated to be reappointed to the Hospital Licensing Advisory Council for a term to expire December 7, 1995: Dr. Richard Lewis Ballard of McAllen. Dr. Ballard has asked that his name be withdrawn; therefore, I request that the Senate return the appointment to me.

TRD-9003265





Name: Brandon Cook

Grade: 9

School: Memorial High, Spring Branch

# Attorney General

**Description of Attorney General submissions.** Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

## Opinions

**JM-1147 (RQ-1813).** Request from Hugh Parmer, Chairman, Intergovernmental Relations Committee, Texas State Senate, Austin, concerning rules of the Industrial Accident Board.

**Summary of Opinion.** A rule adopted by the Industrial Accident Board to govern the amount of attorney fees in workers' compensation cases is unreasonable as a matter of law and therefore invalid. The board can require written evidence of representation and disbursement of attorney fees in a worker's compensation case.

TRD-9003295

**JM-1148 (RQ-1811).** Request from Brad Wright, Chairman, Public Health Committee, House of Representatives, Austin, concerning authority of the Board of Chiropractic Examiners to condition eligibility for licensure on graduation from a college accredited by a particular private organization.

**Summary of Opinion.** The fact alone that the United States Department of Education has found the Straight Chiropractic Academic Standards Association to be a nationally recognized accrediting association for certain federal law purposes does not require the Board of Chiropractic Examiners to recognize schools accredited by the Straight Chiropractic Academic Standards Association as a bona fide, reputable school of chiropractic for purposes of Texas law.

TRD-9003294

**JM-1149 (RQ-1889).** Request from Ashley Smith, Chairman, Financial Institutions Committee, Texas House of Representatives, Austin, concerning certification requirements for a constable who has previously held the office.

**Summary of Opinion.** A constable whose tenure of office ceased on December 31, 1984, and did not resume until January 1, 1989, is required to meet the requirements for licensing by the Commission on Law

Enforcement Officer Standards and Education.

TRD-9003292

**JM-1150 (RQ-1892).** Request from Stephen C. Howard, Orange County Attorney, Orange County Courthouse, Orange, concerning authority to set the salaries of the Orange County Child Support Office.

**Summary of Opinion.** The Juvenile Board of Orange County is authorized to set the salaries of the child support office personnel. The authority of the commissioners court of Orange County to reject the salaries budgeted by the board is limited to a showing that the board abused its discretion.

TRD-9003293

## Requests for Opinions

**(RQ-1943).** Request from Toby C. Wilkinson, Hunt County Attorney, fourth Floor Courthouse, Greenville, concerning authority of a school district to contract for tax collection with a county when the county tax assessor-collector is also a member of the appraisal district's board of directors.

**(RQ-1944).** Request from Phil Nichols, Erath County Attorney, Erath County Courthouse, Stephenville, concerning authority of a sheriff to impose a \$20 fee on an inmate who is released on bond.

**(RQ-1945).** Request from Sam W. Dick, Criminal District Attorney, Fort Bend County, County Courthouse, Richmond, concerning authority of a commissioners court to control salaries and promotions of employees of elected county officials.

**(RQ-1946).** Request from Kent Hance, Chairman, Railroad Commission of Texas, Austin, concerning whether data submitted to the Railroad Commission is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4) and/or §3(a)(10).

**(RQ-1947).** Request from Barney L. Schulz, CPA, Interim Executive Director, Texas School For the Blind, Austin,

concerning authority of the Texas School for the Blind to expend funds to transport students to and from their homes on week-ends.

**(RQ-1948).** Request from Clay Strange, County Attorney, Mitchell County Courthouse, RM-206, Colorado City, concerning whether a municipal court of a home rule city may act as a juvenile court under the Family Code, §51.04(c), and related questions.

**(RQ-1949).** Request from W. N. Kirby, Commissioner of Education, Texas Education Agency, Austin, concerning authority of an independent school district to conduct a raffle.

**(RQ-1950).** Request from Kenneth H. Ashworth, Commissioner of Education, Texas Higher Education Coordinating Board, Austin, concerning whether a trustee of a county-wide junior college district may simultaneously serve as alderman of a general law municipality, and related questions.

**(RQ-1951).** Request from Arnold W. Oliver, P.E., Engineer-Director, State Department of Highways and Public Transportation, Austin, concerning conveyance of land from the Texas Department of Corrections to the State Department of Highways and Public Transportation.

**(RQ-1952).** Request from Jimmie McCullough, County and District Attorney, 82nd Judicial District, Robertson County, Franklin, concerning authority of a sheriff to require his employees to submit to random drug testing.

**(RQ-1953).** Request from Fred Toler, Executive Director, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning potential conflict between statutory provisions authorizing the Commission on Law Enforcement Officer Standards and Education to set standards regarding minimum curriculum requirements and to recognize professional achievement.

**(RQ-1954).** Request from Merrill L. Hartman, Chairman, Court Reporters Certification Board, Austin, concerning application of the Court Reporters Certification Act to out-of-state residents.

(RQ-1955). Request from Catherine Jane Alder, Fort Worth, concerning whether a survey of income producing properties is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-1956). Request from Ron Lindsey, Acting Commissioner, Texas Department of Human Services, John H. Winters Human Services Center, Austin, concerning whether information relating to an employee's termination is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-1957). Request from Jo King McCrorey, Executive Director, State Board of Barber Examiners, Austin, concerning licensing of persons who performs haircutting services in the Department of Corrections and in private prison facilities.

(RQ-1958). Request from Brad Wright, Chairman, Public Health Committee, Texas House of Representatives, Austin, concerning applicability of the three-tier rule prohibiting overlapping ownership and other close relationships among those en-

gaged in the alcoholic beverage industry.

(RQ-1959). Request from Bob McFarland, Chairman, Senate Criminal Justice, Texas State Senate, Austin, concerning whether the City of Arlington is authorized to adopt an additional sales and use tax when it has taken no action to confirm its participation in the regional transportation authority of the City of Fort Worth.

(RQ-1960). Request from Allen Beinke, Executive Director, Texas Water Commission, Austin, concerning potential conflict in two amendments adopted at the same legislative session, regarding requirements of notice for selling realty located in a special district.

(RQ-1961). Request from Paul T. Wrotenbery, Chairman, State Board of Insurance, Austin, concerning authority of a county mutual insurance company to furnish coverage for non-residents of Texas who are involved in accidents outside the State of Texas.

(RQ-1962). Request from John Vance, Dallas County District Attorney, Frank

Crowley Courts Building, Dallas, concerning applicability of the Charitable Raffle Enabling Act, Article 179f, to a non-profit corporation whose purpose is to oppose construction of a landfill.

(RQ-1963). Request from Joe Rubio, Webb County District Attorney, Laredo, concerning authority of the Webb County Bail Bond Board to impose fees in executed bonds.

(RQ-1964). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning authority of the Texas Commission on Law Enforcement Officer Standards and Education to accept gifts of real property.

(RQ-1965). Request from Lee Fernon, County Attorney, Baylor County Courthouse, Seymour, concerning duty of a county to maintain creeks running through private property.

TRD-9003296

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# Emergency Sections

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

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

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 70. Industrialized Housing and Buildings

##### • 16 TAC §§70.78, 70.90-70.95, 70.120

The Texas Department of Licensing and Regulation adopts on an emergency basis §§70.78, 70.90-70.95, and 70.120, concerning industrialized housing and buildings. The sections' language was changed and was not included in the adoption of Chapter 70. The emergency adoption is needed for the enforcement of the Industrialized Housing and Buildings Act, Article 5221f-1.

The new sections are adopted on an emergency basis under the Industrialized Housing and Buildings Act, Texas Civil Statutes, Article 5221f-1, Texas Civil Statutes, Article 9100, and the Administrative Procedure and Texas Register Act, Article 6252-13a, which gives the commissioner of the Texas Department of Licensing and Regulation rulemaking authority.

##### *§70.78. Responsibilities of the Registrants-General.*

(a) Department personnel may enter any business establishment to review applicable and relevant documents and records to determine if any person is violating the Act or the rules and regulations of the commissioner. The department is authorized to enter at reasonable times and without advance notice any manufacturing facility, warehouse, establishment, or location of any person to make any inspections and review records for necessary corrective actions that are reasonably required to determine whether the person is in compliance with the Act and the rules, regulations, and administrative orders promulgated by the commissioner.

(b) Each registrant must notify the department of any changes in information regarding the location, organization, staff, or ownership of the organization as required in the sections in this chapter. The notification must be received by the department no later than 10 days after the change occurs.

(c) Each registrant shall provide

customers with access to the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. A rubber stamp or sticker may be used to convey the information. The notification shall be included on:

(1) a sign prominently displayed in the place of business;

(2) any written contract for services; or

(3) any bill for services.

(d) The registrant must allow the department, as part of an inspection or investigation, to enter his business premises during regular business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted. The department may inspect all records, books, and documents, whether paper or electronic, pertaining to the agency's operation.

##### *§70.90. Sanctions-Administrative Sanctions.*

(a) If a person violates the Industrialized Housing and Buildings Act (the Act), or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner shall:

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

(2) revoke or suspend the person's registration;

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

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

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

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

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

sanction. The commissioner shall base the recommended sanction, and any accompanying conditions, on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violations; and

(5) any other matters that justice may require.

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

(1) a brief summary of the charges;

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

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

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

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

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

(h) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final as provided by the

Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19.

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

**§70.91. Sanctions—Administrative Penalty/Fine.**

(a) If a person violates the Industrialized Housing and Buildings Act (the Act), or a rule or order adopted or issued by the commissioner relating to the Act, the commission may, in addition to or in lieu of a sanction imposed under §70.90 of this chapter (relating to Sanctions—Administrative Sanctions), assess an administrative penalty in an amount not to exceed \$1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed \$1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

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

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the

occurrence of the violation and the amount of the penalty.

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

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

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

(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the commissioner, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the commissioner or the attorney general may bring an action for the collection of the penalty.

(k) A motion for rehearing is a prerequisite for an appeal.

**§70.92. Sanctions—Injunctive Relief and Civil Penalty.** If it appears that a person is in violation of, or is threatening to violate, the Act or a rule or order of the commissioner related to the Act, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding \$1,000 for each violation and not exceeding \$250,000 in the aggregate.

**§70.93. Sanctions—Criminal Penalty.**

(a) A person commits an offense if the person constructs, sells, leases, or offers to lease, or transport over the roads, streets, or highways of this state, any industrialized house or building, module, or modular component in violation of the Act, rules, regulations, or administrative orders of the commissioner.

(b) An offense under this section is a Class A misdemeanor.

**§70.94. Sanctions—Revocation or Suspension because of a Criminal Conviction.**

(a) Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend or revoke an existing certificate of registration, or disqualify a person from receiving a certificate of registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the constructing of industrialized housing and buildings. The commissioner may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(b) In determining whether a criminal conviction directly relates to the construction of industrialized housing and buildings, the commissioner shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the safe construction of industrialized housing and buildings

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

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of constructing industrialized housing and buildings.

(c) In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:



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

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

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

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

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

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

(d) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution and law enforcement and correctional authorities as required.

(e) The applicant shall also furnish proof, in such form as may be required by the department, that he has maintained a record of steady employment, has supported his dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he has been convicted.

*§70.95. Sanctions for Failure to Comply by Design Review Agencies, Third Party Inspection Agencies, and Third Party Inspectors.* The department shall monitor the performance of design review agencies (DRA) third party inspection agencies (TPIA), and third party inspectors (TPI) and may recommend disapproval of any agency or inspector that violates provisions of the act or rules, regulations, or administrative orders issued by the commissioner in, or pursuant to, this chapter, or any decisions, actions, or interpretations of the council. If the council feels that a failure to comply has been shown, then the council will recommend that the commissioner take appropriate action. Sanctions shall be administered pursuant to the provisions of Texas Civil Statutes, Article 5221f-1, §9.

*§70.120. Intent.* The 69th Legislature, 1985, has found and determined that there is great need to provide safe, durable code-constructed housing and buildings and to encourage the economics realized through mass production and assembly line building techniques in order to produce and provide more affordable dwellings and buildings.

The 69th Legislature has also found and determined that existing statutes and regulations prior to September 1, 1985, are not adequate to coordinate properly the interests of both the state and local political subdivisions including home rule cities. In recognition of its findings, and in order to promote the public health, safety, and welfare, the 69th Legislature enacted House Bill 1213 mandating the regulation of industrialized housing and buildings and provided that such Act shall be liberally construed and applied to encourage innovative building and construction techniques (Chapter 84, 69th Legislature, 1985, Vernon's Law Service, 1985, page 332).

Issued in Austin, Texas, on March 28, 1990.

TRD-9003275

Larry Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: March 28, 1990

Expiration date: July 26, 1990

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

## TITLE 22. EXAMINING BOARDS

### Part XXII. Texas State Board of Public Accountancy

#### Chapter 511. Certification as CPA

##### Experience Requirements

###### • 22 TAC §511.122

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §511.122, concerning acceptable experience. The emergency repeal is adopted in order to adopt a new section and insure that certain individuals who do not meet acceptable experience requirements under the section currently in effect will be able to begin receiving experience credit immediately.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to approved areas of work experience for CPA candidates.

###### *§511.122. Experience.*

Issued in Austin, Texas, on March 27, 1990.

TRD-9003334

Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1990

Expiration date: July 28, 1990

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

The Texas State Board of Public Accountancy adopts on an emergency basis new §511.122, concerning acceptable experience. The new section is adopted on an emergency basis in order to insure that certain individuals who do not meet acceptable experience requirements under the section currently in effect will be able to begin receiving experience credit immediately.

The new section adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to approved areas of work experience for CPA candidates.

###### *§511.122. Acceptable Experience.*

(a) All experience must be from the following categories or any combination of these and be acceptable to the board.

(1) Public practice. All experience in a public accounting firm must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters.

(2) Private industry. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters.

(3) Government. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A)-(D) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A)-(D) of this paragraph:

(A) state government as an accountant or auditor at a Salary Group 15 or above, or a comparable rating;

(B) federal government as an accountant or auditor at a GS Level 7 or above;

(C) special agent accountant with the FBI;

(D) military service, as an accountant or auditor as a 2nd Lieutenant or above;

(4) Attorney. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a certified public accounting firm, and shall be in one or more of the following areas:

- (A) tax-individual and corporate;
- (B) estate planning;
- (C) state taxation relating to franchise;
- (D) tax controversy.

(5) Education. Experience gained as an instructor at a college or university will qualify if evidence can be presented showing independent thought and judgment was used on nonroutine accounting matters. Only the teaching of upper division courses will be considered. All experience must be supervised by the department chairman who is a licensed certified public accountant.

(6) Other. Experience in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a certified public accountant upon certification by the person or persons supervising the candidate that the experience was of a nonroutine accounting nature which continually required independent thought and judgment on important accounting matters.

(b) Experience must be under the supervision of an individual holding a current license from this board or an active license or permit issued by any other state board of public accountancy as defined in §511.124 of this title (relating to Acceptable Supervision).

Issued in Austin, Texas, on March 27, 1990.

TRD-9003335      Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1990

Expiration date: July 28, 1990

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

## TITLE 28. INSURANCE

### Part II. Texas Workers' Compensation Commission

#### Chapter 41. Practice and Procedure

##### Subchapter A. Communications

###### • 28 TAC §41.1

The Texas Workers' Compensation Commission adopts on an emergency basis new §41.1, concerning revisions both to the name of the agency, and in the statutory authority to administer the workers' compensation laws in effect prior to January 1, 1991. The new section implements Senate Bill 1 (71st Legislature, 2nd Called Session,

1989), which mandates these changes. The new section is adopted on an emergency basis to reflect the statutory revisions, effective April 1, 1990, and to ensure smooth transition for the agency and all affected persons.

The new section is simultaneously proposed for adoption by regular action, and appears elsewhere in this issue of the *Texas Register*.

The new section is adopted on an emergency basis under Senate Bill 1, §17. 12(b) (71st Legislature, 2nd Called Session, 1989), which provides for delegation by the Texas Workers' Compensation Commission to the executive director of necessary powers to administer the workers' compensation law in effect prior to January 1, 1991; and under Texas Civil Statutes, Article 8307, §4(a), which provide the commission with the authority to adopt rules necessary for the administration of the workers' compensation laws in effect prior to January 1, 1991.

**§41.1. Name Change.** Pursuant to Senate Bill 1 (71st Legislature, 2nd Called Session, 1989), the following revisions are effective April 1, 1990.

(1) The state agency known since 1913 as the Industrial Accident Board is re-named the Texas Workers' Compensation Commission. Wherever the term "Industrial Accident Board," "Board," or "board," meaning the agency, appears in these rules, it shall mean "Texas Workers' Compensation Commission."

(2) The executive director of the Texas Workers' Compensation Commission exercises all authority necessary to administer Texas Civil Statutes, Articles 8306-8309-1. Wherever the terms "Industrial Accident Board" or "Board," meaning one or more members of Industrial Accident Board, appears in these rules, the terms shall mean the executive director or delegatee.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003369      George E. Chapman  
Executive Director  
Texas Workers'  
Compensation  
Commission

Effective date: April 2, 1990

Expiration date: August 20, 1990

For further information, please call: (512) 448-7962

###### • 28 TAC §41.70

The Texas Workers' Compensation Commission adopts on an emergency basis an amendment to §41.70, concerning the filing of forms and printed materials with the agency. The amended section implements Senate Bill 1 (71st Legislature, 2nd Called Session, 1989) which, effective April 1, 1990, changes both the name of the agency, and the authority to administer the workers' compensation laws in effect prior to January 1, 1991. The amended section is adopted on an emergency basis to provide necessary direction to all parties who file forms and printed materials with the agency.

The amendment is simultaneously proposed for adoption by regular action, and appears elsewhere in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis under Senate Bill 1, §17. 12(b) (71st Legislature, 2nd Called Session, 1989), which provides for delegation by the Texas Workers' Compensation Commission to the executive director of necessary powers to administer the workers' compensation law in effect prior to January 1, 1991; and under Texas Civil Statutes, Article 8307, §4(a), which provide the commission with the authority to adopt rules necessary for the administration of the workers' compensation laws in effect prior to January 1, 1991.

###### §41.70. Filing of Instruments.

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

(c) Forms and printed materials used by any person or state agency which incorporate the term "Industrial Accident Board" shall be modified to substitute the term "Texas Workers' Compensation Commission" after the present supply of forms and materials is exhausted. Parties are encouraged to use revised forms by June 1, 1990.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003371      George E. Chapman  
Executive Director  
Texas Workers'  
Compensation  
Commission

Effective date: April 2, 1990

Expiration date: August 20, 1990

For further information, please call: (512) 448-7962

## TITLE 43.

### TRANSPORTATION

#### Part I. State Department of Highways and Public Transportation

##### Chapter 25. Maintenance and Operation Division

###### Oversize and/or Overweight Permits for Certain Oil Well Related Vehicles

###### • 43 TAC §25.91

The State Department of Highways and Public Transportation is renewing the effectiveness of the emergency adoption of amended §25.91, for a 60-day period effective April 14, 1990. The text of amended §25.91 was originally published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6713).

Issued in Austin, Texas, on April 2, 1990.

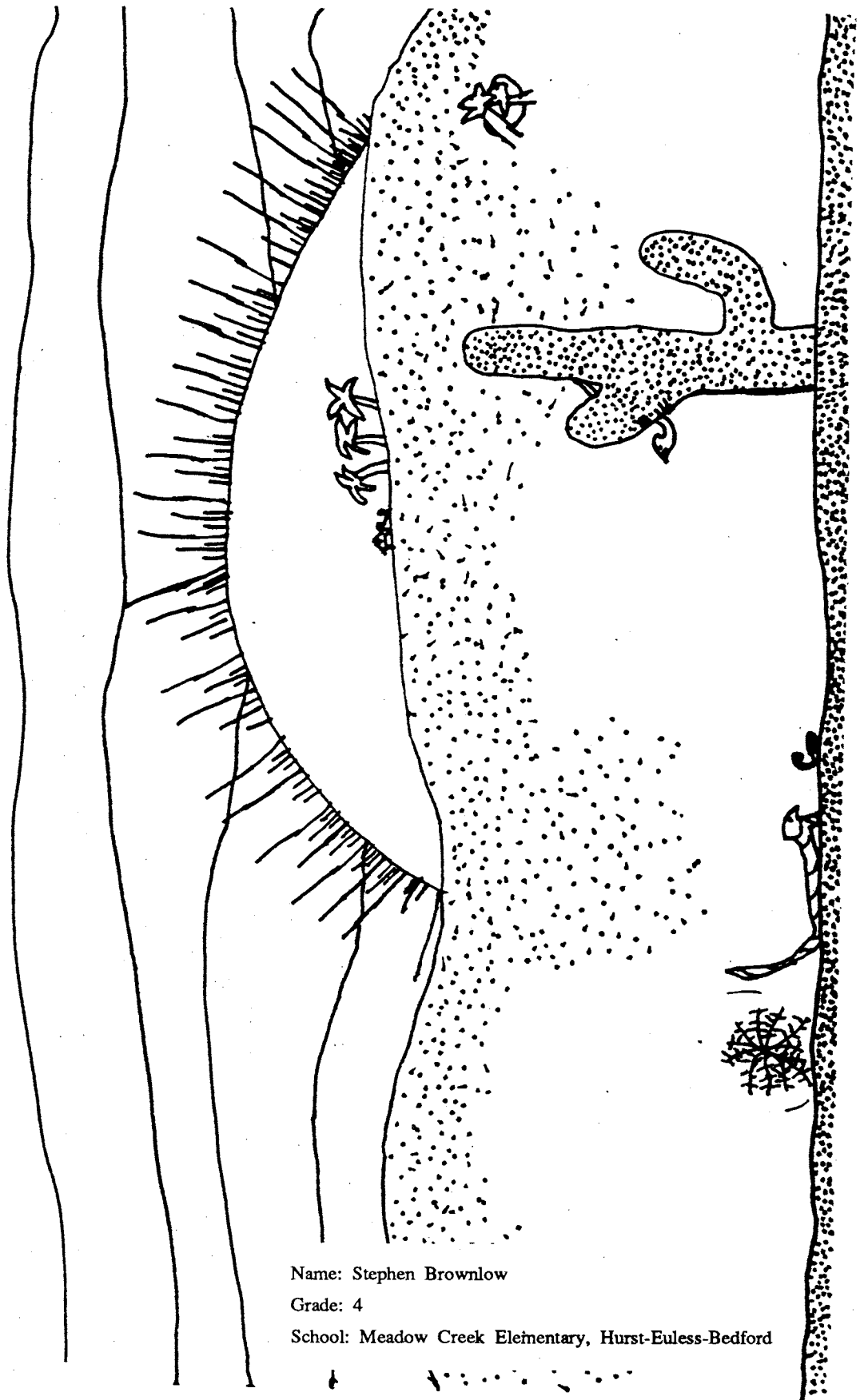
TRD-9003345      Robert E. Shaddock  
General Counsel  
State Department of  
Highways and Public  
Transportation

Effective date: April 14, 1990

Expiration date: June 13, 1990

For further information, please call: (512)  
463-8630





Name: Stephen Brownlow

Grade: 4

School: Meadow Creek Elementary, Hurst-Eules-Bedford

# 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 2 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 70. Industrialized Housing and Buildings

##### • 16 TAC §§70.78, 70.90-70.95, 70.120

*(Editor's Note: The Texas Department of Licensing and Regulation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Department of Licensing and Regulation proposes new §§70.78, 70.90-70.95, and 70.120, concerning responsibility of the registrants-general, sanctions-administrative sanction, sanctions-administrative penalty/fine, sanctions-injunctive relief and civil penalty, sanctions-criminal penalty, sanctions-revocation or suspension because of a criminal conviction, sanctions for failure to comply by design review agencies, third party inspection agencies, and third party inspectors. The new sections are proposed because the sections' language was changed and was not included in the adoption of Chapter 70.

Jimmy G. Martin, assistant director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more easily understood administrative rules and more effective and efficient regulation of Industrialized Housing and Building Program. 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 Jimmy G. Martin, Assistant Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Articles 5221f-1 and 9100, which provides the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules of

practice setting forth the nature and requirements of all formal and informal procedures available.

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 28, 1990.

TRD-9003274

Larry Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: May 7, 1990

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

## TITLE 22. EXAMINING BOARDS

### Part X. Texas Funeral Service Commission

#### Chapter 203. Licensing and Enforcement-Specific Substantive Rules

##### • 22 TAC §203.3

The Texas Funeral Service Commission proposes an amendment to §203.3 concerning sufficient licensed personnel. The section is being amended to limited the number of funeral establishments a licensee can be named as funeral director in charge.

Larry A. Farrow, 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. Farrow 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 protection of the public by insuring that a responsible licensee is available on a regular basis at a funeral establishment. 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 A. Farrow, Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753.

The amendment is proposed under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

##### §203.3. Clarification of Sufficient License Personnel.

(a) (No change.)

(b) Each [All] licensed funeral establishment [establishments] must designate [have] a funeral director in charge on a form prescribed by the commission within 15 days of any changes [in order to maintain sufficient licensed personnel].

(c) The funeral director in charge must be generally available in the routine functions of the [that] establishment in order to personally carry out his responsibilities.

(d) An individual may not be designated as the funeral director in charge of more than one establishment unless the second establishment is operated as a branch or satellite of a primary establishment, both establishments are under the same general manager and are located within 60 miles of each other.

(e) In order to be designated funeral director in charge of more than one establishment, the licensee must submit a petition to the commission office which clearly explains how each of the criteria in section (d) of this section have been met.

(f) The executive director will consider each petition on its own merits and will advise interested parties in writing of the action taken.

(g) The executive director's decision may be appealed, in writing, to the commission at its next regular scheduled meeting. The executive director will advise interested parties of the action taken by the commission.

(h)[(d)] The funeral director in charge may be served with administrative process when violations are alleged to have been committed [by his funeral establishment].

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 28, 1990.

TRD-9003268

Larry A. Farrow  
Executive Director  
Texas Funeral Service  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 834-9992

## Part XXII. Texas State Board of Public Accountancy

### Chapter 511. Certification as CPA

#### Experience Requirements

##### • 22 TAC §511.122

*(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the repeal it adopts on an emergency basis in this issue. The text of the repeal is in the Emergency Rules section of this issue.)*

The Texas State Board of Public Accountancy proposes the repeal of §511.122, concerning acceptable experience. The repeal of this section will allow for the adoption of a new section that will enable individuals not currently meeting acceptable experience requirements to begin receiving credit.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to allow for the adoption of a new section that will conform with recent amendments to the Act. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1 §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to approved areas of work experience for CPA candidates.

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 27, 1990.

TRD-9003332

Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: May 7, 1990

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

*(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)*

The Texas State Board of Public Accountancy proposes new §511.122, concerning acceptable experience. The new section insures that individuals who do not currently meet acceptable experience requirements will be able to receive credit immediately.

Bob E. Bradley, 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. Bradley 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 conform with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

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

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 27, 1990.

TRD-9003333

Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: May 7, 1990

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

### Chapter 513. Registration

#### Registration of Partnerships

##### • 22 TAC §513.22

The Texas State Board of Public Accountancy proposes an amendment to §513.22, concerning application for registration of a partnership. The amendment expands the information required on the application for partnership registration to include certain litigation disclosures.

Bob E. Bradley, 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. Bradley 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 insure that partners of registered partnerships hold a valid license to practice public accounting. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

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

##### §513.22. Application for Registration of a Partnership.

(a) Application for registration of a partnership must be made upon a form prescribed by the board and be submitted to the executive director. Application must be made upon the affidavit of a general partner (individual) who holds a license to practice public accountancy in this state. The application must set out:

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

(9) whether or not the firm has had an application for license denied, suspended, or revoked by any state or federal agency; [or] whether the firm or any partner has been convicted of any felony or misdemeanor involving fraud or deceit not previously reported to the board; or whether the firm or any partner has been a party to legal proceedings as described in §513.47 of this title (relating to Affidavit of Firm);

(10)-(12) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on March 27, 1990.

TRD-9003336

Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: May 7, 1990

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

## Registration of Corporations

### • 22 TAC §513.47

The Texas State Board of Public Accountancy proposes new §513.47, concerning affidavit of firm. The new section permits the board to require public accounting firms to submit an affidavit disclosing the applicant's involvement in certain civil proceedings.

Bob E. Bradley, 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. Bradley 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 insure full disclosure of civil matters relating to the eligibility of a firm to receive registration by the board. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to affidavits required of firms at the time of initial registration with the board.

#### §513.47. Affidavit of Firm.

(a) The board may require at the time of a firm's initial registration with the board, and annually thereafter, an affidavit on a form provided by the board certifying whether the firm and/or its partners, officers, directors, and/or shareholders have been defendant(s) in lawsuit(s) relating to professional accounting services performed within the State of Texas during the three-year period immediately preceding the date of the affidavit and the disposition of each lawsuit.

(b) The affidavit must be executed by the individual shown on the board's records as the firm's general partner, officer, incorporator, or person in charge. The affidavit must show any civil actions involving the firm as a defendant, the date, and amount of penalty.

(c) Upon affirmative response on said affidavit, the firm must provide sufficient factual documentation for the board to determine the need for further action as described in Chapter 519 of this title (relating to Practice and Procedure) and Chapter 525 of this title (relating to Criminal Background Investigations).

(d) Failure to complete said affidavit or falsification of its contents or information relating thereto as requested by the board shall cause the firm to be subject

to disciplinary action as described in Chapter 519 of this title (relating to Practice and Procedure).

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 27, 1990.

TRD-9003338

Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: May 7, 1990

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

## Chapter 523. Continuing Professional Education

### Continuing Professional Education Standards

#### • 22 TAC §523.27

The Texas State Board of Public Accountancy proposes an amendment to §523.27, concerning continuing education credits instructors and discussion leaders may earn for preparing and teaching courses. The amendment provides that instructors may claim a maximum of 20 hours for preparation and presentation per year.

Bob E. Bradley, 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. Bradley 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 clarify the type and maximum number of credits that may be earned. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to granting credit for preparation and presentation time of continuing education courses.

§523.27. Credits for Instructors and Discussion Leaders. When an instructor or discussion leader serves at a program for which participants receive credit and at a level that contributes to the instructor's or discussion leader's professional competence, credit may be given for preparation and presentation time measured in terms of credit hours. Instructors and discussion leaders could receive credit for both

preparation and presentation[,] but not as a participant. For the first time they present a program, they may receive credit for actual preparation hours up to two times the recommended credit hours. [If a course is recommended as eight credit hours, the instructor could receive up to 24 hours of credit (16 hours for preparation and eight hours for presentation).] For repetitious presentations, the instructor may receive credit only if it can be demonstrated that the subject matter involved was changed sufficiently to require significant additional study or research. The maximum credit for preparation and presentation cannot exceed 20 hours in the reporting period [50% of the minimum annual requirement].

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 27, 1990.

TRD-9003337

Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: May 7, 1990

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

## Part XXIII. Texas Real Estate Commission

### Chapter 535. Provisions of the Real Estate License Act

#### Education, Experience, Educational Programs, Time Periods, and Type of License

#### • 22 TAC §535.67

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Real Estate Commission proposes the repeal of §535.67, concerning nonapplicability of education and experience requirements for real estate licensing. The repeal of the section is necessary for the agency to conform its rules with the provisions of House Bill 1212, 71st Legislature (1989) which repealed a "grandfather" clause in Texas Civil Statutes, Article 6573a, exempting licensees from certain education and experience requirements. Under current law, an applicant who has not been licensed within the year preceding the filing of another application for a real estate license is subject to specific education and experience requirements. The section to be repealed established the effective date of the previous "grandfather" clause.

Mark A. Moseley, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the repeal.

Mr. Moseley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be conforming the agency's sections with current law. There will be no effect on small businesses and not anticipated economic cost to persons who are required to comply with the repeal as proposed.

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

The repeal is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

#### §535.67. Education and Experience Requirements: Nonapplicability.

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-9003250 Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 465-3960

### Education, Experience, Educational Programs, Time Periods and Type of License

#### • 22 TAC §535.68

The Texas Real Estate Commission proposes an amendment to §535.68, concerning alternative education and experience requirements for real estate brokers. The amendment conforms statutory citations found in the section with Texas Civil Statutes, Article 6573a.

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

Mr. Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

#### §535.68. Brokers: Alternative Education and Experience.

(a) The Real Estate License Act (Act) §7(g) [7(h)] establishes alternative experience or [and/or] education requirements, or both, for applicants for a Texas real estate broker license [licensure].

(b) As used in the Act, 7(g)(2) [7(h)(3)], "another state" means one of the states, territories, and possessions of the United States and any foreign county or governmental subdivision thereof.

(c) For the purpose of determining compliance with the requirement of the Act, §7(g)(2) [7(h)(3)] of being a licensed real estate broker in another state, a person who is the designated officer of a corporation which is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state.

(d) For the purpose of determining compliance with the requirements, of the Act, §7(g)(2) [7(h)(3)] of being a licensed real estate broker in another state, a person whose real estate broker license is on inactive status is deemed to be a licensed real estate broker in another state.

(e) For the purpose of determining compliance with the requirement of the Act, §7(g)(2) [7(h)(3)] of having had two years' active experience in the other state as a licensed real estate salesman or broker, inactive periods brought about by a lack of broker sponsorship or any other reason cannot be included as active experience.

(f) For the purpose of determining compliance with the requirement of the Act §7(g)(2) [7(h)(3)] of having had two years' active experience in another state as a licensed real estate broker or salesman, a person's two years' experience may be derived from periods of licensure in two or more states.

(g) For the purpose of determining compliance with the requirement of the Act, §7(g)(3) [7(h)(4)], a person who has, within one year previous to the filing of his application, been the designated officer of a corporation licensed in Texas as a broker is deemed to have been licensed in this state as a broker within one year previous to the filing of his application.

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-9003255 Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 465-3960

### Licenses

#### • 22 TAC §535.94

The Texas Real Estate Commission proposes an amendment to §535.94, concerning probationary real estate licenses. The amendment is necessary for the agency to comply with a recent amendment to Texas Civil Statutes, Article 6573a, §10(c), which require the agency to adopt by rule reasonable terms and conditions for a probationary license.

The proposed amendment requires terms and conditions for a probationary license to be set forth in the order entered with regard to the license application concerned. Terms and conditions authorized by the section include compliance with the enabling statute and rules of the agency, cooperation with the agency in the investigation of complaints, attendance of prescribed number of classroom hours in specific areas of study, limitation of brokerage practice, regular reporting to the agency, and any other term or condition found reasonable and appropriate after due consideration of the circumstances involved in the particular application. The amendment provides for reprimand or suspension or revocation of the probationary license for failure to comply with a term or condition of the probationary license; the amendment also permits renewal of the license after the probationary period unless the order provides otherwise.

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

Mr. Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

#### §535.94. Hearing on Application Disapproval: Probationary Licenses.

(a) For the purposes of this section, "declines or fails to license an applicant" means to disapprove an application for failure to comply with the requirement of the Texas Real Estate License Act, §6(b) to



satisfy the commission as to the applicant's honesty, trustworthiness, and integrity.

(b) If the commission or an employee of the commission authorized by it to conduct hearings and render final decisions in contested cases determines that issuance of a probationary license is appropriate, the order entered with regard to the application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) that the probationary licensee comply with Texas Civil Statutes, Article 6573a and with the rules of the Texas Real Estate Commission;

(2) that the probationary licensee fully cooperate with the enforcement division of the Texas Real Estate Commission in the investigation of any complaint filed against the licensee;

(3) that the probationary licensee attend a prescribed number of classroom hours in specific areas of study during the probationary period;

(4) that the probationary licensee limit real estate brokerage practice as prescribed in the order;

(5) that the probationary licensee report regularly to the commission on any matter which is the basis of the probationary license; or

(6) that the probationary licensee comply with any other terms and conditions contained in the order which have been found to be reasonable and appropriate by the commission or commission employee rendering the final decision after due consideration of the circumstances involved in the particular application.

(c) The commission or an employee of the commission authorized to render final decisions in contested cases may, after notice and hearing as provided in §533.17 of this title (relating to Contested Case: Notice of Hearing), reprimand a probationary licensee or suspend or revoke a probationary license if the probationary licensee fails to comply with a term or condition of the probationary license.

(d) Unless the order granting a probationary license specifies otherwise, a probationary licensee may renew the license after the probationary period by filing a renewal application and paying the prescribed renewal fee.

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-9003254  
Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 465-3960

## Place of Business

### • 22 TAC §535.112

The Texas Real Estate Commission proposes an amendment to §535.112, concerning a real estate broker's branch office license. The amendment conforms a statutory citation found in the section with Texas Civil Statutes, Article 6573a.

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

Mr. Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

### §535.112. Place of Business: Branch Office.

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

(c) A branch office license is not required for a licensee selling property under exemption of the Real Estate License Act (Act), §3(6) [3(f)].

(d)-(e) (No change.)

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

Issued in Austin, Texas, on March 23, 1990.

TRD-9003253  
Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 465-3960

## Suspension and Revocation of Licensure

### • 22 TAC §535.153

The Texas Real Estate Commission proposes an amendment to §535.153, concerning violation of an exclusive agency granted to another real estate broker.

Texas Civil Statutes, Article 6573(a), §15(a)(6)(N), prohibit real estate licensees from negotiating or attempting to negotiate the sale, exchange, lease, or rental of property with an owner or lessor, knowing that the owner or lessor had granted exclusive agency in connection with the property to another broker. The amendment clarifies that the statutory prohibition applies to a real estate licensee acting as agent for a buyer or tenant as well as licensees acting as agents for the owner of the property.

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

Mr. Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the law regulating real estate licensees. There will be no effect on small businesses and not anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

*§535.153. Violating and Exclusive Agency.* Although a licensee, including one acting as agent for a prospective buyer or prospective tenant, may not attempt to negotiate a sale, exchange, lease or rental of property under exclusive listing with another broker, the Real Estate License Act (Act), §15(a)(6)(N) [this section] does not prohibit a licensee from soliciting a listing from the [such] owner while the owner's property is subject to an exclusive listing with another broker.

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-9003252  
Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 465-3960

## Suspension and Revocation of Licensure

### • 22 TAC §535.154

The Texas Real Estate Commission proposes an amendment to §535.154,

concerning misleading advertising. The amendment deletes a subsection prohibiting use by a licensee of the phrase "by owner" or other language suggesting direct sale, rental, lease or exchange of real property by its owner unless the property is owned by the licensee. The subsection was judicially invalidated in 1980 and has not been enforced by the agency since that time.

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

Mr. Moseley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

#### §535.154. *Misleading Advertising.*

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

[(f) Use by a licensee of the phrase "by owner" or any other language suggesting direct sale, rental, lease, or exchange of real property by its owner is misleading advertising for the purposes of this section unless the property is owned by the licensee.]

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-9003251

Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 465-3960



## TITLE 25. HEALTH SERVICES;

### Part I. Texas Department of Health

#### Chapter 325. Solid Waste Management

##### Subchapter A. General Information

The Texas Department of Health (department) proposes amendments to §§325.5, 325.6, 325.75, 325.92, 325.143, 325.150, 325.151, 325.185, 325.484, and 325.701, 325.702, 325.705, and 325.706, concerning solid waste management. The sections cover definitions of terms and abbreviations; relationships with other governmental entities; technical information required for solid waste processing and experimental sites; application processing; burning; compaction, intermediate cover, and final cover; odor and air pollution control; operational requirements; and memoranda of agreement and joint rules with other agencies (control of air pollution from municipal solid waste facilities—Texas Air Control Board (TACB)).

The amendments are proposed in response to changes in the law related to TACB review of permits for municipal solid waste facility units that do not burn or incinerate solid waste, as enacted by Senate Bill 1518, 71st Legislature, 1989. The proposed amendments will clarify sections to indicate that TACB will administer and enforce its own jurisdiction and rules with respect to any air contaminant emissions released from municipal solid waste facilities; define "burning" for municipal solid waste permit applications and clarify that flaming of naturally occurring methane gas is not "burning" or "incineration"; and provide that TACB may review permit applications for any municipal solid waste facility, but must conduct a technical review of any permit application for a municipal solid waste facility that proposes to burn or incinerate solid waste.

Stephen Seale, Chief Accountant III, Budget Division, Texas Department of Health, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The TACB will probably actively participate in fewer public hearings on permit applications, resulting in some minor savings to the state worker-hours necessary for the permitting process. The department will not expend additional worker-hours in the permitting process due to these amendments. There will be no impact on local employment.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased efficiency and uniformity of public hearings concerning applicants for municipal solid waste facility unit permits. The time that would have been spent in reviewing air quality aspects of proposed municipal solid waste facilities may now be used in enforcement of these sections and in more rapidly scheduled public hearings. There will be no

effect on small businesses as a result of enforcing the sections. There is no anticipated cost to persons who are required to comply with the sections as proposed.

Written comments will be considered if they are received within 30 days following publication of these proposed sections in the *Texas Register*. Written comments may be mailed to: T. A. Outlaw, 1100 West 49th Street, Austin, Texas 78756-3199. A public hearing has been scheduled in order to receive public comment on the proposed sections. The hearing is scheduled for 10 a.m., Thursday, April 26, 1990, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin.

#### • 25 TAC §325.5, §325.6

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorizes the department to enter into joint rules or memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes, Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

*§325.5. Definitions of Terms and Abbreviations.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

**Open burning**—The [unauthorized] combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion; without containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and without control of the emission of the combustion products.

*§325.6. Relationships With Other Governmental Entities.*

(a) (No change.)

(b) Texas Air Control Board (TACB). All municipal solid waste facility units are subject to the jurisdiction and regulation of the TACB with respect to air contaminant emissions. The TACB is responsible for the administration and enforcement of its jurisdiction and rules. Applicants for permits for municipal solid waste facility units that burn or incinerate solid waste must comply with the applicable requirements of Subchapter Q of this chapter (relating to Memoranda of

Agreement and Joint Rules with Other Agencies). The department will not conduct a technical review of any permit application for a municipal solid waste facility unit with respect to air contaminant emissions. [The department shall consult with Texas Air Control Board on aspects of solid waste management that relate to air pollution control and ambient air quality (Texas Civil Statutes, Article 4477-7). The Texas Air Control Board has a separate statutory responsibility for evaluating all types of incinerators, including air curtain destructors, and, when appropriate, issuing construction and operating permits for incinerators (Texas Clean Air Act, Texas Civil Statutes, Article 4477-5).]

(c)-(i) (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 April 2, 1990.

TRD-9003347 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271

◆ ◆ ◆  
Subchapter E. Permit  
Procedures and Design  
Criteria  
Application and Data  
Requirements

• 25 TAC §325.75

The amendment is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorized the department to enter into joint rules or memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes, Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

◆ ◆ ◆  
§325.75. *Technical Information Required for Solid Waste Processing and Experimental Sites.*

(a) (No change.)

(b) **Site development plan.** The site development plan shall be prepared in the format and content described in paragraphs (1)-(6) of this subsection.

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

(5) Design data shall be reflected to the maximum extent possible on the set of attachments described in paragraph (6) of this subsection. Information which is to be placed in narrative form in this section of the application should be in a sequence that parallels the sequence of the attachments described in paragraph (6) of this subsection. Applicants shall consider criteria that in the selection of a site and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific site dictates. Applicants shall include information in the support data for their permit applications as specified in the design criteria indicated in this paragraph. Additional information may be required of the applicant when deemed necessary by the department.

(A)-(H) (No change.)

(I) **Ventilation.** In the interest of odor control and operator safety, any structure associated with the processing of solid waste shall be adequately ventilated. Applicants for permits shall consult with [The rules and regulations of] the TACB [Texas Air Control Board] at the time an application is filed with the department, or earlier, regarding TACB's jurisdiction and regulations [shall be complied with] in all matters involving the collection and emission of air contaminants through ventilating systems.

(J)-(L) (No change.)

(6) (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 April 2, 1990.

TRD-9003348 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271

◆ ◆ ◆  
Application Review Process

• 25 TAC §325.92

The amendment is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorized the department to enter into joint rules or

memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes, Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

◆ ◆ ◆  
§325.92. *Application Processing.*

(a) Following receipt of all required information, the bureau will provide copies of the application or summaries of its contents to those agencies, officials, or authorities which have or may have a jurisdictional interest in the case and request their comments or recommendations. These entities may have their own jurisdictional requirements and regulations and an applicant may be subject to these entities' permitting and/or enforcement provisions. These entities include:

(1)-(10) (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 April 2, 1990.

TRD-9003349 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271

◆ ◆ ◆  
Subchapter F. Operational  
Standards for Solid Waste  
Land Disposal Sites

Other Operational Standards  
for Types I, II, III, and IV  
Sites.

• 25 TAC §§325.143, 325.150,  
325.151

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorized the department to enter into joint rules or memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes,

Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

**§325.143. Open burning [Burning].** The open burning of solid waste except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, or emergency cleanup operations is prohibited at any municipal solid waste landfill. The operation of any type of air-curtain destructor (trench burner), other than for the exceptions noted in the previous sentence, is prohibited. The landfill is also subject to TACB jurisdiction concerning burning and air pollution control. [Burning of solid waste is under the jurisdiction of, and shall have specific approval of the Texas Air Control Board.]

**§325.150. Compaction, Intermediate Cover, and Final Cover.**

(a) (No change.)

(b) Intermediate cover shall be six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste to prevent the blowing of waste materials; insect and rodent problems; and obnoxious odors. Cover frequencies shall be as outlined in §325.42 of this title (relating to Types of Municipal Solid Waste Sites) unless some other cover frequency is stipulated by the department.

(1) (No change.)

(2) The [Where the TACB has granted authorization to burn, the] department may allow greater time periods between intermediate cover applications only if approved during the permitting process. For Type II, III, or IV sites or any specifically designated special use areas, more frequent coverage may be required by the department if site inspections indicate such need due to excessive windblown material, excessively large waste cells which could pose a significant fire hazard, or other conditions which could pose a hazard to health or the environment. Where insects, rodents, and/or snakes are in evidence, they should be exterminated by the use of approved pesticides, rodenticides, trapping, etc., prior to covering deposited waste to ensure that they are not driven to populated areas when the landfill harborage is eliminated. The site operators of disposal sites near airports may be required to apply intermediate cover at more frequent intervals and take other precautions when it appears that site is contributing to air navigation safety problems. All previously-granted extended-cover periods at any permitted landfill due solely to previous authorization to openly burn solid waste are no longer applicable.

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

**§325.151. Odor and Air Pollution Control.**

(a) (No change.)

(b) **Municipal solid waste disposal facilities are also subject to TACB jurisdiction concerning air pollution control.** [All applicable Texas Air Control Board regulations concerning air pollution control shall be observed.]

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 April 2, 1990.

TRD-9003350 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271

**Subchapter G. Operational Standards for Solid Waste Processing, Experimental, and Land Application Sites**  
**Operational Standards for Type V and VI Sites**

• 25 TAC §325.185

The amendment is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorized the department to enter into joint rules or memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes, Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

**§325.185. Ventilation and Air Pollution Control.**

(a) (No change.)

(b) **Municipal solid waste processing facilities are also subject to TACB jurisdiction concerning air pollution control.** [All applicable regulations of the Texas Air Control Board concerning air pollution control shall be complied with.]

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 April 2, 1990.

TRD-9003351

Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271

**Subchapter N. Management of Sludge and Similar Wastes**  
**Land Disposal**

• 25 TAC §325.484

The amendment is proposed under authority of the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorized the department to enter into joint rules or memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes, Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

**§325.484. Operational Requirements.**

(a) Land treatment sites.

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

(12) **Odor and air pollution control.** The site shall be operated in a manner to avoid creating obnoxious odors. Where objectionable odors do occur, appropriate measures shall be taken to reduce or eliminate the problem. The site is also subject to TACB jurisdiction concerning odor and air pollution control. [All applicable Texas Air Control Board rules shall be observed.]

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 April 2, 1990.

TRD-9003352 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271

Subchapter Q. Memoranda of Agreement and Joint Rules With Other Agencies  
Control of Air Pollution From Municipal Solid Waste Facilities—Texas Air Control Board

- 25 TAC §§25.701, 325.702, 325.705, 325.706

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.024, which authorizes the Texas Board of Health to adopt rules and manage municipal solid waste; §361.072, which authorized the department to enter into joint rules or memoranda of agreement with the TACB; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Senate Bill 1518, 71st Legislature, 1989, which amends the requirements in Texas Civil Statutes, Article 4477-7 (now Health and Safety Code, §361.072) that the Texas Air Control Board must conduct a technical review of all permit applications for municipal solid waste landfills.

**§325.701. Definitions.** The words and terms used in this undesignated head have the meanings as given in the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 [Texas Civil Statutes, Article 4477-7], or the regulations promulgated thereunder. Unless specifically defined in the Solid Waste Disposal Act or the regulations promulgated thereunder, the terms used in this undesignated head have the meanings commonly ascribed to them in the field of air pollution control. The term "facility" as used in this undesignated head refers to a solid waste facility as defined in the Solid Waste Disposal Act. The use of the term "modified" in this undesignated head is consistent with the term "modification" as defined in the Texas Clean Air Act.

**§325.702. Applicability.**

(a) Except as provided in subsection (b) of this section and the Texas Administrative Code, Title 31, §116.6 (relating to Exempted Facilities), this undesignated head applies to all municipal solid waste facilities which are required to obtain a permit from the Texas Department of Health (TDH) pursuant to the authority of the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 [Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i)]. For the purposes of this undesignated head, a "municipal solid waste facility unit that burns or incinerates solid waste" shall not include a facility unit that burns or incinerates gas that may be produced by the decay of solid waste at a municipal solid waste facility.

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

**§325.705. Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility Units that Burn or Incinerate Solid Waste [New and Modified Facilities].**

(a) Technical review. The Texas Air Control Board (TACB) shall be responsible for performing a technical review of the air quality aspects of any permit application submitted to the Texas Department of Health (TDH) for a municipal solid waste facility unit that burns or incinerates solid waste [to which this undesignated head applies]. The TACB shall complete such review and shall forward all recommendations or proposed permit provisions to the TDH within time limits established for completion of technical review of the application. Normally, the TDH shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the TACB. If the TACB's proposed permit provisions conflict with provisions proposed by the TDH technical staff, the staffs of the two agencies shall attempt to resolve such conflict prior to the end of the technical review of the application.

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

**§325.706. Air Emissions Requirements for Municipal Solid Waste Facility Units that Burn or Incinerate Solid Waste [Facilities].** In order for a permit to be granted to a municipal solid waste facility unit that burns or incinerates solid waste, the applicant for such a permit shall submit information to the Texas Department of Health (TDH) which will demonstrate that all of the following are met.

(1)-(8) (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 April 2, 1990.

TRD-9003353 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: May 19, 1990

For further information, please call: (512) 458-7271



TITLE 28. INSURANCE  
Part I. State Board of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

- 28 TAC §7.50

The State Board of Insurance proposes new §7.50, concerning election by a reciprocal exchange or by an interinsurance exchange, pursuant to the Insurance Code, Article 4.11C, to be taxed under the Insurance Code, Article 4.10. Section 7.50 was adopted on an emergency basis and became effective on November 30, 1989. Notice of the emergency adoption appeared in the December 8, 1989, issue of the *Texas Register* (14 TexReg 6375). Adoption of this section is necessary to provide reciprocal exchanges and interinsurance exchanges the opportunity to file such elections. Section 7.50 adopts by reference the election form, with instructions, to be used by reciprocal exchanges and interinsurance exchanges. The form provides that the election shall remain in effect for all subsequent tax years until withdrawn by written notice, as provided by Article 4.11C. The board has filed with the Office of the Secretary of State, Texas Register Division, a copy of the form adopted by reference. Other copies of the form are available from the Tax Collection Division, Mail Code 009-4, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Ken Ramoin, director of accounting and tax collection, 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, and there will be no effect on local employment or local economy.

Mr. Ramoin 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 establishment of an orderly procedure whereby a reciprocal exchange or an interinsurance exchange may make an election to be taxed under the Insurance Code, Article 4.10, as authorized by the Insurance Code, Article 4.11C. 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 Lillian B. Talley, Director, Tax Collection Section, Administrative Services Division, Mail Code 009-4, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.04 and Article 4.11C. Article 1.04 authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 4.11C allows reciprocal exchanges or interinsurance exchanges to elect to be taxed under the Insurance Code, Article 4.10, and

requires that the election be made on forms adopted by the State Board of Insurance.

**§7.50. Election by Reciprocal or Interinsurance Exchange Pursuant to the Insurance Code, Article 4.11C.** For use in notice of election under the Insurance Code, Article 411C, the State Board of Insurance adopts by reference the reciprocal or interinsurance exchange election form with instructions, as effective for taxes due after December 31, 1989. This document is published by the State Board of Insurance and is available from the Tax Collection Division, Mail Code 009-4, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 April 2, 1990.

TRD-9003346 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Earliest possible date of adoption: May 7, 1990

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

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**Part II. Texas Workers' Compensation Commission**

**Chapter 41. Practice and Procedure**

**Subchapter A. Communications**

• 28 TAC §41.1

*(Editor's Note: The Texas Workers' Compensation Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Workers' Compensation Commission proposes new §41.1, concerning revisions both to the name of the agency and in the statutory authority to administer the workers' compensation laws in effect prior to January 1, 1991. The new section implements Senate Bill 1 (71st Legislature, 2nd Called Session, 1989), which mandates these changes.

George E. Chapman, 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.

There is no anticipated impact on employment, locally or statewide, as a result of implementing the section.

Mr. Chapman 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 understanding and

compliance with this section. 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 George E. Chapman, Executive Director, Texas Workers' Compensation Commission, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Senate Bill 1, §17.12(b) (71st Legislature, 2nd Called Session, 1989), which provides for delegation by the Texas Workers' Compensation Commission to the executive director of necessary powers to administer the workers' compensation law in effect prior to January 1, 1991; and under Texas Civil Statutes, Article 8307, §4(a), which provide the commission with the authority to adopt rules necessary for the administration of the workers' compensation law in effect prior to January 1, 1991.

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 April 2, 1990.

TRD-9003370 George E. Chapman  
Executive Director  
Texas Workers' Compensation Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 448-7962

◆ ◆ ◆  
• 28 TAC §41.70

*(Editor's Note: The Texas Workers' Compensation Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Workers' Compensation Commission proposes an amendment to §41.70, concerning the filing of forms and printed materials with the agency. The proposed amendment addresses use of forms and print materials that have not been revised to reflect changes both to the name of the agency, and in the statutory authority to administer the workers' compensation laws in effect prior to January 1, 1991, mandated by Senate Bill 1 (71st Legislature, 2nd Called Session, 1989).

George E. Chapman, 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.

There is no anticipated impact on employment, locally or statewide, as a result of implementing the section.

Mr. Chapman 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 understanding and compliance with this section. 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 George E. Chapman, Executive Director, Texas Workers' Compensation Commission, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Senate Bill 1, §17.12(b) (71st Legislature, 2nd Called Session, 1989), which provides for delegation by the Texas Workers' Compensation Commission to the executive director of necessary powers to administer the workers' compensation laws in effect prior to January 1, 1991; and under Texas Civil Statutes, Article 8307, §4(a), which provide the commission with the authority to adopt rules necessary for the administration of the workers' compensation law in effect prior to January 1, 1991.

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 April 2, 1990.

TRD-9003372 George E. Chapman  
Executive Director  
Texas Workers' Compensation Commission

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 448-7962

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part III. Texas Air Control Board**

**Chapter 121. Control of Air Pollution from Municipal Solid Waste Facilities**

• 31 TAC §§121.1, 121.3, 121.15, 121.21

The Texas Air Control board (TACB) proposes amendments to §121.1, concerning definitions, §121.3, concerning applicability, §121.15, concerning responsibility for review of air quality impacts from new and modified facilities, and §121.21, concerning air emissions requirements for municipal solid waste facilities. The amendments are proposed in response to changes in the Solid Waste Disposal Act (SWDA), formerly Texas Civil Statutes, Article 4477-7. The SWDA was amended by Senate Bill 1518, 71st Legislature, 1989, and was retitled as Chapter 361, Texas Health and Safety Code. The statutory changes state that applications for municipal solid waste management

facilities are not subject to TACB review under the statute, with the exception of applications for facility units which burn or incinerate solid waste.

The amendments to §121.1 and part of §121.3 reflect the codification of the statute. Amendments to §121.15 and §121.21 restrict the applicability of those sections which pertain to licensing to municipal solid waste facility units which burn or incinerate solid waste. A statement is added to §121.3 to explain that the definition of municipal solid waste incinerator does not include a unit which incinerates gas which emanates from decaying solid waste. The applicability of other sections remains the same in order to maintain the agency's ability to enforce the provisions of existing permits. The proposed amendments are intended for joint rulemaking with the Texas Department of Health (TDH) which will be publishing identical amendments separately under 31 TAC Chapter 325, Subchapter Q.

James C. Myers, deputy director for regulatory operations, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The fiscal implications for state units of government will be a reduction in the number of TDH permit applications reviewed by TACB staff and in the number of permit application hearings in which TACB staff must participate. The savings to the TACB in terms of staff time and operational expenses is estimated to be \$124,525 per year during the first five years.

Mr. Myers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the increased ability of the TACB to reallocate limited agency resources to respond to more critical air quality issues.

A public hearing on this proposal is scheduled for 10 a.m. on April 26, 1990, in the auditorium of the Texas Department of Health located at 1100 West 49th Street, Austin.

Copies of the proposed rule changes are available from Barry Irwin at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposal is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony prior to or at the hearing. Written testimony received by 4 p.m. on May 4 at the TACB central office will be included in the hearing record and should be sent to the Regulation Development Section, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

The amendments are proposed under the Texas Clean Air Act (TCAA), §382.017(a), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§121.1. Definitions.** The words and terms used in this chapter have the meaning as given in the Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code, [Texas Civil Statutes, Article 4477-7] or the regulations promulgated

thereunder. Unless specifically defined in the Solid Waste Disposal Act or the regulations promulgated thereunder, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. The term "facility" as used in this chapter refers to a solid waste facility as defined in the Solid Waste Disposal Act. The use of modified in this chapter is consistent with the term "modification" as defined in the Texas Clean Air Act.

#### **§121.3. Applicability.**

(a) Except as provided in subsection (b) of this section and §116.6 of this title (relating to Exempted Facilities), this chapter applies to all municipal solid waste facilities which are required to obtain a permit from the Texas Department of Health (TDH) pursuant to the authority of the Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code [Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i)]. For the purposes of this chapter, a municipal solid waste facility unit that burns or incinerates solid waste shall not include a facility that burns or incinerates gas that may be produced by the decay of solid waste at a municipal solid waste facility.

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

#### **§121.15. Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility Units Which Burn or Incinerate Solid Waste [New and Modified Facilities].**

(a) Technical review. The Texas Air Control Board (TACB) shall be responsible for performing a technical review of the air quality aspects of any permit application submitted to the Texas Department of Health (TDH) for a municipal solid waste facility unit that burns or incinerates solid waste [to which this chapter applies]. TACB shall complete such review and shall forward all recommendations or proposed permit provisions to TDH within time limits established for completion of technical review of the application. Normally, TDH shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by TACB. If the TACB's proposed permit provisions conflict with provisions proposed by the TDH technical staff, the staffs of the two agencies shall attempt to resolve such conflict prior to the end of the technical review of the applications.

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

**§121.21. Air Emissions Requirements for Municipal Solid Waste Facility Units That Burn or Incinerate Solid Waste [Facilities].** In order for a permit to be granted to a municipal solid waste facility

unit that burns or incinerates solid waste, the applicant for such a permit shall submit information to the Texas Department of Health (TDH) which will demonstrate that all of the following are met.

(1)-(8) (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 April 2, 1990.

TRD-9003343

Steve Spaw, P.E.  
Executive Director  
Texas Air Control Board

Proposed date of adoption: May 18, 1990

For further information, please call: (512) 451-5711, ext. 354

## Part IX. Texas Water Commission

### Chapter 334. Underground and Aboveground Storage Tanks

#### Subchapter A. General Provisions

#### • 31 TAC §334.1

The Texas Water Commission (TWC) proposes new §§334.121-334.132, concerning aboveground storage tanks, and amended §334.1, concerning general provisions. The new subchapter will replace existing Subchapter F, §§334.121-334.126, concerning aboveground storage tanks which was adopted on an emergency basis on August 15, 1989, (14 TexReg 4030).

These sections are proposed pursuant to Subchapter I of the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorizes the Texas Water Commission to establish a program to regulate underground storage tanks and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund.

TWC proposes to amend existing §334.1 concerning purpose and applicability to incorporate appropriate references and additions for aboveground storage tanks, which are now also subject to certain requirements of Chapter 334. Section 334.1(a)(1) is to be amended to correct the types of stored regulated substances in an underground storage tank. Section 334.1(b) will be amended to clarify that it is applicable only to underground storage tanks. New §334.1(c) is proposed to identify those aboveground storage tanks which are subject to the provisions of this chapter. Also, new §334.1(d) is proposed to define the specific sections in this chapter which are applicable to underground storage tanks and those applicable to aboveground storage tanks.

New §334.121 concerning purpose and applicability for ASTs, is a general policy statement as to the purpose of the proposed sections, and states which aboveground storage tanks are to be regulated by the proposed section.



New §334.122 concerning definitions for ASTs, lists significant terms with particular meanings related to aboveground storage tanks under the proposed sections.

New §334.123 concerning statutory exemptions for ASTs, lists those aboveground storage tanks which are completely exempt from regulation pursuant to the Texas Water Code, §26.344. These include farm or residential aboveground storage tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes; aboveground storage tanks storing heating oil for on-site use; septic tanks; surface impoundments, pits, ponds, or lagoons; certain stormwater and wastewater collection facilities; flow-through process tanks; aboveground storage tanks associated with certain oil and gas activities regulated by the Railroad Commission of Texas, aboveground storage tanks on or above the surface of the floor of an underground area which store hazardous substances, and aboveground storage tank located at or part of a petrochemical plant, petroleum refinery, electric generating facility, or a bulk facility; and certain intrastate and interstate pipeline facilities.

New §334.124 concerning commission exclusions for ASTs, lists those aboveground storage tanks which are not listed in the statutory exemptions, but are nevertheless completely excluded from regulation by commission directive. These include any aboveground storage tanks with a capacity of 1,100 gallons or less, transformers or other electrical equipment used in the transmission of electricity, certain emergency spill protection or emergency overflow containment tanks, and aboveground storage tanks which contain dilute concentrations of petroleum products.

New §334.125 concerning general prohibitions for ASTs, requires that on or after the effective date of this subchapter, no person may deposit or have deposited petroleum products into an aboveground storage tank unless such tank is registered with the commission; and no person shall perform any installation of an aboveground storage tank until prior notification has been provided to the commission. This section also prohibits any person from owning or operating an AST after March 1, 1990, unless it has been properly registered with the commission.

New §334.126 concerning installation notification for ASTs, requires that any person who intends to install a new or replacement aboveground storage tank must file a written notice on an authorized form with the commission at least 30 days prior to initiating the activity. (Senate Bill 698, 71st Legislature, 1989, puts primary authority for inspections of initial installations of aboveground storage tanks regulated by Senate Bill 698, with the Texas Water Commission, subject to subsequent regulation and enforcement by the State Board of Insurance.)

New §334.127 concerning registration for ASTs, requires all aboveground storage tanks in existence on or after September 1, 1989, to be registered on an authorized form, unless such tank is completely exempt or excluded from regulation, as specified in §334.123 and §334.124. This section also states the requirements for registration of movable tanks (e.g. skid tanks).

New §334.128 concerning annual facility fees for ASTs, requires that owners of aboveground storage tanks subject to the provisions of this subchapter pay an annual facility fee of \$25. Common carrier railroads are statutorily exempt from this fee under this section.

New §334.129 concerning release reporting and corrective action for ASTs, requires owners and operators of regulated aboveground storage tanks to comply with the same general release reporting, investigation, and corrective action requirements applicable to underground storage tanks pursuant to Subchapter D of Chapter 334.

New §334.130 concerning reporting and recordkeeping for ASTs, requires owners and operators of aboveground storage tanks to file certain documents with the commission and to develop and maintain certain specific records.

New §334.131 concerning enforcement for ASTs, describes the options which the commission may pursue when an owner or operator fails to comply with the applicable requirements of this subchapter.

New §334.132 concerning other general provisions for ASTs, states that owners and operators of aboveground storage tanks are not relieved of the responsibility of complying with other applicable regulations. This section also assigns principal responsibility for regulatory compliance to the owner and operator, and prescribes statutory procedures for facility inspections, monitoring, and testing.

Comments on this proposal may be submitted to William W. Thompson, III, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069. Comments will be accepted until 5 p.m., 30 days following publication of the proposal.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of compliance with enforcement of the sections. The effect on state government will be an increase in revenue of approximately \$1.25 million in each of the fiscal years 1990-1994. There will be an increased cost of administration of the sections of \$750,000 in each of the fiscal years 1990-1994. The effect on local government will be an increase in costs of compliance with registration, notification, and fee assessments requirements for regulated aboveground storage tanks owned by a governmental entity. Fee assessments will result in annual costs of \$25 per tank for an affected agency. The costs of registration and notification will vary considerably, depending on the number of tanks owned and the occurrence of activities subject to notification. On an average, the costs in fiscal year 1990 to any agency are not expected to exceed \$125 for an affected facility. Costs in subsequent years will, on the average, be substantially less.

The sections as proposed will have fiscal impacts on small businesses. The costs to a small business are anticipated to be consistent with those for local government. Annual costs from fee assessment will be \$25 for each regulated aboveground storage tank owned or operated. Registration and notification costs should also be similar to those identified above.

Mr. Bourdeau 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 and administering the sections will be improvements in regulation of aboveground storage tanks, protection of the quality of the state's groundwater resources, and enforcement of the provisions of the Texas Water Code and regulations of the Texas Water Commission. There are no anticipated costs to persons who are required to comply with the sections as proposed, other than those costs which were identified above and which would apply to any individual owning or operating a regulated aboveground storage tank.

The amendment is proposed pursuant to Subchapter I of the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorizes the Texas Water Commission to establish a program to regulate underground storage tanks and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund, and under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve any general policy of the commission.

#### §334.1. Purpose and Applicability.

(a) Purpose. The purposes of this chapter are to:

(1) provide a comprehensive regulatory program for underground storage tank systems storing hazardous [, toxic, or other harmful] substances and petroleum substances, and for aboveground storage tanks storing certain petroleum products, as prescribed by the Texas Water Code, Chapter 26, Subchapter I.

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

(b) Applicability to underground storage tanks.

(1) An underground storage tank system shall be subject to all or part of the applicable regulations in this chapter only when such system:

(A) -(D) (No change.)

(2) The applicable requirements and provisions in this chapter shall apply to regulated underground storage tank systems (as described in paragraph (1) of this subsection), and to the registration, design, construction, installation, operation, testing, maintenance, upgrading, recordkeeping, reporting, removal from service, release monitoring, release reporting and corrective action, fee assessment, financial assurance, and other applicable requirements associated with such systems, as more fully described in this chapter.

(3) The applicable requirements and provisions in this chapter shall apply



equally to all owners and operators of regulated underground storage tank systems (as described in paragraph (1) of this subsection), including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of underground [storage] tank systems shall be subject to all or parts of the applicable regulations in this chapter if they meet the general qualifications for an underground storage tank system in paragraph (1) of this subsection:

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

(c) Applicability to aboveground storage.

(1) An aboveground storage tank shall be subject to the applicable regulations in this chapter only when such tank;

(A) meets the definition of "aboveground storage tank" in §334.122 of this title (relating to Definitions for ASTs);

(B) contains, has contained, or will contain a "petroleum product" as defined in §334.122 of this title (relating to Definitions for ASTs);

(C) is not exempted from regulation in §334.123 of this title (relating to Statutory Exemptions for ASTs); and

(D) is not excluded from regulation in §334.124 of this title (relating to Commission Exclusions for ASTs).

(2) The applicable requirements and provisions in this chapter shall apply to regulated aboveground storage tanks, and to the registration, installation notification, reporting, recordkeeping, release reporting and corrective action, fee assessment, and other applicable requirements associated with such tanks, as more fully described in this chapter.

(3) The applicable requirements and provisions in this chapter shall apply equally to all owners and operators of regulated aboveground storage tanks, including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-

profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of aboveground tanks shall be subject to the applicable regulations in this chapter if they meet the general qualifications for an aboveground storage tank in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store petroleum products; and

(B) dual-use or multiple-use tanks which alternately store two or more substances when at least one of the stored substances is a petroleum product.

(5) If a storage tank containing a petroleum product technically meets the definitions of both an aboveground storage tank and an underground storage tank under this chapter, then the tank will be considered an underground storage tank, and must conform with all applicable requirements for underground storage tanks in this chapter.

(6) Consistent with the statutory exemption for heating oil tanks in §334.123(a)(2) of this title (relating to Statutory Exemptions for ASTs), an aboveground storage tank storing a petroleum product (such as kerosene or diesel) which is primarily used as a heating oil substitute for heating purposes on the premises where stored, and which is secondarily used as a motor fuel for the operation of internal combustion engines, shall be exempt from the regulations of this chapter.

(d) Applicability of specific sections to underground storage tanks and aboveground storage tanks.

(1) Underground storage tanks shall be subject to the provisions of the following sections in this chapter:

(A) Subchapter A of this title (relating to General Provisions);

(B) Subchapter B of this title (relating to Underground Storage Tank Fees);

(C) Subchapter C of this title (relating to Technical Standards);

(D) Subchapter D of this title (relating to Release Reporting and Corrective Action);

(E) Subchapter E of this title (relating to Financial Responsibility);

(F) Subchapter H of this title (relating to Interim reimbursement Program); and

(G) Subchapter I of this title (relating to Underground Storage Tank Contractor Certification and Installer Licensing).

(2) Aboveground storage tanks shall be subject to the provisions of the following sections in this chapter:

(A) §334.1 of this title (relating to Purpose and Applicability), and §334.2 of this title (relating to Definitions);

(B) Subchapter D of this title (relating to Release Reporting and Corrective Action);

(C) Subchapter F of this title (relating to Aboveground Storage Tanks); and

(D) Subchapter H of this title (relating to Interim Reimbursement 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 30, 1990.

TRD-9003359

Jim Haley  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 7, 1990

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

◆ ◆ ◆  
The Texas Water Commission (TWC) proposes amendments to §§334.2, 334.3, 334.5-334.7, 334.42, 334.44, 334.47, 334.50, and 334.51, and the repeal of §334.13, concerning underground storage tanks. The text of Subchapters A and C appeared as proposed in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1171). The adoption appeared in the September 15, 1989, issue of the *Texas Register* (14 TexReg 4714). These amendments are proposed to clarify certain ambiguities, correct several omissions, and revise several provisions to facilitate regulatory compliance.

The proposed amendment to §334.2 adds a definition of emergency generator which was not previously included within the subchapter. Such definition has become necessary as several of these proposed amendments relate to emergency generators. TWC proposes to add a provision to §334.3(a) to include the

statutory exemption related to transformers and other electrical equipment, as provided in House Bill 1588, 71st Legislative Session, 1989. The addition will also require that current §334.3(a)(8)-(10) be renumbered.

Sections 334.5(d)(1) and (2) and §334.7(a)(1)(A) and (B) have been amended to clarify that hydraulic lifts are exempted and excluded from the registration and fee requirements of this chapter. This revision is made to reiterate the intent of the exemption and exclusion of hydraulic lifts as provided in §334.3(b) and §334.4(c).

TWC also proposes to amend §334.5(d)(3)(B) and §334.7(a)(1)(D) and to add §334.5(d)(4) and §334.7(a)(1)(E) in order to provide a reasonable regulatory requirement related to registration of underground storage tanks which are newly discovered and empty. The proposed revision will allow the exemption of such tanks from the registration requirements, provided that such tanks (which are empty and newly discovered) are permanently removed from service no later than September 29, 1990 (i.e. one year after the effective date of Chapter 334), or within 60 days of the discovery of such tanks, whichever date is later.

The proposed amendment to §334.6(c)(2) adds new subparagraph (D) to allow for the use of the alternative notification procedure in §334.6 in those situations where the construction activity relates to maintaining the operational readiness of an emergency generator. TWC believes that tanks associated with emergency generators should be in a constant state of operational readiness and considers that this amendment will allow for expedited contractor activities for such tanks.

Current §334.6(c)(2)(D) will now be renumbered as §334.6(c)(2)(E).

Current §334.13 will be repealed as it is felt that the issue of joint and several liability should be addressed in the separate rules to be promulgated to implement House Bill 1588, 71st Legislative Session, 1989. House Bill 1588, §26.3513, addresses liability and costs for multiple owners and operators; thus, it is considered more appropriate that the rules relating to joint and several liability be part of the rules related to House Bill 1588. TWC also believes that additional public comment and review is appropriate on this matter as part of the rules promulgation process for House Bill 1588.

TWC proposes to amend §334.42(g) to clarify that the intent of this section is consistent with the corrosion protection requirements in 31 TAC §334.49. As subsection (g) was originally adopted, the language seemed to require that only cathodic protection or electrical isolation could be used to satisfy the corrosion protection requirements for all underground metal components. The proposed revision clarifies that other methods of corrosion protection will be acceptable for certain other components, as specified in §334.49(b).

The proposed amendments to §334.44(b)(1)(D) and §334.47(b)(4) will provide a one-year extension of the release detection compliance dates for emergency generator tanks only. Since emergency generator tanks were deferred from the federal release detection requirements, and due to the limited types of release detection applicable to these tanks and the limited implementation period between September

29, 1989 (effective date of Chapter 334) and December 22, 1989 (deadline for release detection on the oldest tanks), the TWC considers that the existing rules for release detection implementation for such tanks are impracticable. Therefore, the TWC has allowed emergency generators to be provided with release detection one year later than other regulated tanks, except that all tanks must still have release detection by December 22, 1993.

TWC proposes to amend §334.50, relating to release detection, by adding new subsection (d)(3) which will allow monthly tank gauging as an additional alternative method of release detection for emergency generator tanks only. The TWC has determined that many of the recognized release detection methods are not practicable for certain types of emergency generator tanks; therefore, the TWC proposes monthly tank gauging as an alternative method of release detection. Due to the operational nature of emergency generator tanks, the monthly tank gauging method shall provide an acceptable release detection procedure. Also, existing subsection (d)(3)-(8) will be renumbered to reflect this addition. In addition, subsection (b)(1)(C) will also be amended to recognize this change. All other references in this chapter to the acceptable release detection methods under subsection (d) will also be revised to incorporate this addition. The following list shows Title 31 Texas Administrative Code, Chapter 334 locations where current references to subsection (d) need revision because of the addition of new subsection (d)(3), and shows the current reference notation and the proposed revised notations:

<u>Location of Reference</u>	<u>Current Notation</u>	<u>Proposed Revised Notation</u>
§334.47(b)(1)(A)(i)	§334.50(d)(3)-(d)(8)	§334.50(d)(4)-(d)(9)
§334.47(b)(4)(B)	§334.50(d)(4)&(d)(5)	§334.50(d)(5)&(d)(6)

§334.50(a)(1)(C)(ii)(II)	(d)(3)	(d)(4)
§334.50(b)(1)(A)	(d)(3)-(d)(8)	(d)(4)-(d)(9)
§334.50(b)(2)(A)(ii)(II)	(d)(4)-(d)(8)	(d)(5)-(d)(9)
§334.50(b)(2)(B)(i)(II)	(d)(4)-(d)(8)	(d)(5)-(d)(9)
§334.50(c)(3)(B)	Subsections (d)(6), (d)(7) or (d)(8)	Subsections (d)(7), (d)(8) or (d)(9)
§334.50(d)	Paragraphs (1)-(8)	Paragraphs (1)-(9)
§334.50(d)	Paragraphs (4)-(8)	Paragraphs (5)-(9)
§334.50(d)(8)	Paragraphs (1)-(7)	Paragraphs (1)-(8)
§334.55(a)(6)(B)(i)	§334.50(d)(4)-(d)(8)	§334.50(d)(5)-(d)(9)

The proposed amendment to §334.51(b)(4), relating to spill and overflow prevention and control, will allow an extension until December 22, 1998, for the required addition of spill containment equipment, if the tank has been properly equipped by December 22, 1994, with both a tight-fill fitting and an automatic overflow shut-off device. TWC believes that this revision will adequately protect the environment from overfills, while also allowing for the addition of spill containment devices in conjunction with the addition of cathodic protection by December 22, 1998. TWC believes that the installation of tight-fill fittings and protective shut-off devices will provide adequate protection from spills and overfills in the interim period from December 22, 1994, until the federally-mandated deadline of December 22, 1998, for the addition of spill containment.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bourdeau 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 not to materially change the estimate of fiscal impact of these subchapters as they were originally proposed in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1171). The proposed amendments will clarify certain exemptions from regulation under this chapter and incorporate alternatives to certain technical standards for spill prevention and containment for underground storage

tanks during the interim period until federal requirements for spill prevention and containment become effective on December 22, 1998. 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 William Thompson, Staff Attorney, Legal Division, P. O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m., 30 days after the date of this publication.

• 31 TAC §§334.2, 334.3, 334.5-334.7

The amendments are proposed under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and amended by House Bill 1588, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and assess and collect fees for deposit to the storage tank fund; and \$5.103 and \$5.105, which provide the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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

**Emergency generator**—A standby electrical generating system powered by an internal combustion engine (including a turbine), where such system is designed to supply temporary electrical service only when service from the normal or primary electrical source is disrupted. Such systems shall include, but are not necessarily limited to, those providing emergency electrical service for hospitals, life support systems, and other medical service facilities; telephone and electrical utilities; heating, lighting, ventilation, security, elevator, fire control, and other essential building operations systems; uninterruptible power systems; essential air conditioning and refrigeration; and motors, machinery, and controls used for other essential or critical purposes.

**§334.3. Statutory Exemptions.**

(a) Complete exemption. The following underground tanks and containment devices (including any connected piping) are completely exempt from regulation under this chapter, as provided under the Texas Water Code, §26.344:

(1)-(7) (No change.)

(8) transformers or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States

**Environmental Protection Agency under 40 Code of Federal Regulations, Part 280;**

(9)[(8)] storage tanks located in an underground area, including a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is located on or above the surface of the floor;

(10)[(9)] pipeline facilities, including gathering lines, if such facilities are regulated under:

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

(11) [(10)] intrastate pipeline facilities if such facilities are regulated under of the following state laws:

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

(b) (No change.)

**§334.5. General Prohibitions.**

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

(d) Registration. On or after September 1, 1987, no person shall own or operate an underground storage tank which contains or has contained a regulated substance unless such underground storage tank has been properly registered with the commission in accordance with §334.7 of this title (relating to Registration), except for:

(1) underground storage tanks [specifically] completely exempted or partially exempted from regulation under §334. 3(a) or (b) of this title (relating to Statutory Exemptions);

(2) underground storage tanks [specifically] completely excluded or partially excluded from regulation under §334.4(a) or (c) of this title (relating to Commission Exclusions); and

(3) underground storage tanks which are permanently out of service and which either:

(A) (No change.)

(B) remain in the ground, but were emptied, [and] cleaned, and filled with solid inert materials on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation. [, and either:]

[(i) were filled with solid inert materials on or before January 1, 1974; or

[(ii) were not filled with solid inert materials on or before January 1, 1974, but were subsequently permanently removed from service in accordance with §334. 55 of this title (relating to Permanent Removal from Service) no later than one year after the effective date of this

subchapter, or within 60 days of the discovery of the UST, whichever is later.]

(4) Underground storage tanks which are out of operation and empty of regulated substances at the time of their discovery, provided that:

(A) the facility owner can reasonably demonstrate no prior knowledge of the existence of the USTs; and

(B) the USTs are permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than September 29, 1990, or within 60 days of their discovery, whichever is later.

**§334.6. Construction Notification.**

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

(c) Alternative notification procedures.

(1) (No change.)

(2) The alternative notification procedures of paragraph (1) of this subsection may be used only when the following situations occur:

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

(D) when the activity is necessary to maintain the operational readiness of an emergency generator; [in any other case, where the executive director determines that compliance with the notification provisions of subsection (b) of this section would be unreasonable or impractical, or could increase the threat to human health or safety or the environment.]

(E) in any other case, where the executive director determines that compliance with the notification provisions of subsection (b) of this section would be unreasonable or impractical, or could increase the threat to human health or safety or the environment.

**§334.7. Registration.**

(a) General provisions.

(1) All underground storage tanks in existence on or after September 1, 1987, shall be registered with the commission on authorized commission forms, except for those tanks which:

(A) are completely exempted or partially exempted [exempt] from regulation under §334.3(a) or (b) of this title (relating to Statutory Exemptions);

(B) are completely excluded or partially excluded from regulation

under §334.4(a) or (c) of this title (relating to Commission Exclusions);

(C) (No change.)

(D) have been permanently removed from service and which either:

(i) (No change.)

(ii) remain in the ground, but were emptied, [and] cleaned, and filled with solid inert materials on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation. [, and either:]

[(I) were filled with solid inert materials on or before January 1, 1974; or

[(II) were not filled with solid inert materials on or before January 1, 1974, but were subsequently permanently removed from service in accordance with §334. 55 of this title (relating to Permanent Removal from Service) no later than one year after the effective date of this subchapter, or within 60 days of discovery of the UST, whichever is later.]

(E) were out of operation and empty of regulated substances at the time of their discovery, provided that:

(i) the facility owner can reasonably demonstrate no prior knowledge of the existence of the USTs; and

(ii) the USTs are permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than September 29, 1990, or within 60 days of their discovery, whichever is later.

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

(b) Existing tanks. Any person who owns an underground storage tank that was in existence on September 1, 1987, shall register such tank with the commission not later than September 1, 1987, on an authorized commission form, except for those tanks exempted and excluded under subsection (a)(1)(A)-(D) of this section.

(c)-(f) (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 30, 1990.

TRD-9003358 Jim Haley  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 7, 1990

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

◆ ◆ ◆  
• 31 TAC §334.13

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Water Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and amended by House Bill 1588, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and assess and collect fees for deposit to the storage tank fund; and §§5.103 and §5.105, which provide the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§334.13. *Joint and Several Liability.*

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 30, 1990.

TRD-9003357 Jim Haley  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 7, 1990

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

◆ ◆ ◆  
Subchapter B. Aboveground  
Storage Tank Fees

• 31 TAC §§334.21-334.23

The Texas Water Commission proposes new §§334.21-334.23, concerning underground storage tank fees. The new subchapter will replace existing subchapter B, §334.21-334.23, concerning underground storage tank fees, which were adopted on an emergency basis on August 15, 1989, (14 TexReg 4030).

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

New §334.21 concerning annual facility fee assessments, requires that owners of

underground storage tanks pay an annual facility fee of \$50. The new section states that the federal government will not be assessed for any revenue used to match federal funds for the remediation of leaking underground storage tanks. No annual facility fee will be assessed for an underground storage tank owned, operated, or maintained by a common carrier railroad, as provided in the Texas Water Code, §26.344(g).

New §334.22 concerning failure to make payment, requires owners to pay the annual facility fee in a timely manner. This section also provides that a penalty may be assessed for failure to pay the annual facility fee in the manner and in the amount required. Such penalty may be either 10% of the total amount due, or an interest penalty of 15% per year, whichever is greater.

New §334.23 concerning disposition of fees, interest, and penalties requires the executive director to deposit any fees, interest, or penalties collected under this subchapter into the state treasury to the credit of the storage tank fund.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period that the sections are in effect there will be fiscal implications as a result of compliance with an enforcement of the sections. The effect on state government will be an increase in revenue of approximately \$2, 670,000 per year in fiscal years 1990-1994. Increased costs to the state to incorporate the amended fee schedule into current billing and accounting systems will be minimal. The effect on local government will be an increased cost of \$25 per year for each regulated underground storage tank owned by a local governmental entity.

The new sections as proposed will have fiscal impact on small businesses. Each business owning regulated tanks will be assessed an annual fee increase of \$25 per tank. The average number of tanks registered at each regulated facility is just less than three. The typical small business, therefore, could anticipate an incremental annual cost increase of \$75 as a result of compliance with the new sections.

Mr. Bourdeau also has determined that, for each year of the first five year period the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be improvements in regulation of underground storage tank facilities, protection of the quality of the state's groundwater resources, and enforcement of the provisions of the Texas Water Code and the regulations of the Texas Water Commission. There is no anticipated economic cost to persons who are required to comply with the sections, other than those costs which are identified for small businesses. Many of the small businesses in the affected group of regulated tank owners/operators are presumed to be sole proprietors.

Comments on the proposal may be submitted to Carlos Celestino, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069. Comments will be accepted until 5 p.m., 30 days following publication of the proposal.

The new sections are proposed pursuant to the Texas Water Code, §§26.341-26.359, as

enacted in Senate Bill 779, 70th Legislature, 1987, and as amended in House Bill 1588, 71st Legislature, 1989, which authorizes the Texas Water Commission to establish a program to regulate underground storage tanks and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund, and under the Texas Water Code, §§5.103 and §5.105, which authorize the Texas Water Commission to adopt any rules necessary to carry out its powers and duties.

§334.21. *Fee Assessment.*

(a) Except as provided in subsection (e) of this section, an annual facility fee of \$50 is assessed for each underground storage tank subject to the registration provisions of §334.7 of this title (relating to Registration). The fees shall be billed to and paid by the owner of the tank.

(b) Payment of annual facility fees is due within 30 days of the date the executive director sends a statement of the assessment to the tank owner. Annual facility fees must be paid by check, certified check, or money order made payable to the Texas Water Commission. Payments must be mailed to the address specified in the billing statement.

(c) The executive director shall establish a schedule for billing of annual facility fees. The amount of the fee to be paid, regardless of the actual billing date, shall be based on the number of regulated underground storage tanks in place on or after the first day of each fiscal year (September 1).

(d) An agency of the federal government is not subject to an assessment under this section for any revenue used to match federal funds for the remediation of leaking underground storage tanks. In any fiscal year in which fee revenues are used to match federal funds for remediation of a leaking underground storage tank, the commission shall determine the prorated contribution of each federal underground storage tank (UST) facility to the leaking underground storage tank trust fund in that year. The assessment of annual UST facility tank fees in the following year shall be adjusted by crediting the account of each federal facility for the excess amount paid in the previous year.

(e) An annual facility fee shall not be assessed for an underground storage tank which is owned, operated, or maintained by a common carrier railroad, as provided in the Texas Water Code, §26.344(g).

§334.22. *Failure To Make Payment.*

(a) Annual facility fees must be paid at the time and in the manner and amount provided by this subchapter.

(b) The executive director may impose interest and penalties on owners who fail to make payment of the annual facility

fees imposed under this subchapter at the time and in the manner and amount required. The executive director is authorized to impose either a penalty of 10% of the total amount due, or interest charges which shall accrue at an annual rate of 15% from the date the payment was due, whichever is greater.

**§334.23. Disposition of Fees, Interest, and Penalties.** The executive director shall deposit any annual facility fees collected, together with all interest and penalties collected for late payment, in the state treasury to the credit of the storage tank fund.

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 30, 1990.

TRD-9003356

Jim Haley  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 7, 1990

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

## Subchapter C. Technical Standards

### • 31 TAC §§334.42, 334.44, 334.47, 334.50, 334.51

The amendments are proposed under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and amended by House Bill 1588, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and assess and collect fees for deposit to a storage tank fund; and \$5.103 and \$5.105, which provide the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

#### §334.42. General Standards.

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

(g) Any underground component of an underground storage tank system installed on or after September 29, 1989, shall be properly protected from corrosion by one or more of the allowable methods in §334.49(b) of this title (relating to Corrosion Protection) [Except for a composite tank or a tank clad with a factory-installed fiberglass-reinforced plastic coating which meets the requirements of §334.45(b)(1)(D) of this title (relating to Technical Standards for New UST Systems), any underground metallic component of an underground storage tank system installed on or after December 22, 1988, which does, or could convey,

contain, or store a regulated substance shall either:

[(1) be equipped with a factory-installed cathodic protection system which meets the requirements of §334.49(c)(1) of this title (relating to Corrosion Protection);

[(2) be equipped with a field-installed cathodic protection system which meets the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection); or

[(3) be completely isolated from the backfill material, groundwater, and other metallic components of the system as provided under §334.49(b)(2) or (3) of this title (relating to Corrosion Protection)].

#### §334.44. Implementation Schedules.

(a) (No change.)

(b) Existing UST systems.

(1) Requirements for all existing UST systems. All existing UST systems (i.e., UST systems for which installation has commenced or has been completed on or prior to December 22, 1988) which are used to store any regulated substances shall meet the applicable requirements of §334.47 of this title (relating to Technical Standards for Existing UST Systems) in accordance with the following schedule.

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

(D) Release detection for existing tanks.

(i) Except as provided in clause (II) of this subparagraph, [All] all tanks in an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title (relating to Release Detection) no later than the date specified in the following subclauses [clauses] for the time of installation applicable to such tanks:

(I)(i) December 22, 1989, for tanks where the installation dates are undetermined or unknown;

(II)(ii) December 22, 1989, for tanks installed during 1964 or prior years;

(III)(iii) December 22, 1990, for tanks installed during the years 1965-1969, inclusive;

(IV)(iv) December 22, 1991, for tanks installed during the years 1970-1974, inclusive;

(V)(v) December 22, 1992, for tanks installed during the years 1975-1979, inclusive;

(VI)(vi) December 22, 1993, for tanks installed during the years 1980-1987, inclusive; and

(VII)(vii) December 22, 1993, for tanks installed between January 1, 1988, and December 22, 1988, inclusive.

(ii) For emergency generator tanks only, the compliance dates prescribed in clause (I)(I)-(V) of this subparagraph shall be extended by one year, however, no compliance date shall be extended later than December 22, 1993.

(2) (No change.)

#### §334.47. Technical Standards for Existing UST Systems.

(a) (No change.)

(b) Minimum upgrading requirements for all existing UST systems.

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

(4) Adding release detection for tanks.

(A) Except as provided in subparagraph (B) of this paragraph, [All] all tanks at an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title (relating to Release Detection) no later than the date specified in the following clauses for the time of installation applicable to such tanks:

(i)-(vii) (No change.)

(B) For emergency generator tanks only, the compliance dates prescribed in subparagraph (A)(I)-(v) of this paragraph shall be extended by one year; however, no compliance date shall be extended past December 22, 1993 [When two or more existing tanks are located in a common tank hole, and when the selected method of release detection is either vapor monitoring or groundwater monitoring in accordance with §334.50(d)(4) and (5) of this title (relating to Release Detection), then all such tanks shall be brought into compliance with the applicable release detection requirements of this paragraph no later than the date specified for the oldest tank in such common tank hole].

(C) When two or more existing tanks are located in a common tank hole, and when the selected method of release detection is either vapor monitoring or groundwater monitoring in accordance with §334.50(d)(5) and (6) of this title (relating to Release Detection), then all such tanks shall be brought

into compliance with the applicable release detection requirements of this paragraph no later than the date specified for the oldest tank in such common tank hole.

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

**§334.50. Release Detection.**

(a) General requirements.

(1) Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection which shall be:

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

(C) capable of meeting the particular performance requirements of such method (or methods) as specifically prescribed in this section, based on the performance claims by the equipment manufacturer or installer, provided that the following additional requirements shall also be met.

(i) (No change.)

(ii) When any of the following release detection methods are used on or after December 22, 1990, (except for methods permanently installed and in operation prior to that date), such method shall be capable of detecting the particular release rate or quantity specified for that method such that the probability of detection shall be at least 95% and the probability of false alarm shall be no greater than 5%:

(I) (No change.)

(II) automatic tank gauging, as prescribed in subsection (d)(4) [(3)] of this section;

(III)-(IV) (No change.)

(2)-(6) (No change.)

(b) Release detection requirements for all UST systems. Owners and operators of all UST systems shall ensure that release detection equipment or procedures are provided in accordance with the following requirements.

(1) Release detection requirements for tanks.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, all tanks shall be monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in subsection (d)(4) [(3)]-(9) [(8)] of this section.

(B) (No change.)

(C) The manual tank gauging method of release detection, as prescribed in subsection (d)(2) of this section, may be used as the sole release detection system only for a petroleum substance tank with a nominal capacity of 550 gallons or less. The monthly tank gauging method of release detection, as prescribed in subsection (d)(3) of this section, may be used as the sole release detection system only for emergency generator tanks.

(D) (No change.)

(2) Release detection for piping. Piping in an underground storage tank system shall be monitored in a manner designed to detect a release from any portion of the piping system, and in accordance with the following requirements.

(A) Requirements for pressurized piping. Underground storage tank system piping that conveys regulated substances under pressure shall be in compliance with the following requirements.

(i) (No change.)

(ii) In addition to the required line leak detector prescribed in clause (i) of this subparagraph, each pressurized line shall also be tested or monitored for releases in accordance with at least one of the following methods.

(I) (No change.)

(II) The piping may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed in subsection (d)(5) [(4)]-(9) [(8)] of this section.

(B) Requirements for suction piping and gravity flow piping.

(i) Except as provided in clause (ii) of this subparagraph, each separate line in a UST piping system that conveys regulated substances either under suction or by gravity flow shall meet at least one of the following requirements.

(I) (No change.)

(II) Each line may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed in subsection (d)(5) [(4)]-(9) [(8)] of this section.

(ii) (No change.)

(C) (No change.)

(c) Additional release detection requirements for hazardous substance UST systems. In addition to the release detection requirements for all UST systems prescribed in subsections (a) and (b) of this section, owners and operators of all hazardous substance UST systems shall also assure compliance with the following additional requirements.

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

(3) Secondary containment and monitoring.

(A) (No change.)

(B) All hazardous substance UST systems (including tanks and piping) shall include one or more of the release detection methods or equipment prescribed in subsection (d)(7)-(9) [(6)-(8)] of this section, which shall be capable of monitoring the space between the primary tank and piping walls and the secondary containment wall or barrier.

(d) Allowable methods of release detection. Tanks in a UST system may be monitored for releases using one or more of the methods included in paragraphs (1)-(9) [(8)] of this subsection. Piping in a UST system may be monitored for releases using one or more of the methods included in paragraphs 5 [(4)]-(9) [(8)] of this subsection. Any method of release detection for tanks and/or piping in this section shall be allowable only when installed (or applied), operated, calibrated, and maintained in accordance with the particular requirements specified for such method in this subsection.

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

(3) Monthly tank gauging. Monthly tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Monthly tank gauging in accordance with this paragraph may be used as the sole method of tank release detection only for emergency generator tanks.

(B) The use of monthly tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks other than emergency generator tanks.

(C) When used for compliance with the release detection requirements of this section, the procedures and requirements in the following clauses shall be applicable.

(i) For purposes of this paragraph only, the following definitions are applicable.

(I) **Level measurement**—The average of two consecutive liquid level readings from a tank gauge, measuring stick, or other manual or automatic measuring equipment.

(II) **Gauging period**—A period of at least 36 hours during which no substance is added to or removed from the tank.

(III) **Monthly deviation**—The variation between the level measurements taken at the beginning and the end of one gauging period, converted to and expressed as gallons.

(ii) Any measuring equipment (whether operated manually or automatically) shall be capable of measuring the level of a stored substance over the full range of the tank's height to the nearest one-eighth of an inch.

(iii) Separate liquid level measurements in the tank shall be taken at least once monthly at the beginning and the ending of the gauging period, and the monthly deviation shall be determined from such level measurements;

(iv) For the purposes of the monthly tank gauging method of release detection, a release shall be indicated when the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

(I) For a tank with a capacity of 550 gallons or less; monthly standard = five gallons.

(II) For a tank with a capacity of 551 gallons to 1,000 gallons; monthly standard = seven gallons.

(III) For a tank with a capacity of 1,001 gallons to 2,000 gallons; monthly standard = 13 gallons.

(IV) For a tank with a capacity greater than 2,000 gallons; monthly standard = 1.0% of the total tank capacity.

(v) When the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(4) [(3)] Automatic tank gauging and inventory control. A combination of automatic tank gauging and inventory control may be used as a tank release detection method, subject to the following requirements.

(A) Inventory control procedures shall be in compliance with paragraph (1) (B) of this subsection.

(B) The automatic tank gauging equipment shall be capable of:

(i) automatically monitoring the in-tank liquid levels, conducting automatic tests for substance loss, and collecting data for inventory control purposes; and

(ii) performing an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the tank which contains regulated substances.

(5)[(4)] Vapor monitoring. Equipment and procedures designed to test or monitor for the presence of vapors from the regulated substance (or from a related tracer substance) in the soil gas of the backfilled excavation zone may be used, subject to the following limitations and requirements.

(A) The bedding and backfill materials in the excavation zone shall be sufficiently porous to allow vapors from any released regulated substance (or related tracer substance) to rapidly diffuse through the excavation zone (e.g., gravel, sand, crushed rock).

(B) The stored regulated substance, or any tracer substance placed in the tank system, shall be sufficiently volatile so that, in the event of a substance release from the UST system, vapors will develop to a level that can be readily detected by the monitoring devices located in the excavation zone.

(C) The capability of the monitoring device to detect vapors from the stored regulated substance shall not be adversely affected by the presence of any groundwater, rainfall, and/or soil moisture in a manner that would allow a release to remain undetected for more than one month (not to exceed 35 days).

(D) Any pre-existing background contamination in the excavation zone shall not interfere with the capability of the vapor monitoring equipment to detect releases from the UST system.

(E) The vapor monitoring equipment shall be designed to detect va-

pors from either the stored regulated substance, a component or components of the stored substance, or a tracer substance placed in the UST system, and shall be capable of detecting any significant increase in vapor concentration above pre-existing background levels.

(F) Prior to installation of any vapor monitoring equipment, the site of the UST system (within the excavation zone) shall be assessed by qualified personnel to:

(i) ensure that the requirements in subparagraphs (A)-(D) of this paragraph have been met; and

(ii) determine the appropriate number and positioning of any monitor wells and/or observation wells, so that releases into the excavation zone from any part of the UST system can be detected within one month of the release (not to exceed 35 days).

(G) All monitoring wells and observation wells shall be designed and installed in accordance with the requirements of §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(6)[(5)] Groundwater monitoring. Equipment or procedures designed to test or monitor for the presence of regulated substances floating on or dissolved in the groundwater in the excavation zone may be used, subject to the following limitations and requirements:

(A) The stored regulated substance shall be immiscible in water and shall have a specific gravity of less than one.

(B) The natural groundwater level shall never be more than 20 feet (vertically) from the ground surface, and the hydraulic conductivity of the soils or backfill between all parts of the UST system and the monitoring points shall not be less than 0.01 centimeters per second (i.e., the soils or backfill shall consist of gravels, coarse to medium sands, or other similarly permeable material).

(C) Any automatic monitoring devices that are employed shall be capable of detecting the presence of at least 1/8 inch of free product on top of the groundwater in the monitoring well or observation well. Any manual monitoring method shall be capable of detecting a visible sheen or other accumulation of regulated substances in or on the groundwater in the monitoring well or observation well.

(D) Prior to installation of any groundwater monitoring equipment, the site of the UST system (within and immedi-



ately below the excavation zone) shall be assessed by qualified personnel to:

(i) ensure compliance with the requirements of subparagraphs (A) and (B) of this paragraph; and

(ii) determine the appropriate number and positioning of any monitoring wells and/or observation wells, so that releases from any part of the UST system can be detected within one month (not to exceed 35 days) of the release.

(E) All monitoring wells and observation wells shall be designed, installed, and maintained in accordance with the requirements in §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(7) [(6)] Interstitial monitoring for double-wall UST systems. Equipment designed to test or monitor for the presence of regulated substance vapors or liquids in the interstitial space between the inner (primary) and outer (secondary) walls of a double-wall underground storage tank system may be used, subject to the following conditions and requirements.

(A) Any double-wall UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substances from any portion of the primary tank or piping within one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater into the interstitial space due to a breach in the secondary wall of the double-wall tank or piping system within one month (not to exceed 35 days) of such breach or failure (whether or not a stored regulated substance has been released into the environment).

(8) [(7)] Monitoring of UST systems with secondary containment barriers. Equipment designed to test or monitor for the presence of regulated substances (liquids or vapors) in the excavation zone between the UST system and an impermeable secondary containment barrier immediately around the UST system may be used, subject to the following conditions and requirements.

(A) Any secondary containment barrier or liner system at a UST system using this method of release detection

shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substance from any portion of the UST system into the excavation zone between the UST system and the secondary containment barrier within one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be designed and installed in a manner that will ensure that groundwater, soil moisture, and rainfall will not render the method inoperative where a release could remain undetected for more than one month (not to exceed 35 days).

(D) Prior to installation of any secondary containment release monitoring equipment, the site of the UST system shall be assessed by qualified personnel to:

(i) ensure that the secondary containment barrier will be positioned above the groundwater level and outside the designated 25-year flood plain, unless the barrier and the monitoring equipment are designed for use under such conditions; and

(ii) determine the appropriate number and positioning of any observation wells.

(E) All observation wells shall be designed and installed in accordance with the requirements in §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(9) [(8)] Alternative release detection method. Any other release detection method, or combination of methods, may be used if such method has been reviewed and determined by the executive director to be capable of detecting a release from any portion of the UST system in a manner that is no less protective of human health and safety and the environment than the methods described in paragraphs (1)-(8) [(7)] of this subsection, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(e) (No change.)

#### §334.51. Spill and Overfill Prevention and Control.

(a) (No change.)

(b) Spill and overfill prevention

equipment. Except as provided in paragraph (4) of this subsection, all underground storage tank systems shall be equipped with spill and overfill prevention equipment which shall be designed, installed, and maintained in a manner that will prevent any spilling or overfilling of regulated substances resulting from transfers to such systems, as provided in this subsection.

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

(4) Exceptions. [UST systems are not required to be equipped with the spill and overfill prevention equipment prescribed in this subsection if one or more of the following conditions are applicable to such system.]

(A) UST systems are not required to be equipped with the spill and overfill prevention equipment prescribed in this subsection if one or more of the following conditions are applicable to such system:

(i) [(A)] the transfers of regulated substances into the underground storage tank system do not exceed 25 gallons per occurrence;

(ii) [(B)] the underground storage tank system is equipped with alternative equipment which has been reviewed and determined by the executive director to prevent spills and overfills of regulated substances in a manner that is no less protective of human health and the environment than the equipment prescribed in this subsection, as provided in §334.43 of this title (relating to Variances and Alternative Procedures); or

(iii) [(C)] the installation of the spill and overfill prevention equipment prescribed in this subchapter has been reviewed and determined by the executive director to be impracticable or unreasonable due to the type, design, or use of the underground storage tank system, as provided in §334.43 of this title (relating to Variances and Alternative Procedures).

(B) For existing UST systems which are properly equipped on or before December 22, 1994, with both a tight-fill fitting as prescribed in paragraph (2)(A) of this subsection, and an automatic overfill shut-off device as prescribed in paragraph (2)(C)(i) of this subsection, the implementation date for the installation of spill containment equipment, as prescribed in paragraph (2)(B) of this subsection, shall be deferred until December 22, 1998.

(c) (No change.)

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

Earliest possible date of adoption: May 7, 1990

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

## Subchapter F. Aboveground Storage Tanks

### • 31 TAC §§334.121-334.132

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

**§334.121. Purpose and Applicability for ASTs.**

(a) Purpose. The purpose of this subchapter is to provide a regulatory program for aboveground storage tanks storing petroleum products, as prescribed by the Texas Water Code, Chapter 26, Subchapter I to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in aboveground storage tanks that may pollute such groundwater and surface water resources, and to provide for the protection of human health and safety, as well as the protection of the overall environment of the state.

#### (b) Applicability.

(1) An aboveground storage tank shall be subject to the regulations in this subchapter only when such tank:

(A) meets the definition of "aboveground storage tank" in §334.122 of this title (relating to Definitions for ASTs);

(B) contains, has contained, or will contain a "petroleum product" as defined in §334.122 of this title (relating to Definitions for ASTs);

(C) is not exempted from regulation in §334.123 of this title (relating to Statutory Exemptions for ASTs); and

(D) is not excluded from regulation in §334.124 of this title (relating to Commission Exclusions for ASTs).

(2) The requirements and provisions in this subchapter shall apply to regulated aboveground storage tanks, and to the registration, installation notification, reporting, recordkeeping, release reporting and corrective action, fee assessment, and other requirements associated with such tanks, as more fully described in this subchapter.

(3) The requirements and provisions in this subchapter shall apply equally to all owners and operators of regulated aboveground storage tanks, including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States government (including all of its departments), except as otherwise provided in this subchapter.

(4) The following types of aboveground tanks shall be subject to the regulations in this subchapter if they meet the general qualifications for an aboveground storage tank in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store petroleum products; and

(B) dual-use or multiple-use tanks which alternately store two or more substances, when at least one of the stored substances is a petroleum product.

(5) If a storage tank containing a petroleum product technically meets the definitions of both an aboveground storage tank and an underground storage tank under this chapter, then the tank will be considered an underground storage tank, and must conform with all applicable requirements for underground storage tanks in this chapter.

(6) Consistent with the statutory exemption for heating oil tanks in §334.123(a)(2) of this title (relating to Statutory Exemptions for ASTs), an aboveground storage tank storing a petroleum product (such as kerosene or diesel) which is primarily used as a heating oil substitute for heating purposes on the premises where stored, and which is secondarily used as a motor fuel for the operation of internal combustion engines, shall be exempt from the regulations of this subchapter.

#### **§334.122. Definitions for ASTs.**

(a) Except as provided in subsection (b) of this section, the words and terms used in this subchapter, shall have the meanings prescribed in §334.2 of this title (relating to Definitions), unless the context clearly indicates otherwise.

(b) The following words and terms, as used in this subchapter only, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Appropriate district office—The commission's district field office which has jurisdiction for conducting authorized commission regulatory activities in the area where a particular aboveground storage tank is located.

(3) Associated piping—All underground pipes or aboveground pipes (including related valves, elbows, joints, flanges, connectors, and other fittings) which are directly associated with an aboveground tank storing petroleum products, which are located at the aboveground storage tank facility, and through which petroleum products flow or in which petroleum products are contained or stored.

(4) Bulk facility—A facility, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(5) Electric generating facility—A plant or facility where on-site equipment is used to generate electrical power on a continuous or regular basis. This term does not include emergency generators, as defined in §334.2 of this title (relating to Definitions).

(6) Facility—The site, tract, or other defined area where one or more aboveground storage tanks are located, and which includes all adjoining contiguous land and associated improvements.

(7) Facility owner—Any person who holds legal possession or ownership of a total or partial interest in an aboveground storage tank facility. (The facility owner and the owner associated with an aboveground storage tank may be the same person or may be different persons, depending on the specific arrangements at the facility.)

(8) Nonearthen materials—Man-made materials designed to provide structural support and containment, such as concrete, steel, or plastic.

(9) Nonvehicular device—A fixed, stationary, or moveable storage vessel which is not affixed or mounted to any selfpropelled, towable, or pushable vehicle (e.g. wagon, truck, trailer, railcar, aircraft, boat, or barge).

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

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

(12) Petroleum product—A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not necessarily limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(13) Release—Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into groundwater or surface water, or into subsurface or other surrounding soils.

(14) Retail service station—A facility where flammable liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and where such dispensing is an act of retail sale.

(15) Tank—An aboveground storage tank.

#### §334.123. Statutory Exemptions for ASTs.

(a) The following aboveground storage tanks are exempt from regulation under this subchapter, as provided in the Texas Water Code, §26.344:

(1) a farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

(2) a tank used for storing heating oil for consumptive use on the premises where stored;

(3) a septic tank;

(4) a surface impoundment, pit, pond, or lagoon;

(5) a stormwater or wastewater collection system;

(6) a flow-through process tank;

(7) a tank, liquid trap, gathering line, or other facility used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101;

(8) a tank located on or above the surface of the floor of an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the sole or principal substance in the tank is a hazardous substance; and

(9) a tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility.

(b) The following pipeline facilities are exempt from regulation under this subchapter, as provided in the Texas Water Code, §26.344:

(1) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §1671, et seq.); or

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §2001, et seq.);

(2) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(A) Chapter 111, Natural Resources Code;

(B) Chapter 117, Natural Resources Code; or

(C) Article 6053-1 and 6053-2, revised statutes.

#### §334.124. Commission Exclusions for ASTs.

(a) Except as provided in subsection (b) of this section, the following aboveground storage tanks are excluded from regulation under this subchapter by commission directive:

(1) any tank with a capacity of 1,100 gallons or less;

(2) any emergency spill protection or emergency overflow containment tank, including any sump or secondary containment system, which is used solely for the temporary storage or containment of petroleum products resulting from a leak, spill, overflow, or other unplanned release of petroleum products from any source, and where the petroleum products are routinely removed within 48 hours of the discovery of the release, provided that such tank shall be inspected for a release no less than once every month;

(3) any tank that contains petroleum products at such dilute concentrations that:

(A) the mixture is not capable of being used as a fuel for the propulsion of a motor vehicle or aircraft; and

(B) any release would not pose any significant threat to human health and safety or the environment;

(4) a transformer or other electrical equipment that is used in the transmission of electricity.

(b) Notwithstanding the exemptions in subsection (a) of this section, any aboveground storage tank containing petroleum products located at a retail service station is subject to the construction notification requirements of §334.126 of this title (relating to Installation Notification for AST's).

#### §334.125. General Prohibitions and Requirements for ASTs.

(a) Delivery prohibition.

(1) Except as provided in paragraph (2) of this subsection, on or after the effective date of this subchapter, no person shall deposit or have deposited any petroleum products into an aboveground storage tank unless such tank is registered with the commission in accordance with §334.127 of this title (relating to Registration for ASTs). Prior to the deposit of any petroleum products into an aboveground storage tank, the owner or operator shall provide evidence of registration as necessary to comply with the provisions of this paragraph.

(2) The prohibited delivery of petroleum products shall not be applicable to the initial deposit of petroleum products into a new or replacement aboveground storage tank, or to any subsequent deposits occurring within 30 days of the first deposit.

(b) Installation notification. No person shall perform any installation or replacement of an aboveground storage tank unless and until the commission has been provided prior notification of such activity in accordance with §334.126 of this title

(relating to Installation Notification for ASTs).

(c) Registration. On or after March 1, 1990, any person who owns or operates an aboveground storage tank which contains or will contain petroleum products must register the tank with the commission in accordance with §334.127 of this title (relating to Registration for ASTs), except for:

(1) aboveground storage tanks specifically exempted from regulation under §334.123 of this title (relating to Statutory Exemptions for ASTs); and

(2) aboveground storage tanks specifically excluded from regulation under §334.124 of this title (relating to Commission Exclusions for ASTs).

#### §334.126. Installation Notification for ASTs.

(a) Except as provided in subsection (b) of this section, on or after the effective date of this subchapter, any person who intends to install a new or replacement aboveground storage tank shall comply with the notification requirements of this section prior to initiating such activity.

(1) Installation notifications shall be submitted to the executive director at least 30 days prior to initiating the activity.

(A) The notification may be provided either to the commission's central office in Austin or to the commission's appropriate district office. The official date of notification shall be the date on which the notification is first received in a commission office.

(B) Notification may be provided by the owner or operator, an authorized agent or representative of the owner or operator, or the contractor or consultant retained for the activity. Notifications filed by unauthorized persons shall be null and void.

(C) Notifications shall be submitted on the commission's authorized form. The form shall be filled out as completely as possible. Upon completion, the form shall be dated and signed by the owner or operator (or designated representative) and shall be filed in accordance with this paragraph.

(D) When appropriate, installation notifications for aboveground storage tanks (as required under this section) may be filed together with construction notifications for underground storage tank activities at the same facility (as required by §334.6 of this title (relating to Construction Notification)), provided that complete and accurate explanation of the activities is included.

(E) Between 24 and 72 hours prior to the scheduled time of initiation of the installation, the owner or operator (or designated representative) shall contact the commission's appropriate district office to confirm the time of the initiation of the installation activities.

(F) The requirements and procedures for rescheduling, waiver requests, and expiration as related to installation notifications for aboveground storage tanks shall be in conformance with the procedures for construction notifications applicable to underground storage tanks in §§334.6(b)(3)-(5) of this title (relating to Construction Notification).

(2) When requested by the executive director, any person who intends to install a new or replacement aboveground storage tank shall also submit additional supporting information to assure that the activity is in compliance with applicable statutes and regulations.

(3) In addition to the installation notification requirements of this section, the owner or operator of a proposed aboveground storage tank that is to be located in the designated recharge zone or transition zone of the Edwards Aquifer shall also secure the requisite approval from the executive director prior to initiating any installation or replacement activities, as prescribed in Chapter 313 of this title (relating to Edwards Aquifer).

(4) When an existing underground storage tank is to be removed from the ground and is to be subsequently converted to an aboveground storage tank, the owner or operator must comply with the applicable technical requirements under §334.55 of this title (relating to Permanent Removal from Service) and with the notification requirements of §334.6 and §334.126 of this title (relating to Construction Notification and Installation Notification for ASTs).

(b) The following aboveground storage tanks shall not be subject to the installation notification requirements of this section:

(1) aboveground storage tanks which are statutorily exempt from regulation under §334.123 of this title (relating to Statutory Exemptions for ASTs);

(2) aboveground storage tanks which are excluded from regulation by commission directive under §334.124 of this title (relating to Commission Exclusions for ASTs);

(3) movable or mobile aboveground storage tanks (e.g. skid tanks) which are moved from one location to another on a regular basis, which are not permanently part of any particular facility, and which are

otherwise in compliance with the provisions of §334.127(f) of this title (relating to Registration for ASTs); except that any movable or mobile aboveground storage tanks proposed for installation or placement at a retail service station shall remain subject to the installation notification requirements of this section.

#### §334.127. Registration for ASTs.

(a) General Provisions.

(1) All aboveground storage tanks in existence on or after September 1, 1989, shall be registered with the commission on forms supplied by or approved by the executive director, except for those tanks which:

(A) are statutorily exempt from regulation under §334.123 of this title (relating to Statutory Exemptions for ASTs); or

(B) are excluded from regulation by commission directive under §334.124 of this title (relating to Commission Exclusions for ASTs).

(2) The owner of an aboveground storage tank shall be responsible for compliance with the tank registration requirements of this section. An owner may designate an authorized representative to complete and submit the required registration information. However, the owner shall be held responsible for compliance with the provisions of this section by such representatives.

(3) All aboveground storage tanks subject to the registration requirements of this section shall also be subject to the annual facility fee provisions in §334.128 of this title (relating to Annual Facility Fees for ASTs), except where specifically exempted from such fee provisions. The failure by a tank owner to properly register any tanks shall not exempt the owner from such fee assessment and payment provisions.

(b) Existing tanks. Any person who owns an aboveground storage tank subject to the provisions of this section that was in existence on September 1, 1989, shall register such tank with the commission not later than March 1, 1990, on forms supplied by or approved by the executive director.

(c) New or replacement tanks. Any person who owns a new or replacement aboveground storage tank subject to the provisions of this section that is placed into service on or after September 1, 1989, must register the tank with the commission on forms supplied by or approved by the executive director no later than March 1, 1990, or within 30 days from the date any petroleum product is placed into the tank, whichever is later.

(d) Changes or additional information. An owner of an aboveground storage tank subject to the provisions of this section shall provide written notice to the executive director of any changes or additional information concerning the status of any regulated tanks, including, but not necessarily limited to, information regarding the operational status, condition, substance stored, ownership, location of records, and number of tanks. Such notice shall be submitted on a form supplied by or approved by the executive director. Such form shall be properly completed and signed, and shall include the commission's unique facility identification number. Notice of any change or additional information shall be filed with the executive director within 30 days of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(e) Registration form for aboveground storage tanks.

(1) Any tank owner required to submit tank registration information under subsections (a)-(d) of this section shall provide all the required information on a form supplied by or approved by the executive director for each regulated tank owned.

(2) The tank registration form shall be filled out as completely and accurately as possible. Upon completion, the form shall be dated and signed by the owner or the owner's designated representative, and shall be filed with the executive director within the time frames specified in this section.

(3) All tank owners required to submit tank registration information under subsections (a)-(d) of this section shall provide the registration information for all aboveground storage tanks located at a particular facility on the same registration form.

(4) Tank owners who own tanks located at more than one facility shall complete and file a separate registration form for each facility.

(5) If additional documents are submitted with new or revised registration data, the specific facility identification information (including the facility identification number, if known) shall be conspicuously indicated on each document, and all such documents shall be securely attached to and filed with the registration form.

(f) Registration requirements for movable aboveground storage tanks. Movable or mobile aboveground tanks which are regularly used to store petroleum products (e.g. skid tanks) shall also be registered by the owner in accordance with the provisions of this section. When such tanks are intended to be moved from one location to another on a regular basis and are not permanently part of any particular facility,

then an owner may register the tanks in accordance with the following procedures.

(1) For the purposes of completing the tank registration form, the owner may identify the "facility location" for such movable tanks as the owner's principal business address or location.

(2) The owner shall continuously maintain complete and accurate records of the specific location, operational status, condition, and type of petroleum products stored at the owner's principal business address or location. At any given time, the owner's records shall include the required tank information for at least the preceding 5 years, except that records for any period prior to the effective date of this subchapter shall not be required. Such records shall be readily accessible and available for inspection upon request by commission personnel.

(3) Any movable or mobile tank which is registered at the owner's business address or location, rather than at the actual facility location, shall be permanently and legibly labeled with the executive director's designated identification number for such tank by painting, decals, tags, or other permanent identification method.

(g) Inadequate information. When any of the required tank registration information submitted to the commission is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the executive director may require the owner to submit additional information. An owner shall be required to submit any such additional information within 30 days of receipt of such request.

#### *§334.128. Annual Facility Fees for ASTs.*

##### *(a) Fee assessments.*

(1) Except as provided in subsection (e) of this section, an annual facility fee of \$25 shall be assessed by the commission for each aboveground storage tank subject to the registration provisions of §334.127 of this title (relating to Registration for ASTs).

(2) All annual facility fees shall be billed to, and shall be payable by, the owner of the aboveground storage tank.

(3) Payment of annual facility fees is due no later than 30 days after the date the executive director mails a statement of the assessment to the tank owner.

(4) Annual facility fees must be paid by check, certified check, or money order made payable to the Texas Water Commission. Payments must be mailed to the address specified in the billing statement.

##### *(b) Billing schedule.*

(1) The executive director shall establish a schedule for the billing of annual facility fees.

(2) Regardless of the actual billing date, the total amount of annual facility fees billed to and payable by an owner shall be based on the total number of regulated aboveground storage tanks in place on or after the first day of each fiscal year (September 1).

##### *(c) Failure to make payment.*

(1) Annual facility fees must be paid at the time and in the manner and amount provided by this section.

(2) The executive director may impose interest and penalties on owners who fail to make payment of the annual facility fees assessed under this section at the time and in the manner and amount required.

(3) The executive director is authorized to impose either a penalty of 10% of the total amount due, or interest charges accruing at an annual rate of 15% from the payment due date, whichever is greater.

(d) Disposition of fees, interest, and penalties. As required by the Texas Water Code, §26.358(g) the commission shall deposit all annual facility fees collected, together with all interest and penalties collected for late payment, in the state treasury to the credit of the storage tank fund.

(e) Exception. An annual facility fee shall not be assessed for an aboveground storage tank which is owned by a common carrier railroad, as provided in the Texas Water Code, §26.344(g).

#### *§334.129. Release Reporting and Corrective Action for ASTs.*

(a) An owner or operator of an aboveground storage tank shall comply with the same release reporting, investigation, and corrective action requirements and procedures applicable to underground storage tanks, as prescribed in Subchapter D of this chapter (relating to Release Reporting and Corrective Action), whenever a suspected or confirmed release of a petroleum product from an aboveground storage tank has occurred.

(b) An owner or operator of an aboveground tank which stores other petroleum substances or hazardous substances which are not petroleum products shall comply with the release reporting, investigation, and corrective action requirements prescribed in the Texas Water Code Chapter 26, Subchapter G.

#### *§334.130. Reporting and Recordkeeping for ASTs.*

(a) Reporting. Owners and operators of aboveground storage tanks shall assure that all reporting and filing requirements in this subchapter are met, including the following (as applicable):

(1) installation notification in

accordance with §334.126 of this title (relating to Installation Notification for ASTs);

(2) application for approval of any proposed aboveground storage tank in the Edwards Aquifer recharge or transition zones, in accordance with §334.126(3) of this title (relating to Installation Notification for ASTs) and Chapter 313 of this title (relating to Edwards Aquifer);

(3) registration of aboveground storage tanks and changes in information, in accordance with §334.127 of this title (relating to Registration for ASTs);

(4) payment of annual facility fees for aboveground storage tanks, in accordance with §334.128 of this title (relating to Annual Facility Fees for ASTs);

(5) all reports, plans, and certifications related to actions taken in response to suspected and confirmed releases of petroleum products, in accordance with §334.129 of this title (relating to Release Reporting and Corrective Action for ASTs) and Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(6) any other reports, filings, notifications, or other submittals required by this subchapter, or otherwise required by the executive director or the commission to demonstrate compliance with the provisions of this subchapter.

(b) Recordkeeping.

(1) General recordkeeping requirements.

(A) Except as provided in Subparagraph (B) of this paragraph, owners and operators of aboveground storage tanks shall comply with the same general recordkeeping requirements applicable to underground storage tanks, as prescribed in §334.10(b)(1) of this title (relating to Reporting and Recordkeeping).

(B) Owners of movable or mobile aboveground storage tanks (e.g. skid tanks) may maintain the records for such tanks in accordance with the provisions of §334.127(f)(2) of this title (relating to Registration for ASTs).

(2) Required records and documents. Owners and operators of aboveground storage tanks shall assure that legible copies of all original and amended tank registration documents, as prescribed in §334.127 of this title (relating to Registration for ASTs), shall be maintained for the operational life of the aboveground storage tank.

*§334.131. Enforcement for ASTs.*

(a) Further action. If an investigation, review, or inspection by commission personnel does not sufficiently

demonstrate that an owner or operator of an aboveground storage tank is in compliance with the applicable requirements of this subchapter, the executive director may take one or more of the following actions.

(1) The executive director may require the owner or operator to submit additional documentation and data to adequately demonstrate compliance with the applicable provisions of this subchapter.

(2) The executive director may require the owner to conduct additional activities to achieve compliance with this subchapter, including monitoring and testing for releases and corrective action.

(3) The executive director may initiate formal enforcement action and may seek administrative penalties, as prescribed under Chapter 337 of this title (relating to Enforcement) and under the Texas Water Code, Chapter 26.

(b) Commission orders. The commission may issue orders to enforce the provisions of this subchapter in accordance with the procedures applicable to orders issued under the Texas Water Code, Chapter 26, §26.019.

*§334.132. Other General Provisions for ASTs.*

(a) Other regulations. Compliance with the provisions of this subchapter by an owner or operator of an aboveground storage tank shall not relieve such owner or operator from the responsibility of compliance with any other laws and regulations directly and/or indirectly affecting such tanks and the stored petroleum products, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Air Control Board, Texas Department of Health, State Board of Insurance (including State Fire Marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Water Commission and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(b) Responsibilities of owners and operators. The owners and operators of aboveground storage tanks subject to the provisions of this subchapter shall be responsible for ensuring compliance with all applicable provisions of this subchapter. Owners and operators are responsible for any violations or noncompliant activities resulting from the actions or inactions by any contractor, operator, or other person who is employed or otherwise engaged by an aboveground storage tank owner or operator

to be principally in charge of any activities or procedures required under this subchapter.

(c) Inspections, monitoring, and testing.

(1) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, an owner or operator of an aboveground storage tank, on the request of the commission shall:

(A) furnish information related to the tank, including tank equipment and contents; and

(B) permit a designated agent or employee of the commission at all reasonable times to have access to, and to copy all records relating to the tank.

(2) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, the commission, its designated agent, or employee may:

(A) enter at reasonable times an establishment or place in which an aboveground storage tank is located;

(B) inspect and obtain samples of a petroleum substance contained in the tank from any person; and

(C) conduct monitoring or testing of the tank, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

(3) The commission may order an owner or operator of an aboveground storage tank to conduct monitoring and testing if the commission finds that there is reasonable cause to believe that a release has occurred in the area in which the aboveground storage tank is located.

(4) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person. The commission's designated agent or employee must observe the regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.

(5) Pursuant to the provisions of Texas Civil Statutes Article 9201, §3, (as amended by Senate Bill 698, 71st Legislature, 1989), the commission shall have concurrent jurisdiction with the State Board of Insurance on inspection of initial

installation and other administrative supervision of certain specified above-ground storage tanks at retail service stations. Primary authority for inspection of initial installation of such tanks shall be in the Texas Water Commission. The Commission shall report all violations of Texas Civil Statutes, Article 9201, §3 in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.

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 30, 1990.

TRD-9003354

Jim Haley  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 7, 1990

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

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter L. Motor Fuels

###### Tax

###### 34 TAC §3.182

The Comptroller of Public Accounts proposes an amendment to §3.182, concerning motor fuel transporting documents. The amendment reflects the changes imposed by House Bills 504, 1155, and 1588. Cargo manifest now list the percentage of ethanol and methanol contained in the fuel and the amount of delivery fee assessed under the Water Code, §26.3574. A cargo manifest is not required on motor fuel purchased on a signed statement by an end user and transported in his own cargo tank.

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. This 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 by providing them with new information regarding their tax responsibilities. 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 Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the

comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

###### §3.182. Motor Fuel Transporting Documents.

(a) (No change.)

(b) Information required. The cargo manifest shall be issued in not less than duplicate and shall contain:

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

(5) the percentage of ethanol or methanol contained in the motor fuel;

(6) the types and percentages of cosolvents contained in the motor fuel if methanol has been added;

(7){(5)} the date of loading or movement;

(8){(6)} the point cargo loaded;

(9) [(7)] the destination of the cargo;

(10){(8)} the name of the seller, consignor, or shipper;

(11){(9)} the name of the purchaser or consignee;

(12){(10)} the method of transportation:

(A) if by truck, the license or unit number;

(B) if by barge or boat, the name of the vessel;

(C) if by railway, the rail car number and initial;.]

(13) the amount of delivery fee assessed under the Water Code, §26.3574.

(c) Waybills or bill of lading. If a carrier is transporting motor fuel which requires waybills pursuant to the regulations of the Texas Railroad Commission or a bill of lading pursuant to the regulation of the United States Department of Transportation, these documents may be used in lieu of the manifest prescribed in this section if the waybill or bill of lading lists the number of gross gallons, [and in addition] the temperature adjusted gallons, or temperature of motor fuel in the load, if subject to §3.190 of this title (relating to Temperature Adjustment Conversion Table) and the amount of delivery fee assessed under the Water Code, §26.3574.

(d) Delivery of manifest. One copy of the transporting document shall be delivered to the purchaser at the time of fuel delivery, one copy retained by the seller, and if delivered by common or contract carrier, the carrier must retain one copy.

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

(3) A cargo manifest is not required on motor fuel purchased on a signed statement by an end user and transported in his own cargo tank. [Transportation of motor fuel by a person in his own cargo tank for a purpose other than his own use shall be covered by a cargo manifest.]

(4) If the delivery fee assessed under the Water Code, §26.3574, is not shown on the cargo manifest, it must be shown on the invoice covering the delivery and cross referenced to the manifest for record purposes.

(e) Deliveries at different locations. Deliveries to the same purchaser at different locations may be construed to be single deliveries and qualify for temperature adjustment if the total of all deliveries to that customer is 5,000 gallons or more and if:

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

(f) Separate deliveries. Deliveries from more than one cargo tank are presumed to be separate deliveries. This presumption may be overcome if:

(1)-(4) (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 30, 1990.

TRD-9003339

Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 7, 1990

For further information, please call: (512) 463-4004

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 10. Family Self-support Services

##### Child Care Management Services Field Test

###### • 40 TAC §§10.3501-10.3506

The Texas Department of Human Services (DHS) proposes new §§10.3501-10.3506, concerning child care management services field test, in its family self-support chapter. The purpose of the new sections is to field test the Child Care Management Services (CCMS) concept for the purchase of child care services. The CCMS concept was developed jointly by DHS, child care providers, and public participants. The field test will begin July 1, 1990, in four sites that correspond with Job Training Partnership Act (JTPA) Service Delivery Areas (SDAs). DHS will



extend its contracts with contractors currently brokering child care services to test the CCMS concept. The contractors and the areas they will serve are Children's Learning Centers, Amarillo, serving the Panhandle SDA in DHS Region 01; Young Women's Christian Association (subcontracting with El Paso Human Services), El Paso, serving the Upper Rio Grande SDA in DHS Region 03; Day Care Association of Fort Worth and Tarrant County, Fort Worth, serving the City of Fort Worth and the balance of Tarrant County SDAs in DHS Region 05; and Galveston County Community Action Council, Galveston, serving the Gulf Coast SDA in DHS Region 11. DHS will competitively procure the contracts for the field test areas in 1994.

Burton F. Raiford, chief financial officer, has determined that for the first two months of the field test there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for fiscal year 1990 will be an estimated increase in costs of approximately \$80,000-\$100,000 in start-up costs and \$40,000-\$60,000 in initial operating costs. There will be no fiscal implications for local government or small businesses.

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 section will be an expanded number of providers and more continuity in child care arrangements. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Marian Monroe at (512) 450-4167 in DHS's Client Self-support Services Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-152, 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 1 p.m. on April 26, 1990, in the public hearing room, 701 West 51st Street, Austin.

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

#### *§10.3501. Child Care Management Services (CCMS) Field Test Period.*

(a) The CCMS field test will begin July 1, 1990.

(b) The CCMS will be tested in four sites:

(1) Children's Learning Centers, Amarillo, serving the Panhandle Service Delivery Area (SDA) in Texas Department of Human Services (DHS) Region 01;

(2) Young Women's Christian Association (subcontracting with El Paso Human Services), in El Paso, serving the Upper Rio Grande SDA in DHS Region 03;

(3) Day Care Association of Fort Worth and Tarrant County, Fort Worth, serving the City of Fort Worth and

the balance of Tarrant County SDA's in DHS Region 05; and

(4) Galveston County Community Action Council, Galveston, serving the Gulf Coast SDA in DHS Region 11.

*§10.3502. Child Care Management Services (CCMS) Contractor Characteristics.* CCMS contractors must be stable, efficient, financially sound agencies whose staff exhibit an understanding of child care including its purchase from other vendors.

*§10.3503. Method of Payment.* The Texas Department of Human Services (DHS) will pay Child Care Management Services (CCMS) contractors on a cost-reimbursement basis based on a DHS approved budget.

*§10.3504. Child Care Management Services (CCMS) Contractor Responsibilities.* The CCMS contractor performs the following tasks in accordance with Texas Department of Human Services (DHS) directives:

(1) organizes and maintains a child care advisory group with geographic and ethnically balanced representation. Resource and referral agencies, early childhood education programs, employment and training programs, providers, parents, child care associations, appropriate city agencies, and other agencies, such as United Way, in the SDA, should be represented;

(2) coordinates community resources to improve services to the families served;

(3) manages budgets with multiple funding sources, and collects data for statistical reporting;

(4) maintains a data base that supports assessment of needs and resources;

(5) recruits vendors to meet identified child care needs;

(6) contracts with eligible vendors for the delivery of child care services;

(7) contracts only with vendors that comply with state and local laws, including license, registration, and/or certification requirements;

(8) sets reimbursement rates for vendors based on the vendor's published rates in accordance with DHS rate maximums (ceilings) and other DHS rate setting guidelines;

(9) trains vendors in program participation requirements specified in their vendor agreements;

(10) provides or arranges for training that will assist vendors in maintaining or improving their service delivery;

(11) performs intake and eligibility verification and documentation for clients requesting child care services;

(12) informs parents about all child care options available to them;

(13) provides for parent choice in the selection of care;

(14) assists in locating child care that meets the needs of parents and children and assists them in making a child care arrangements;

(15) assesses parent co-payment fees and oversees their collection;

(16) authorizes child care in accordance with the child's eligibility and the availability of appropriate funds;

(17) authorizes and/or pays child care rates in accordance with DHS specifications;

(18) pays for or arranges for the payment of child care by DHS;

(19) manages waiting lists;

(20) authorizes and issues payments to parents who choose self-arranged care outside the Child Care Management Services (CCMS) system of vendors;

(21) tests applications of automation including client access, eligibility, funds management, resource and referral, waiting list management, billing, and reporting;

(22) ensures that a child development or early childhood education specialist is on staff or under contract to monitor the service delivery and to offer training and technical assistance to vendors. This specialist must meet the same qualifications as a person employed at DHS as a Child Development Specialist II or III. A person who meets the qualifications of a Child Development Specialist II may qualify only if he is supervised by a person who meets qualifications of a Child Development Specialist III, IV, or V, and if there are no more than four specialists per supervisor.

*§10.3505. Procedures for Phasing in Vendors.* The Child Care Management Services (CCMS) contractor must follow the department's directions for phasing in vendors that have previously contracted directly with the department.

*§10.3506. Termination procedures.* Providers not complying with the department's reporting and payment procedures may have their vendor agreements terminated by the Child Care Management Services (CCMS) contractor.

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 30, 1990.



Proposed date of adoption: June 15, 1990  
For further information, please call: (512)  
450-3765

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**Chapter 56. Family Planning**  
**Subchapter G. Genetic**  
**Services;**

• **40 TAC §56.701**

The Texas Department of Human Services (DHS) proposes an amendment to §56.701, concerning contract requirements for the Title XIX Genetic Services program, in its family planning chapter. The purpose of the amendment is to add the requirement for the medical director of a genetic services agency to be certified by the American Board of Medical Genetics (ABMG) and the time frame for doing so. Effective July 1, 1990, the medical director (M.D. or D.O.) must be ABMG certified at the time of contract application or must be ABMG eligible and subsequently become certified within two ABMG examination cycles.

Genetic services contract agencies approved prior to July 1, 1990, are not affected by this change.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period

the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be DHS assurance of qualified medical directors of genetic services agencies providing diagnosis and counseling for clients. There will be no effect on small businesses as a result of enforcing the section. The cost of compliance for persons required to comply with the section will be none.

Questions about the content of this proposal may be directed to Beth Weber at (512) 450-4164, Unit Leader, Family Planning/Genetic Services Program. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services Section-164, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

*§56.701. Contract Requirements for the Title XIX Genetic Services [Family Planning] Program.*

(a) A genetic service agency provider may contract with DHS for Title XIX reimbursement for genetic diagnostic

and counseling services under the following conditions.

(1) The medical director of the genetic services agency provider is a clinical geneticist (M.D. or D.O.). For all new contracts approved on or after July 1, 1990, the clinical geneticist must be certified [meet the criteria established] by the American Board of Medical Geneticists (ABMG) at the time of contract application or must be ABMG eligible and subsequently certified within two ABMG examination cycles.

(2)-(7) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on March 29, 1990.

TRD-9003303

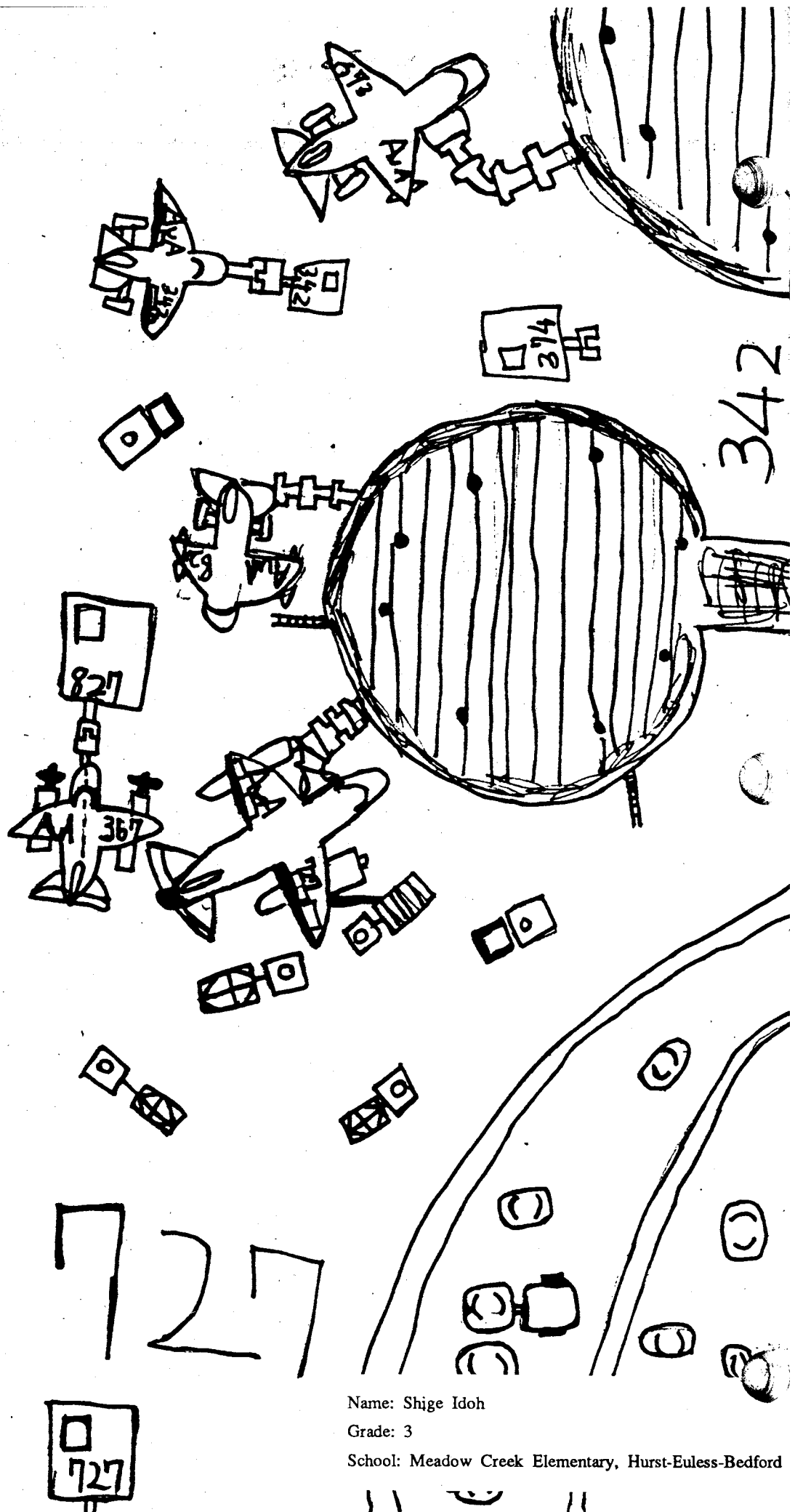
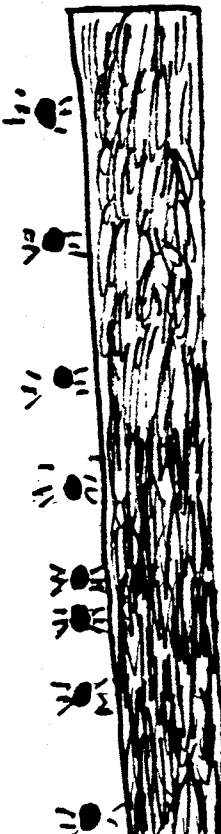
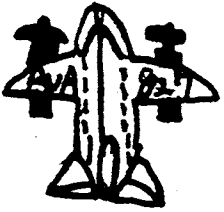
Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

◆ ◆ ◆

827



Name: Shige Idoh  
Grade: 3  
School: Meadow Creek Elementary, Hurst-Euless-Bedford

# Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 16. Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

##### Compliance with State and Local Laws

###### • 40 TAC §16.1502, §16.1503

The Texas Department of Human Services has withdrawn from consideration for permanent adoption a proposed amendment to §16.1502 and §16.1503 which appeared in the November 10, 1989, issue of the *Texas Register* (14 TexReg 5925). The effective date of this withdrawal is April 2, 1990.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003364 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 2, 1990

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



##### Special Programs

###### • 40 TAC §16.1601

The Texas Department of Human Services has withdrawn from consideration a proposed new §16.1601 which appeared in the November 10, 1989, issue of the *Texas Register* (14 TexReg 5925). The effective date of this withdrawal is April 2, 1990.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003365 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 2, 1990

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



##### Governing Body and Management

###### • 40 TAC §§16.1902, 16.1905, 16.1908, 16.1909

The Texas Department of Human Services has withdrawn from consideration for permanent adoption a proposed amendment to §§16.1902, 16.1905, 16.1908, and 16.1909 which appeared in the November 10, 1989, issue of the *Texas Register* (14 TexReg 5926). The effective date of this withdrawal is April 2, 1990.

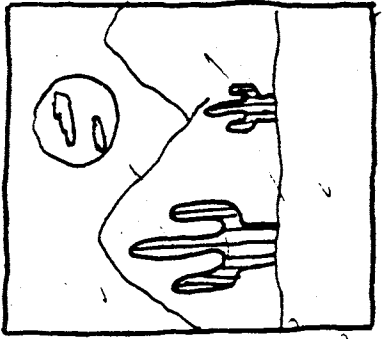
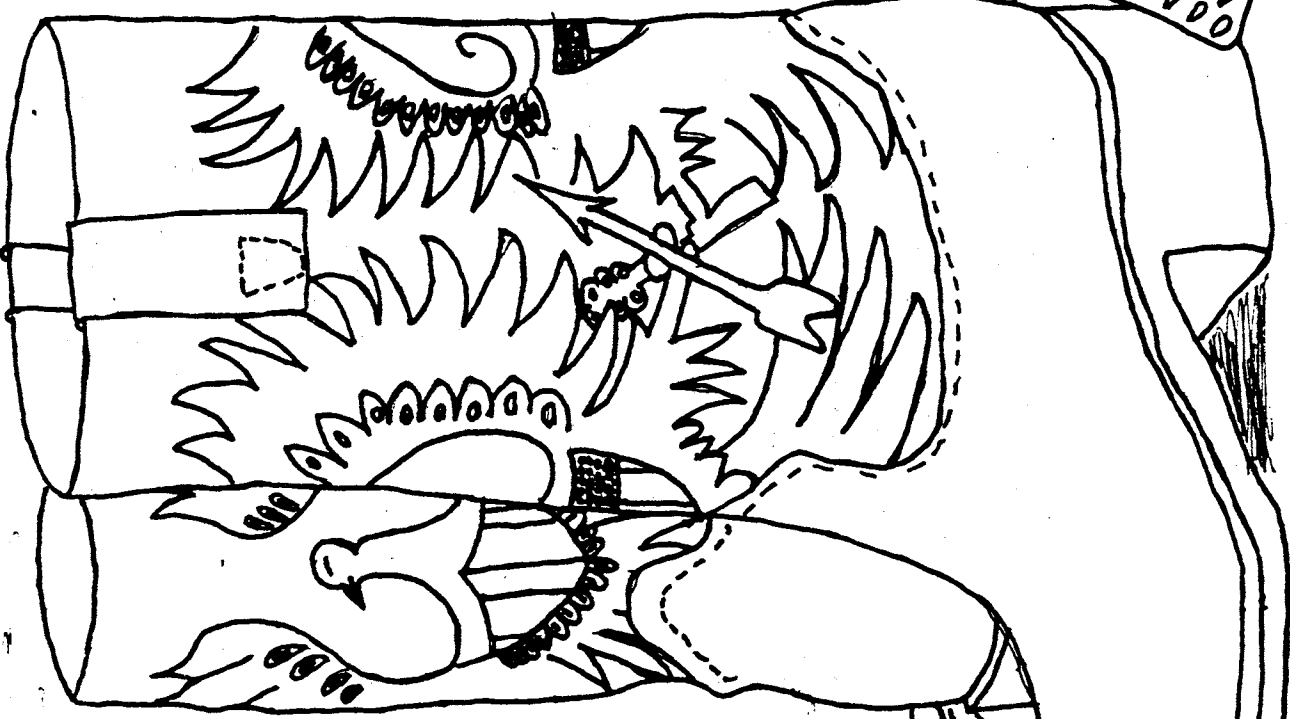
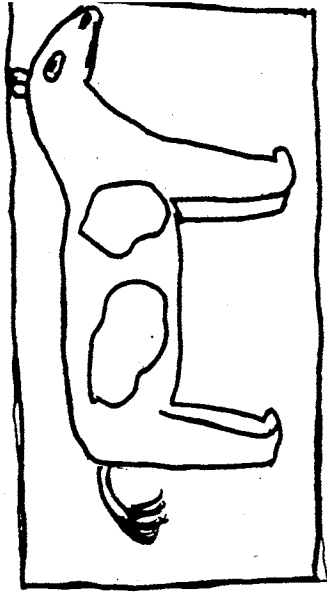
Issued in Austin, Texas, on April 2, 1990.

TRD-9003366 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 2, 1990

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# Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 63. Personnel Employment Services

- 16 TAC §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, 63.90-63.94

The Texas Department of Licensing and Regulation adopts new §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, and 63.90-63.94. Sections 63.10, 63.20, 63.30, 63.40, 63.70, 63.71, and 63.90-63.93 are adopted with changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 192). Sections 63.1, 63.21, 63.60, 63.80-63.82, and 63.94 are adopted without changes and will not be republished.

The new sections are adopted to allow for a more concise and understandable interpretation of House Bill 863, 71st Texas Legislature, 1989, and new generic numbering system of the agency.

The sections will allow for the administering of the Personnel Employment Services Program relating to the licensing of persons regulated by the Texas Department of Licensing and Regulation.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Articles 5221a-7 and 9100, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to regulate the personnel employment service.

#### §63.20. Certificate of Authority Requirements.

(a) Each personnel employment service location must have its own certificate of authority. A certificate of authority is not assignable or transferable.

(b) A certificate of authority is valid for one year from the date issued. The certificate of authority must be renewed annually.

(c) A person may not own or operate a personnel employment service in the State of Texas on an applicant fee basis unless the person holds a certificate of

authority issued under the Texas Personnel Employment Services Act.

(d) The certificate of authority shall be displayed in a prominent place in each location of the personnel employment service.

#### §63.30. Exemptions.

(a) The Texas Personnel Employment Services Act (the Act) and the sections in this chapter do not apply to:

(1) a governmental entity as defined by the Act, §2(a)(1);

(2) a personnel service operated by a person, without charging any fee, for the purpose of locating employees for that person's business.

(3) a labor organization such as a union;

(4) a business entity that leases the services of their employees to other businesses when the business entity receives no monetary compensation from the employee even if the employee becomes permanently employed by another business; or

(5) a professional counselor as defined in the Act.

(b) A management search consultant need not comply with the Act, §7.

#### §63.40. Security Requirements.

(a) Before a certificate of authority is issued, the owner must obtain and file with the department a surety bond in the amount of \$5,000, issued by a company authorized to do business in the State of Texas, on a form provided by the department, and payable to the State of Texas.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days' written notice prior to cancellation.

(c) one bond will be sufficient for multiple locations if the bond indicates each location covered.

(d) An owner may deposit a cash performance alternative of \$5,000 in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank, or savings and loan association, subject to the

express approval of the commissioner. Each assignment or cash deposit shall remain in effect for a period of two years after expiration, cancellation, or revocation of the certificate of authority. Forms for filing an assignment of security shall be provided by the department upon request.

(e) The surety bond or assignment of security shall be maintained in full during the entire time the certificate of authority is in effect and for an additional two years thereafter. Failure to do so will be cause for the commissioner to call an administrative hearing to suspend or revoke the personnel employment service's certificate of authority.

#### §63.70. Responsibilities of the Certificate Holder-General.

(a) Each personnel employment service owner must notify the department of any changes in information regarding the location or ownership of the personnel employment service. The notification must be received by the department no later than 30 days after the change occurs.

(b) If any of the information that appears on the face of the personnel employment service's certificate of authority changes, the personnel employment service must obtain a duplicate certificate of authority showing the correct information.

(c) Each personnel employment service shall provide service recipients with access to the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. A rubber stamp or sticker may be used to convey the information. The notification shall be included on:

(1) a sign prominently displayed in the place of business;

(2) any written contract for services; or

(3) any bill for services.

(d) The certificate holder must allow the department, as part of an inspection or investigation, to enter his business premises during regular business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted. The department may inspect all records, books, and documents, whether paper or electronic, pertaining to the agency's operation.

**§63.71. Responsibilities of the Certificate Holder—Prohibited Acts.**

(a) A person who acts as a personnel service may not:

(1) impose any fee on an applicant for employment until the applicant has accepted an offer of employment resulting from an employment referral made by the personnel service. Refund policies are disallowed;

(2) engage or attempt to engage in splitting or sharing fees except with other personnel services;

(3) make any false promise, misrepresentation, or misleading statement or information, or cause the same to be made or given to the applicant;

(4) refer any applicant for employment in the absence of any valid job order for the referral;

(5) advertise a non-verifiable position for each position advertised;

(6) interfere with a person's current employment;

(7) communicate any service file or any information contained in a service file to or from a person by delivery, disclosure, distribution, or receiving said information except as authorized by the personnel service owning the file;

(8) advertise in any manner, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(9) knowingly refer an applicant to a place where a strike or lockout exists without first furnishing the applicant a written statement of the existence of the strike or lockout.

(10) knowingly refer an applicant to employment harmful to his health or morals; or

(11) charge a fee to an applicant of more than 20% of the applicant's gross wages if the position that the applicant accepted as a result of a referral by a personnel service lasts less than 30 calendar days and if the applicant leaves the position with good cause connected with the work, as that term is used by the Texas Employment Commission.

**§63.90. Sanctions—Administrative Sanctions.**

(a) If a person violates the Texas Personnel Employment Services Act (the Act), §3(a)(1) or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may enforce this Act, Texas Civil Statutes, Article 5221a-7 or Texas Civil Statutes, Article 9100 at his discretion in compliance with the Administrative Procedure and Texas Register Act by the following:

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

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

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

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

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

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

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

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

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

(1) a brief summary of the charges;

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

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

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

(f) If the person charged with the violation accepts the determination of the commissioner, the commissioner shall issue an order approving the determination and

ordering that the recommended sanction and accompanying conditions be imposed upon that person.

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

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

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

**§63.91. Sanctions—Administrative Penalty/Fine.**

(a) If a person violates the Texas Personnel Employment Services Act (the Act), §3(a)(1), or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may, in addition to or in lieu of a sanction imposed under §63.90 of this title (relating to Sanctions—Administrative Sanctions), assess an administrative penalty in an amount not to exceed \$1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed \$1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

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

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

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

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

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

(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for

judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the commissioner, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the commissioner or the attorney general may bring an action for the collection of the penalty.

(k) A motion for rehearing is a prerequisite for an appeal.

**§63.92. Sanctions—Injunctive Relief and Civil Penalty.** If it appears that a person is in violation of, or is threatening to violate, the Texas Personnel Employment Services Act (the Act) §3(a)(1), or a rule or order of the commissioner related to the Act, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding \$1,000 for each violation and not exceeding \$250,000 in the aggregate.

**§63.93. Sanctions—Criminal Penalty.**

(a) A person commits an offense if the person operates a personnel employment service that does not have a valid certificate of authority issued under the Texas Personnel Employment Services Act.

(b) An offense under this section is a Class A misdemeanor.

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 28, 1990.

TRD-9003279

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: April 18, 1990

Proposal publication date: January 12, 1990

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

## Chapter 67. Auctioneers

### • 16 TAC §§67.1-67.28

The Texas Department of Licensing and Regulation adopts the repeal of §§67.1-67.28, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 803).

The repeals are adopted to allow for the adoption of reorganized and amended administrative rules for the auctioneer industry.

The repeals will allow for new administrative sections to be adopted that comply with House Bill 863, 71st Legislature, 1989.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Articles 8700 and 9100, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to administer the auctioneer program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 23, 1990.

TRD-9003277

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: April 18, 1990

Proposal publication date: February 16, 1990

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

### ◆ ◆ ◆ • 16 TAC §§67.1, 67.10, 67.20-67.23, 67.30, 67.40, 67.60, 67.61, 67.70, 67.80-67.83, 67.90-67.92, 67.94, 67.100-67.105

The Texas Department of Licensing and Regulation adopts new §§67.1, 67.10, 67.20-67.23, 67.30, 67.40, 67.60, 67.61, 67.70, 67.80-67.83, 67.90-67.92, 67.94, and 67.100-67.105. Sections 67.10 and 67.100 are adopted with changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 803). Sections 67.1, 67.20-67.23, 67.30, 67.40, 67.60, 67.61, 67.70, 67.80-67.83, 67.90-67.92, 67.94, and 67.101-67.105 are adopted without changes and will not be republished.

The new sections are adopted for the reorganization of the previous administrative rules, changes to clarify the rules, and changes necessary to comply with House Bill 863, 71st Texas Legislature, 1989.

The sections will allow for a generic numbering system for the Texas Department of Licensing and Regulation so that programs under the department's jurisdiction will be more concise and more easily understood by the general public and persons regulated by the auctioneering program.

Public comments received concerned the impact of House Bill 863 and the Texas Commission of Licensing and Regulation's rule in regard to the auctioneering program.

Comments were received both in favor of an opposing the new sections by the Texas Auctioneer Association.

The agency incorporated most comments into the new sections for clarity.

The new sections are adopted under Texas Civil Statutes, Articles 8700 and 9100, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to regulate the auctioneer program.

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

**Act—Auctions and Auctioneering-Licensing and Regulation, Texas Civil Statutes, Article 8700.**

**Applicant—Any person applying for an auctioneer or associate auctioneer license.**

**Associate auctioneer—A person who, for compensation, is employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction.**

**Auction—The sale of any property by competitive bid.**

**Auction company—A person, partnership, corporation, association, or other legal entity that engages in the business of arranging, managing, sponsoring, advertising, or conducting auctions.**

**Auctioneer—Any person who acts as an auction company or as a bid caller, with or without receiving or collecting a fee, commission, or other valuable consideration, and sells or offers to sell property at an auction.**

**Commission—The Texas Commission of Licensing and Regulation.**

**Commissioner—The commissioner of licensing and regulation.**

**Department—The Texas Department of Licensing and Regulation.**

**Escrow/trust account—An account wherein the proceeds of all auction sales are deposited for disbursement to consignors or sellers and from which to pay the auctioneer's commission and related expenses. In theory, this account should maintain a zero balance at all times. It shall not be an interest bearing account.**

**Licensee—Any person holding a license issued under the Act.**

**Person—An individual.**

**Property—Any property, tangible and intangible, real, personal, or mixed.**

**Secured party—A person holding a security interest.**

**§67.100. Technical Requirements—General.**

(a) With regard to bid calling, a licensee may not:

(1) allow an unlicensed auctioneer or an unlicensed associate auctioneer to call bids at a sale; or

(2) call bids for an auction company unless the owner or operator has a valid Texas auctioneer license.

(b) A licensed auctioneer may not knowingly use, or permit the use of, false bidders, cappers, or shills at any auction.

(c) Before beginning an auction, the auctioneer must announce, give notice, display notice, and/or disclose:

(1) that the auctioneer conducting the sale is licensed by the

department and is bonded in favor of the State of Texas;

(2) the terms and conditions of the sale; and

(3) if the owner, consignor, or agent thereof has reserved the right to bid.

(d) All auctioneers and auction companies shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. The licensees may use a sticker or rubber stamp to convey the required information. The notification shall be included on any seller or consignor contract and on at least one of the following:

(1) a sign prominently displayed at the place of the auction;

(2) any bill of sale or receipt to be given to the buyer; or

(3) on bidder cards.

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-9003278

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: April 18, 1990

Proposal publication date: February 16, 1990

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

◆ ◆ ◆  
**Chapter 78. Talent Agencies**

• 16 TAC §§78.1, 78.10, 78.20,  
78.21, 78.30, 78.40, 78.60, 78.  
70-78.76, 78.80-78.82, 78.90-78.94

The Texas Department of Licensing and Regulation adopts new §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.60, 78.70-78.76, 78.80-78.82, and 78.90-78.94. Sections 78.21, 78.30, 78.70, 78.76, 78.90, and 78.91 are adopted with changes to the proposed text as published in the January 5, 1990, issue of the *Texas Register* (15 TexReg 73). Sections 78.1, 78.10, 78.20, 78.40, 78.60, 78.71-78.75, 78.80-78.82, and 78.92-78.94 are adopted without changes and will not be republished.

The new sections are necessary to administer the Texas Talent Agency Act passed by the 71st Legislature, 1989.

The sections will allow for the registration requirements, fees, technical requirements, and sanctions for persons operating as a talent agency.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Articles 5221a-9 and 9100, which provide the commissioner of the Texas

Department of Licensing and Regulation with the authority to adopt rules to regulate the talent agency program.

**§78.21. Certificate of Registration Application Process.**

(a) A person desiring to operate a talent agency shall file a written application with the department annually on a form provided by the department for that purpose. No initial or renewal application will be considered filed until all registration requirements have been met and received by the department.

(b) The written application must be signed by the applicant. If the applicant is a corporation, the application must be signed by each officer. If the applicant is an association or partnership, the application must be signed by each associate or partner.

(1) An initial application must contain:

(A) the name under which the talent agency is operated;

(B) the talent agency's street address, including the county in which it is located;

(C) the talent agency's mailing address if different from its street address;

(D) the talent agency's telephone number;

(E) the address of each location at which the applicant for registration operates a talent agency;

(F) the names of all persons owning 10 or more percent of the talent agency. If the talent agency is a partnership, the names of all partners must be included. If the talent agency is a limited partnership, the names of all general and limited partners must be included, along with the name and address of the registered agent. If the talent agency is a corporation, the names of the corporate president, vice president, secretary, and treasurer must be included. The percent ownership interest must be indicated in all cases;

(G) each owner's social security number;

(H) each listed owner's address, including county;

(I) each owner's telephone number;



(J) names of any talent agency owners who have a financial interest in any company involved in the casting, production, and/or distribution of motion pictures or television motion pictures, independent video production companies, recording studios, photography studios, or any other companies or firms which would hire artists from time to time. This disclosure shall include the company or companies in which he has a financial interest, and the percent of ownership in each company listed. Such an interest shall not, in and of itself, be grounds for registration denial, suspension, or revocation;

(K) names of any talent agency owners who have a financial interest in any school or course of instruction which is primarily intended for the professional study of acting and/or modeling. This disclosure shall include the school or course name and the percent of ownership held. Any person owning and/or operating a modeling or acting school must comply with the provisions of the Texas Proprietary School Act, Chapter 32, Texas Education Code and the State Board of Education rules for proprietary schools as they appear in 19 Texas Administrative Code, Chapter 69;

(L) a description of the type of services offered;

(M) full and complete disclosure of any litigation relating to the operation of a talent agency brought against the talent agency, or any owner, officer, or director, that was completed within three years before the date the application is mailed to the department or that is pending as of the date the application is mailed; and

(N) a schedule of commissions and/or fees charged.

(2) A renewal application must contain:

(A) any changes in information contained in the initial or subsequent renewal applications;

(B) the current department certificate of authority number; and

(C) the appropriate renewal fee.

(c) Both initial and renewal applications shall include a statement indicating the owner has read and is familiar with the provisions of the Texas Talent Agency Act.

(d) Before a certificate of registration can be issued or renewed for anyone using an assumed name they must have first complied with the Assumed Business or

Professional Name Act, Chapter 36, the Texas Business and Commerce Code. If the talent agency is incorporated, compliance with the Texas Business Corporation Act, §2.05, is also required. Proof of the talent agency's compliance with the statutes cited will be required on the application by a certification from the clerk of the county in which the assumed name record is filed. The certification should state the exact assumed name and the date it was filed.

(e) If the applicant is a corporation, both initial and renewal applications shall include a certification that the corporation is in good standing with the State Comptroller's Office and the Secretary of State's Office.

(f) Both initial and renewal applications must meet the security requirements (see §78.40 of this title (relating to Security Requirements)) and the required registration fee (see §78.80 of this title (relating to Fees-original Registration)).

(g) If a renewal application is not postmarked before midnight of the 30th day after a certificate of registration expires, the certificate will not be renewed. Immediate reapplication may be made through the original application process, except as provided by subsection (h) of this section. If a renewal application is postmarked before midnight of the 30th day after a certificate of registration expires, it may be renewed on payment of the renewal fee and a \$25 late fee.

(h) A person whose certificate of registration has been revoked may not apply for a new certificate of registration until one year after the date of the revocation and the person has requested a hearing before the commissioner of the Texas Department of Licensing and Regulation to show cause why such registration should be issued.

#### §78.30. Exemptions.

(a) The term "talent agency" does not apply to a person who obtains or attempts to obtain employment for himself.

(b) The term "talent agency" does not apply to a union that represents artists and whose efforts to obtain or attempt to obtain employment for its members is casual in nature only.

(c) The term "talent agency" does not apply to a person who, without assessing a fee, operates a talent agency in conjunction with the person's own business, or as the authorized representative for a bona fide employer, for the exclusive purpose of employing artists for use in or for that business, or by that employer.

(d) The term "talent agency" does not apply to attorneys licensed to practice who represent artists, strictly as legal advisers and not as managers.

(e) The term "talent agency" applies only to persons who obtain or at-

tempt to obtain employment for an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production; and/or a model, as that term is defined herein. Based upon a review of the specific language throughout the entire statute, it is the department's interpretation that the legislation was intended to apply only to talent agencies dealing with those types of artists as described herein. While there is a reference to other types of artists in the statute, the department finds application of the statute to those other artists in conflict with the apparent legislative intent as it is expressed in specific provisions throughout the statute. In the alternative, and without waiving the position stated, there is insufficient legislative guidance to promulgate administrative rules regarding those other types of artists. Therefore, talent agencies representing such artists are not required to comply with the requirements of the Texas Talent Agency Act.

#### §78.70. Responsibilities of the Registrant-General.

(a) Each talent agency shall provide service recipients with access to the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. A rubber stamp or sticker may be used to convey the information. The notification shall be included on:

(1) a sign prominently displayed in the place of business;

(2) any written contract for services; or

(3) any bill for services.

(b) Each talent agency shall display its certificate of registration in a conspicuous public place in the office in which it conducts business.

(c) All talent agency publications or advertisements, including, but not limited to, circulars, newspapers, periodicals, brochures, and receipts shall contain the registered name, address and registration number of the talent agency.

(d) Once services called for under a contract have been delivered by the talent agency, a contract may not be canceled by an artist under the Texas Talent Agency Act, §12. This does not in any way inhibit, restrict, reduce or otherwise limit alternative civil remedies available to parties to a contract.

#### §78.76. Responsibilities of the Registrant-Prohibited Acts.

(a) A talent agency may not charge, as a condition of registering any applicant or representing any artist, a registration or advance fee and may not require the applicant or artist to subscribe to or use the service of any specific publication, video or

audio tape producer, post card service, advertisement service, resume service, photographer, or acting or modeling school or workshop or similar service.

(b) A talent agency may not split or share fees with any person who is required to be but is not registered under the Texas Talent Agency Act as a talent agency.

(c) A talent agency may not, regardless of its refund policy, assess an artist any fee or charge other than reimbursements actually expended by the talent agency on behalf of the artist before the artist has accepted an offer of employment which resulted from an employment referral made by the talent agency. An agency may require an artist to reimburse it for legitimate expenses owed to third parties and incurred as a result of efforts made on the behalf of the artist by the talent agency. However, if this practice is engaged in, the artist must receive, at the time he is billed for the expenses, an itemized statement detailing the nature of the charges and with a copy of the invoice or receipt enclosed to evidence the expense the talent agency has incurred. In addition, the talent agency must permit the artist to make payment directly to the third party billing or invoicing the talent agency. Finally, the talent agency must obtain in writing the express permission of the artist to incur such expenses. It is not the intent of this section that expenses such as utility costs, local telephone service, and other similar indirect costs be recovered hereunder.

**§78.90. Sanctions—Administrative Sanctions.**

(a) If a person violates the Texas Talent Agency Act (the Act), or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner shall:

- (1) issue a written reprimand to the person that specifies the violation;
- (2) revoke or suspend the person's license;
- (3) place on probation a person whose license has been suspended.

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

- (1) report regularly to the commissioner on matters that are the basis of the probation; or
- (2) limit practice to the areas prescribed by the commissioner.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner shall issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative sanction be imposed on the person charged,

and recommending the precise nature and conditions, if any, of that proposed sanction. The commissioner shall base the recommended sanction, and any accompanying conditions, on the following factors:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

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

- (1) a brief summary of the charges;
- (2) a statement of the proposed sanction, and any accompanying conditions; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

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

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

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

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

the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19.

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

**§78.91. Sanctions—Administrative Penalty/Fine.**

(a) If a person violates the Texas Talent Agency Act (the Act), or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may, in addition to or in lieu of a sanction imposed under §78.90 of this title (relating to Sanctions—Administrative Sanctions), assess an administrative penalty in an amount not to exceed \$1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed \$1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

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

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this section, including the

recommended penalty, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

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

(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the commissioner, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the commissioner or the attorney general may bring an action for the collection of the penalty.

(k) A motion for rehearing is a prerequisite for an appeal.

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 27, 1990.

TRD-9003280

Larry E. Kosta  
Executive Director  
Department of Licensing  
and Regulation

Effective date: April 18, 1990

Proposal publication date: January 5, 1990

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

## Chapter 80. Tow Trucks

### • 16 TAC §§80.1-80.5, 80.8-80.10

The Texas Department of Licensing and Regulation adopts the repeal of §§80.1-80.5, 80.8-80.10, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 809).

The repeals are adopted to allow adoption of new tow truck rules.

The repeals will allow new rules to incorporate changes due to the passage of House Bill 863, 71st Texas Legislature, 1989.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Articles 6687-9b and 9100, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to regulate the tow truck industry.

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 28, 1990.

TRD-9003282

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: April 18, 1990

Proposal publication date: February 16, 1990

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

### • 16 TAC §§80.1, 80.10, 80.20, 80.30, 80.40, 80.60, 80.70, 80.80-80.82, 80.90, 80.91, 80.94, 80.100-80.103

The Texas Department of Licensing and Regulation adopts new §§80.1, 80.10, 80.20, 80.30, 80.40, 80.60, 80.70, 80.80-80.82, 80.90, 80.91, 80.94, and 80.100-80.103, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 810).

The new sections are adopted to comply with the passage of House Bill 863, 71st Texas Legislature, 1989, and numbering system of the agency.

The new sections will incorporate changes of House Bill 863 for licensing, fees, and the regulation of persons operating in the tow truck industry.

Comments were received concerning insurance requirements and the use of safety chains.

Commenters in favor of adopting the new sections were: Temple Body Works and Temple Police Department. A commenter oppos-

ing the adoption of the new sections was Haney's Automotive Service.

The Texas Department of Licensing and Regulation disagrees with comments received because the insurance requirements and the use of safety chains are needed as additional protection for the public.

The new sections are adopted under Texas Civil Statutes, Articles 6687-9b and 9100, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to administer the tow truck program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 28, 1990.

TRD-9003281

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: April 18, 1990

Proposal publication date: February 16, 1990

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 48. Community Care for Aged and Disabled

##### In-home and Family Support Program

### • 40 TAC §§48.2701-48.2708, 48.2710, 48.2711

The Texas Department of Human Services (DHS) adopts amendments to §§48.2701-48.2708, §48.2710, and §48.2711 with changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 Tex Reg 830).

The justification for the amendments is to reflect the statewide expansion of the program, changes in categories of eligibility, and increases in the median income used in determining copayments. The title of this undesignated head has been changed from In-home and Family Support Project to In-home and Family Support Program (IH/FSP).

The amendments will function by providing individuals with disabilities and their families direct grant benefits for the purchase of equipment or services that help them to live independently and avoid inappropriate institutionalization.

The department received three written comments regarding adoption of the amendments. A representative of the United Cerebral Palsy Association of Texas addressed §48.2704 and expressed concern that an applicant might not receive IH/FSP services if he were eligible to receive the

same services from another program. The department changed the section to require documentation showing why the service was not provided by another program, in order for the applicant to be considered for IH/FSP services.

Two comments were received in support of the proposed amendments.

The department received no public comments concerning §48.2701 but changed the definition of household/family to reflect current community care policy which allows adult foster care homes to care for as many as four individuals. In addition, room and board facilities were added to the list of facilities excluded from the definition of household/family.

The department also made minor editorial changes.

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

**§48.2701. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Adult**—An individual age 18 or older.

**Applicant/consumer**—An individual who is determined to have a disability or disabilities as specified in the Human Resources Code, Chapter 35, and who is either a member of a household or is living independently. Disability is defined as physical impairment which:

(A) is likely to continue indefinitely;

(B) results in substantial functional limitations in one or more of the following areas of major life activity:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living;

(vii) economic self-sufficiency; and

(C) reflects the person's need for care, treatment, services or support which are of lifelong or extended duration and are individually planned and coordinated.

**Household/family**—Except as specified in Subparagraph (E) of this definition, one or more people listed on the Internal Revenue Service (IRS) income tax return form:

(A) jointly, in the case of spouses;

(B) as individuals included as dependents on the IRS income tax return form. If the person with the disability is a new household member by court order, and therefore would not have been considered a household member on the previous year's IRS income tax return form, he is considered a member of the household/family;

(C) as an adult with a disability who is applying for services on his own behalf, who lives alone or with others, and who files an IRS income tax return under single status or files as married—filing separately;

(D) as an individual living with his natural, foster, adoptive, or surrogate parent(s) or legal guardian(s) appointed by the court; or

(E) as foster care homes with a current DHS contract to care for no more than four adults. Exception: DHS-certified foster care homes which care for four or more minors that are under the department's temporary or permanent managing conservatorship. The definition of a household excludes Intermediate Care Facilities; Skilled Nursing Facilities; Personal Care Homes; ICF-MR/RC Facilities; Board and Care Homes, and Room and Board Facilities.

**Informant**—An individual who is assisting an adult applicant/consumer in applying for IH/FSP services.

**Responsible party**—An individual who is either:

(A) the consumer's natural or surrogate parent or legal guardian appointed by the court and who is applying on behalf of the consumer; or

(B) an adult 18 years or older who is applying for services on his own behalf. An applicant who is 18 years or older, who is unable to apply because of physical limitations, may designate a responsible party to assist him in the application process; however, the adult applicant must sign the application form. If the applicant signs with an "X," he must have two witnesses.

#### **§48.2702. Application.**

(a) (No change.)  
(b) Upon receipt of the application, the caseworker places the applicant in one of the following four categories:

(1) Category I—Age 4 through age 17;

(2) Category II—Age 18 or older and living alone;

(3) Category III—Age 18 or older and living with spouse, relatives, or friends; or

(4) Category IV—Age 65 or older.

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

(f) Persons on the waiting list are entitled to be contacted annually to determine their continued interest in the program.

(g)-(h) (No change.)

#### **§48.2703. Income Eligibility.**

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

(c) SSI recipients who are determined to have a disability are categorically eligible and are exempt from the copayment requirement.

(d) Copayments are figured according to the following table:

*Percent (%) Copay:		10%	20%	30%	40%	50%
Family Size	Median Income	105% of Median	110% of Median	115% of Median	120% of Median	125% of Median
1	\$16,870	\$17,714	\$18,557	\$19,401	\$20,244	\$21,088
2	22,061	3,164	24,267	25,370	26,473	27,576
3	27,252	28,615	29,977	31,340	32,702	34,065
4	32,442	34,064	35,686	37,308	38,930	40,553
5	37,633	39,515	41,396	43,278	45,160	47,041
6	42,823	44,364	47,105	49,246	51,388	53,529

FOR ADDITIONAL MEMBERS ADD 3% TO 135% AND MULTIPLY NEW PERCENT BY 4 PERSON FAMILY

For additional member, add:	\$ 1,960	\$ 2,058	\$ 2,156	\$ 2,254	\$ 2,352	\$ 2,450
Maximum Copayment Amount	0	\$ 720	\$ 1,440	\$ 2,160	\$ 2,880	\$ 3,600

*Percent % Copay:		60%	70%	80%	90%	100%
Family Size	130% of Median	135% of Median	140% of Median	145% of Median	150% of Median	
1	\$21,931	\$22,775	\$23,618	\$24,462	\$25,305	
2	28,679	29,782	30,885	31,988	33,092	
3	35,428	36,790	38,153	39,515	40,878	
4	42,175	43,797	45,419	47,041	48,663	
5	48,923	50,805	52,686	54,568	56,450	
6	55,670	57,811	59,952	62,093	64,235	

For additional member, add:	\$ 2,548	\$ 2,646	\$ 2,744	\$ 2,842	\$ 2,940
Maximum Copayment Amount	\$ 4,320	\$ 5,040	\$ 5,760	\$ 6,480	\$ 7,200

\*For annual income that falls between the amounts listed use the lower copayment percentage.

(e) Applicants must provide to the caseworker all required documentation of earned or unearned income or both. This income is considered in determining financial eligibility.

(f) (No change.)

(g) An applicant who has earned income at or below the limits listed in IRS Publication 17 must sign a statement reporting the amount of earned income, unless he filed a personal income tax return claiming a refund for federal withholding. If he files this type of a tax return, he must present it to the caseworker as documentation of earned income.

(h) If an applicant or his household fails to furnish, within 10 calendar days of the interview, the requested documentation of annual income, the caseworker denies the application. If the required documentation cannot be obtained within the 10-day period, the applicant must notify the case-

worker. If the applicant has not contacted the caseworker before the end of the 30-day application processing period, the caseworker denies the application.

(i) Consumers must notify the caseworker within 10 calendar days of a change in their circumstances that were considered in determining their eligibility or copayment amount.

#### *\$48.2704. Functional Eligibility.*

(a) Applicants must meet the definition of disabilities specified in the Human Resources Code, Chapter 35.

(b) The applicant or responsible party must sign the IH/FSP disabilities screening instrument.

(c) The applicant must give permission to obtain verification of his disability through either a signed physician's statement or clinical, educational, medical,

diagnostic, and evaluation records that include the following:

- (1) diagnosis;
- (2) limitation; and
- (3) prognosis.

(d) Individuals who reside in Intermediate Care Facilities, Skilled Nursing Facilities, Personal Care Homes, ICF-MR/RC Facilities, Board and Care Homes, or DHS foster homes with four or more adults are not eligible for IH/FSP services. Individuals who reside in DHS foster homes which care for three or more minors that are under the department's temporary or permanent managing conservatorship are eligible for IH/FSP services.

(e) An applicant may not receive IH/FSP services if he is receiving the same services from another support program. If he is eligible for another program's services and not receiving them, the applicant must

provide documentation to the caseworker as to why the services are not being provided from the other program.

#### §48.2705. Service Plan.

(a) An eligible applicant may qualify for either or both of the following two categories of program benefits:

(1) The applicant may receive a one-time cash grant of up to \$3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, or general living conditions of the person who has a disability. A capital expenditure is defined as any one-time purchase costing more than \$250.

(2) (No change.)

(b) The service plan is based on the applicant's statement of need, which indicates the services and capital expenditure or architectural renovation that will meet his care needs in a community-based setting. The applicant, assisted by the caseworker, selects the programs or provider of services that he will use to meet his care needs without service duplication or overlap.

(c) (No change.)

(d) The applicant household is responsible for obtaining three written bids to determine the lowest cost for capital expenditures, architectural modification(s), or both, for any item/service that costs more than \$250.00.

(e) In order for a sole source estimate to be accepted, the caseworker must document that no other source is available, explain the consumer's highly specialized need for the particular item/service, and specify all efforts made to locate additional resources. The supervisor must approve all sole source capital expenditure purchases.

#### §48.2706. Allowable IH/FSP Services. The following IH/FSP services may be purchased with a service subsidy:

(1) the purchase or lease of special equipment or architectural modifications of a home, if these purchases or leases improve or facilitate the care, treatment, therapy, or general living conditions of a person with a disability;

(2) (No change.)

(3) counseling or training programs that help a household to provide proper care for a disabled family member, help a person with a disability in an independent living situation, or provide for the special needs of the family or person with a disability;

(4)-(5) (No change.)

(6) transportation services for the person with a disability;

(7) transportation, room, and board costs incurred by a person with a disability or his family during evaluation or

treatment that has been pre-approved by DHS. Estimates of lodging, meals, and mileage costs, limited to \$.24 per mile, must be submitted to the caseworker for prior approval; and

(8) other services requested by the applicant and prior-approved by the state office section manager.

#### §48.2707. Program Restrictions.

(a) The IH/FSP service subsidy and capital expenditure cash grant must be used only for goods, supplies, or services that specifically and directly relate to the care of the person with a physical disability.

(b) (No change.)

(c) The applicant must agree to submit receipts for service subsidy funds, and the copayment amount, if any, at intervals designated by DHS during the 12 month certification period. A one-time submittal of receipts is required for the capital expenditure grant. If the applicant fails to furnish the required receipts, he is denied eligibility and faces possible criminal prosecution. The receipts that are returned to verify how the program funds were spent must not be dated prior to the date the individual was certified as eligible for the IH/FSP. Receipts are due 180 calendar days from date of approved certification. Any exception to the 180 calendar day time frame requires supervisory approval. The receipts must:

(1) include specifications of modification/renovation, equipment or services to be purchased;

(2) include date item delivered/purchased;

(3) include vendor signature;

(4) be marked paid.

(d) Applicants must be residents of Texas and must live in a community-based setting, or they must live in a community living arrangement within 30 days from the date they apply for program services.

(e) (No change.)

(f) Applicants are limited to one \$3,600 grant for capital expenditures.

(g) (No change.)

(h) Applicants must not receive services from both the DHS IH/FSP and the TDMHMR IH/FSP.

(i) Individuals with mental illness according to the Mental Health Code, mental retardation according to the Mentally Retarded Persons' Act, autism or other mental disease(s) as defined by the Diagnostic and Statistical Manual III, and children who meet the definition of early childhood intervention are not eligible for services in the DHS In-home and Family Support Program. Participants served by the Texas Mental Health and Mental Retarda-

tion In-home and Family Support Program who have reached the age of four years and who have been determined not to have a diagnosis of mental illness or mental retardation as defined in the Texas Mental Health Code (Texas Civil Statutes, Article 5547-205) or the Mentally Retarded Persons Act of 1977 (Texas Civil Statutes, Article 5547-205) will be given priority status when transferring to the DHS program. If space is not available in Category I, individuals who were on the TDMHMR waiting list are placed on the DHS waiting list using the original date they were placed on the TDMHMR list.

#### §48.2708. Service Subsidy and Capital Expenditure.

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

(e) The subsidy amount is distributed to consumers in a manner that does not affect eligibility for other support programs.

(f) Consumers who use only a portion of their capital expenditure or service subsidy may be issued the remainder of these program benefits contingent upon the availability of program funds.

(g) After the initial certification, the availability of program funds and the consumer's continued need for the one-time grant determine the disbursement of the capital expenditure subsidy.

#### §48.2710. Right to Appeal.

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

(c) If a consumer is already receiving IH/FSP services and his benefits are denied or reduced, he must submit to the caseworker a request for a hearing within 10 calendar days from the date he receives the notification letter, to continue receiving services while the appeal is pending. He may be able to continue receiving the subsidy until the hearing is completed if the request is submitted within the 10-day time frame. If the results of the appeal agree with the denial or reduction of benefits, the consumer may be asked to pay back the amount of the subsidy provided during the appeal period.

(d) The caseworker must attend the hearing.

#### §48.2711. Recertification.

(a) Recertification occurs after 12 months of continuous program eligibility. To be recertified, the consumer must:

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

(3) complete a new program participant agreement.

(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 30, 1990.

TRD-9003325

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: May 1, 1990

Proposal publication date: February 16, 1990

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

◆ ◆ ◆  
**Support Documents**

◆ ◆ ◆  
• **40 TAC §48.9808**

The Texas Department of Human Services (DHS) adopts new §48.9808, without changes to the proposed text as published in the February 23, 1990, issue of the *Texas Register* (15 *TexReg* 987).

The new section is justified to comply with state legislation by providing new home and community-based services as cost-effective alternatives to placement in intermediate care facilities for persons with mental retardation/related conditions (ICF-MR/RC VII).

The new section will function by providing alternatives to ICF-MR/RC institutional services through a fee-for-service reimbursement methodology for home and community-based services for persons with related conditions.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 29, 1990.

TRD-9003304

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: May 1, 1990

Proposal publication date: February 23, 1990

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

◆ ◆ ◆  
**Part IX. Texas Department  
on Aging**  
**Chapter 255. State Delivery  
Systems**

◆ ◆ ◆  
• **40 TAC §255.39**

The Texas Department on Aging adopts new §255.39, without changes to the proposed text as published in the December 26, 1989, issue of the *Texas Register* (14 *TexReg* 6851).

The new section established the funding formula on which \$100,000 of state revenue was distributed to the Retired Senior Volunteer Programs (RSVP) in Texas.

The new section establishes the initial procedure to distribute state revenues to Retired Senior Volunteer Projects in Texas. It will serve as the model to be replicated in developing funding formulas for distribution of state revenue to RSVP programs in the future.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Chapter 101, which provide 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 29, 1990.

TRD-9003313

Jebron Hopper  
Acting Executive Director,  
Texas Department on  
Aging

Effective date: April 20, 1990

Proposal publication date: December 26,  
1989

For further information, please call: (512)  
444-2727





Name: Stephen Sandefer

Grade: 10

School: La Porte High School, La Porte



# 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 of Agriculture

**Monday, April 9, 1990, 9:30 a.m.** The Texas Agricultural Diversification Board of the Texas Department of Agriculture will meet at the Stephen F. Austin Building, Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss update and take action on linked deposit loan program; 1990 diversification grant program awards; discussion on review process procedures of matching grants and other administrative matters.

**Contact:** Brian Miller, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

**Filed:** March 29, 1990, 10:54 a.m.

TRD-9003300

## Texas Department of Commerce

**Tuesday, April 10, 1990, 10 a.m.** The Board of Directors of the Texas Department of Commerce will meet at 816 Congress Avenue, Suite 1100, Austin. According to the complete agenda, the board will recess into executive session pursuant to Texas Civil Statutes, §2(r); reconvene meeting; presentation on product liability; presentation on marketing update; adoption of prior minutes; consideration of enterprise projects for Embassy Packing, Inc., McAllen, and Atochem North America, Inc., Beaumont, Jefferson County; and consideration of strategic plan.

**Contact:** Mary Lane, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9660.

**Filed:** April 2, 1990, 9:53 a.m.

TRD-9003368

## Texas Department of Criminal Justice Board of Pardons and Paroles

**Monday-Friday, April 9-13, 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 three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases 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 30, 1990, 10:55 a.m.

TRD-9003314

## Daughters of the Republic of Texas

**Saturday, April 7, 1990, 10 a.m.** The Board of Management of the Daughters of the Republic of Texas will meet at the French Legation Carriage House, Austin. According to the complete agenda, the board will discuss all matters pertaining to the state-owned properties which are under the management or control of the Daughters of the Republic of Texas, Inc.; request from local DRT and CRT Chapters; request; for use of prints from Johnson Texas Flower Bk; recommendations to the BOM from the Bylaws Committee; closed session with BOM and other invited DRT members for discussion on purchase of property; tour of proposed properties; and vote on recommendations to convention concerning property.

**Contact:** June Franklin Naylor, 2706 East 17th, Odessa, Texas 79761, (916)366-8360.

**Filed:** March 30, 1990, 3:57 p.m.

TRD-9003331

**Saturday, April 7, 1990, 10 a.m.** The Board of Management of the Daughters of the Republic of Texas will meet at the

French Legation Carriage House, Austin. According to the complete emergency revised agenda, the board will discuss request from local DRT and CRT Chapters; request for use of prints from Johnson Flower Bk for Lindheimer Ed.; recommendations to the BOM and other invited DRT members for discussion on purchase of property; tour of proposed properties; vote on recommendation(s) to convention. The emergency status was necessary because the library committee needs okay on a salary.

**Contact:** June Franklin Naylor, 2706 East 17th, Odessa, Texas 79761, (915)366-8360.

**Filed:** April 3, 1990, 9:45 a.m.

TRD-9003424

## Texas Education Agency

**Tuesday-Wednesday, April 10-11, 1990, 1:30 p.m. and 8 a.m. respectively.** The Continuing Advisory Committee for Special Education of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will discuss approval of the minutes; hearing officer decisions; unmet needs; alternative certification; funding issues--Edgewood v. Kirby; discussion of South Atlantic Regional Resource Center presentation on parent services and relationship between parents/state department; parent-to-parent project; update--Texas adaptive/assistive devices project; update--complaints management system; occupational experience lab; applied learning environment program; special education study.

**Contact:** Dr. Joye A. Scheffler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.

**Filed:** March 29, 1990, 4:25 p.m.

TRD-9003311

## Texas Employment Commission

Tuesday, April 10, 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 15; and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: April 2, 1990, 2:06 p.m.

TRD-9003377

## General Land Office

Thursday, April 12, 1990, 10 a.m. The Coastal Management Public Meeting of the General Land Office will meet at the Texas Southmost College, Lightner Student Center, 80 Fort Brown, Brownsville. According to the agenda summary, the office will discuss formulation of a coastal management plan as authorized by Senate Bill 1571 during the 71st Legislative Session. Coastal issues are: beach access, coastal erosion and shoreline preservation, dune protection, freshwater inflow, habitat and wetland loss, hazardous waste generation and disposal, marine debris, nonpoint source pollution, and oil spills.

Contact: Sally S. Davenport, 1700 North Congress Avenue, Room 735, Austin, Texas 78701, (512) 463-5059.

Filed: April 2, 1990, 11:46 a.m.

TRD-9003376

## Governor's Educational Excellence

Wednesday, April 11, 1990, 8:30 a.m. The Sub-Committee on Performance Indicators of the Governor's Educational Excellence will meet in Room 1.104, William B Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will discuss and possibly vote on recommendations on performance indicators and application process; at 10 a.m., joint meeting of Educational Excellence Sub-Committee on performance indicators with State Board of Education Advisory Committee on performance indicators; at 2 p.m., full committee meeting of Education Excellence Committee to approve recommendations of performance criteria.

Contact: Sheila W. Beckett, P.O. Box 12428, Austin, Texas 78711, (512)

463-1817.

Filed: April 2, 1990, 3:14 p.m.

TRD-9003395

## State Board of Insurance

Tuesday, April 10, 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 extension of emergency effectiveness and permanent adoption of amendment to rules and regulations of the Texas Workers' Compensation Assigned Risk Pool establishing a loss control division; final action on amendment to 28 TAC §21.113; board orders on several different matters as itemized on the complete agenda; personnel matters; litigation; and solvency matters.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 2, 1990, 2:50 p.m.

TRD-9003383

Wednesday, April 11, 1990, 9 a.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 commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Domingo Gonzalez Avina, Houston, who holds a group I, legal reserve life insurance agent's license; and to consider the application of Domingo Gonzalez Avina for a local recording agent's license. Docket Number 10760.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 2, 1990, 1:52 p.m.

TRD-9003381

Wednesday, April 11, 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 commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Alex Lester Ryan, Hurst, who holds a group I, legal reserve life insurance agent's license, a group II, insurance agent's license and a local recording agent's license. Docket Number 10711.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 2, 1990, 1:52 p.m.

TRD-9003382

Wednesday, April 11, 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 commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Ernest R. Gamez, San Antonio, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license. Docket Number 10774.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 2, 1990, 1:51 p.m.

TRD-9003380

Monday, April 16, 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 commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Jerry Hugh Mudd, Houston, who holds a group I, legal reserve life insurance agent's license. Docket Number 10773.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 2, 1990, 1:51 p.m.

TRD-9003379

Monday, April 16, 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 commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Lana Gayle Kennedy, Fort Worth, who holds a group I, legal reserve life insurance agent's license and a group II insurance agent's license. Docket Number 10766.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 2, 1990, 1:51 p.m.

TRD-9003378

## Public Utility Commission of Texas

Thursday, June 14, 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 9420: application of Cooke County Electric Cooperative, Inc. for authority to change rates.

Contact: Mary Ross McDonald, 7800

Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 29, 1990, 3:12 p.m.

TRD-9003306

Friday, June 15, 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 in Docket Number 9427: application of Lower Colorado River Authority for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 2, 1990, 3:19 p.m.

TRD-9003408

Thursday, July 5, 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: April 2, 1990, 3:20 p.m.

TRD-9003407

## Texas Racing Commission

Monday, April 9, 1990, 9 a.m. The Texas Racing Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will discuss approval of minutes; report on commission budget for fiscal year 1990-1991; discussion and vote on commission fiscal matters for 1992-1993; report on Deloitte and Touche contract; consider and vote on rules and regulations for horse and greyhound racing for final adoption and emergency adoption and publication. Vote on repeal §305.70; payment of license fees; executive session to seek attorney's advice with respect to pending litigation; presentation on status of preparations for racing; consideration of and vote on Gillespie County Fair and Festivals Association; application periods for Harris County class I and class II statewide; and chairmanship and vice-chairmanship for the commission.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

Filed: March 30, 1990, 3:21 p.m.

TRD-9003329

## Railroad Commission of Texas

Monday, April 9, 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 30, 1990, 11:05 a.m.

TRD-9003323

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 30, 1990, 11:06 a.m.

TRD-9003320

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 30, 1990, 11:06 a.m.

TRD-9003319

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 30, 1990, 11:07 a.m.

TRD-9003317

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 of 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 30, 1990, 11:05 a.m.

TRD-9003322

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 30, 1990, 11:06 a.m.

TRD-9003321

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 30, 1990, 11:06 a.m.

TRD-9003318

The commission will consider and act on the OIS director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6710.

Filed: March 30, 1990, 11:07 a.m.

TRD-9003316

## Texas Real Estate Commission

Monday, April 9, 1990, 9:30 a.m. The Texas Real Estate Commission will meet in the Kohlberg Room, Westin Paso del Norte Hotel, 101 South El Paso Street, El Paso. According to the agenda summary, the commission will discuss the minutes of March 12, 1990 commission meeting; staff reports for month of February, 1990; appraiser certification matters; possible action to approve recommendation from the

Texas Real Estate Appraiser Certification Committee to contract for examinations; discussion and possible action to approve accreditation of Texas Training Company; to authorize Donald C. Roose or his designate to determine whether MCE providers, courses, or instructors should be approved; authorization of James E. Fletcher as hearings officer for MCE-related matters; discussion and possible action to change effective date of new 22 TAC §§535.71-535.73; executive session to discuss pending litigation and personnel matters pursuant to §2(e) and §2(g), Article Revcovery Fund without contest; approval of financial statement pursuant to Senate Bill Number 222; motions for rehearing and/or probation; entry of orders in contested cases; date and place of next meeting.

Contact: Camilla Shannon, 1101 Camino La Costa, Austin, Texas 78752, (512) 465-3900.

Filed: March 30, 1990, 4:41 p.m.

TRD-9003341

## House of Representatives

Friday, April 6, 1990, 2 p.m. The House Committee on Redistricting of the House of Representatives will conduct an emergency meeting at the Bay Front Convention Center, Corpus Christi. According to the complete agenda, the committee will take public testimony on congressional, legislative, and State Board of Education redistricting topics for the 1991 redistricting effort. The emergency status was necessary to have meeting notice posted in Register.

Contact: Brian Jammer, P.O. Box 2910, Austin, Texas 78769, (512) 463-9948.

Filed: March 30, 1990, 12:42 p.m.

TRD-9003327

## Texas Southern University

Friday, April 6, 1990, 8:30 a.m. The Board of Regents of the Texas Southern University will meet at the University Library, Fifth Floor, Houston. According to the complete agenda, the board will consider: minutes, budget changes; investments; budgets for restricted and/or grants and projects funds. Construction change orders; authorization and ratification of contracts and awards; review of on going construction and current contractual relations; personnel actions, report on progress of academic activities and programs. Report of the president; executive session; and addition: change in law school tuition rate and computer services fee.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: April 2, 1990, 10:46 a.m.

TRD-9003373

## Texas State University System

Tuesday, April 3, 1990, 2:45 p.m. The Board of Regents of the Texas State University System met in Room 350, Lowman Student Center, Sam Houston State University, Huntsville. According to the complete agenda, the board will review matters of the board and the four universities in the system including: out-of-country travel, house cleaning service contract, miscellaneous fees, parking lot improvements and room and board rates at Angelo State University; purchase order award for fume hoods and lease extension for book store at Sam Houston State University; contract award for J. C. Kellam Building renovation and asbestos abatement removal at Southwest Texas State University and other items concerning the four universities and system. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, 78701, (512) 463-1808.

Filed: March 29, 1990, 11:13 a.m.

TRD-9003301

## University Interscholastic League

Wednesday, April 4, 1990, 10 a.m. The State Executive Committee (3 member panel) of the University Interscholastic League met at the Austin Airport Hilton, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the committee considered appeals of district executive committee decisions.

Contact: Bonnie Northcutt, P.O. Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

Filed: March 29, 1990, 3:50 p.m.

TRD-9003309

Thursday, April 5, 1990, 10 a.m. The Drill/Dance/Cheerleading Committee of the University Interscholastic League met at the Austin Airport Hilton, Windsor East Meeting Room, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the committee studied input as to whether the UIL should regulate drill/dance/cheerleading competition.

Contact: Bonnie Northcutt, P.O. Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

Filed: March 29, 1990, 3:57 p.m.

TRD-9003308

## Texas Water Commission

Monday, April 9, 1990, 1:30 p.m. The Advisory Committee, Water District and River Authority Supervision of the Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete agenda, the committee will conduct a public meeting of the Advisory Committee on Water District and River Authority Supervision.

Contact: Dean Robbins, P.O. Box 13087, Austin, Texas 78711, (512) 463-7941.

Filed: March 30, 1990, 4:16 p.m.

TRD-9003330

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) 463-8110.

Filed: April 2, 1990, 3:49 p.m.

TRD-9003406

Tuesday, April 17, 1990, 10 a.m. The Texas Water Commission will meet in Room 1028A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of Horseshoe Bend Water Works-Docket Number 8180-R.

Contact: Mary Sabs, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 2, 1990, 3:50 p.m.

TRD-9003402

Wednesday, April 25, 1990, 3 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing regarding the adoption of standby fees for West Harris County Municipal Utility District Number 7.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 2, 1990, 3:49 p.m.

TRD-9003405

**Monday, May 14, 1990, 3 p.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on petition for organization of West Harris County Municipal Utility District Number 21.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 2, 1990, 3:50 p.m.

TRD-9003403

**Tuesday, May 15, 1990, 10 a.m.** The Office of Hearings Examiner of the Texas Water Commission will meet at the City of Shamrock's City Hall Annex, 114 West Second, Shamrock, May 15, 1990, at 10 a.m. According to the agenda summary, the examiners will consider application by City of Shamrock for proposed permit number 10279-01 authorizing discharge of treated domestic wastewater effluent into Hackberry Creek; thence to Elm Creek; thence to the State of Oklahoma in segment number 0200 of the Red River Basin. The final phase would authorize disposal by irrigation on 71 acres of native grass. The plant site and the irrigation site in the final phase are approximately three miles south and 3/8 mile east of the intersection of U.S. Highway 66 and U.S. Highway 83 in Wheeler County, Texas.

Contact: James Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 30, 1990, 3:14 p.m.

TRD-9003340

**Wednesday, May 16, 1990, 3 p.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on the adoption of standby fees for Lost Creek Municipal Utility District of Travis County.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 2, 1990, 3:50 p.m.

TRD-9003404

## Regional Meetings

### Meetings Filed March 29, 1990

The Austin-Travis County Mental Health Mental Retardation Center Board of Trustees, Personnel Committee met at 1430 Collier Street, Board Room, Austin, April 3, 1990, at 7:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512)

440-4031.

The Bastrop County Appraisal District Board of Directors met at the District Office, 1200 Cedar Street, Bastrop, April 2, 1990, at 7:30 p.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Central Texas Economic Development District Executive Committee will meet at the TSTI Food Service Technology Building, Avenue D, TSTI Campus, Waco, April 12, 1990, at 2 p.m. Information may be obtained from Bruce Gaines, P.O. Box 4408, Waco, Texas 76715, (817) 799-0258.

The Dallas Central Appraisal District Board of Directors met at 1420 West Mockingbird Lane, Suite 500, Dallas, April 4, 1990, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0529.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, April 9, 1990, at 9 a.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904.

The Education Service Center, Region VI Executive Committee met at the Del Lago Conference Center, Montgomery, April 4, 1990, at 7 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

TRD-9003299

### Meetings Filed March 30, 1990

The Barton Springs/Edwards Aquifer Conservation District Regular Board of Directors meeting was held at 1124-A Regal Row, Austin, April 2, 1990, at 7 p.m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78741, (512) 282-8441.

The Central Counties Center for Mental Health Mental Retardation Services Board of Trustees held an emergency meeting at the Gatesville MHMR Center, 211 North Lutterloh, Gatesville, April 3, 1990, at 7:45 p.m. The emergency status was necessary because of personnel issues. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76502, (817) 778-4841.

The Dallas Area Rapid Transit Arts Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, April 3, 1990, at 1:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Government Relations Committee met at 601 Pa-

cific Avenue, 7A Conference Room, Dallas, April 3, 1990, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Planning and Development Committee met at 601 Pacific Avenue, Board Room, Dallas, April 3, 1990, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Garza County Appraisal District Board of Directors will meet at the Appraisal Office, 124 East Main, Post, April 12, 1990, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The High Plains Underground Water Conservation District No. 1 Board of Directors' will meet in the Conference Room, 2930 Avenue Q, Lubbock, April 10, 1990, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Hockley County Appraisal District Appraisal Review Board met at 1103-C Houston, Levelland, April 5, 1990, at 11 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The West Central Texas Municipal Water District met at 401 Cypress Street, Suite 300, Abilene, April 5, 1990, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

TRD-9003312

### Meetings Filed April 2, 1990

The Brown County Appraisal District Board of Directors will meet at 403 Fisk Avenue, Brownwood, April 9, 1990, at 7 p.m. Information may be obtained from Bob Young, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Canadian River Municipal Water Authority Board of Directors will meet at the Plainview County Club, 2902 West Fourth, Plainview, April 11, 1990, at 10:30 a.m. Information may be obtained from John C. Williams, Box 99, Sanford, Texas 79078, (806) 865-3325.

The Deep East Texas Private Industry Council, Inc. Planning Committee will meet at Lufkin City Hall, Room 202, Lufkin, April 11, 1990, at 1 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-2247.

The Deep East Texas Private Industry Council, Inc. will meet in Room 202, Lufkin City Hall, Lufkin, April 11, 1990, at 2

p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-2247.

The East Texas Council of Governments JTPA Board of Directors met at Roy H. Laird Country Club, Kilgore, April 5, 1990, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The East Texas Council of Governments Executive Committee met at Roy H. Laird Country Club, Kilgore, April 5, 1990, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75901, (214) 984-8641.

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, April 11, 1990, at 9:30 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Lavaca County Central Appraisal District Agricultural Appraisal Advisory Board will meet at the District Office, 113 North Main, Hallettsville, April 11, 1990, at 8 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Nolan County Central Appraisal

District Board of Directors will meet at the Nolan County Courthouse, Sweetwater, April 10, 1990, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Nueces-Jim Wells-Kleberg-Kenedy Soil and Water Conservation District Board of Directors will meet at the Nueces County Showbarn, Highway 77 North, Robstown, April 17, 1990, at 7 p.m. Information may be obtained from Joan D. Rummfield, 710 East Main Street, Robstown, Texas 78380, (512) 668-8363.

The Rusk County Appraisal District Appraisal Review Board will meet in the Administrative Offices, 107 North Van Buren, Henderson, April 10, 1990, at 7 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (214) 657-9697.

The West Central Texas Council of Governments Citizens Advisory Council met at Days Inn, U.S. East, Abilene, April 5, 1990, at 9:30 a.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

The West Central Texas Municipal Water District met at 401 Cypress Street,

Suite 300, Abilene, April 5, 1990, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

The Wise County Appraisal District Board of Directors will meet at 206 South State Street, Board Room, Decatur, April 12, 1990, at 9 a.m. Information may be obtained from Brenda Jones, 206 South State, Decatur, Texas 76234, (817) 627-3081.

TRD-9003344

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Meetings Filed April 3, 1990

The Region IV Education Service Center Board of Directors will meet in the Board Room, 7145 West Tidwell Road, Houston, April 10, 1990, at 6 p. m. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77001, (713) 462-7708.

The Rusk County Appraisal District Board of Directors will meet in the Administrative Offices, 107 North Van Buren, Henderson, April 10, 1990, at 1: 30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (214) 657-9697.

TRD-9003412  
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# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Air Control Board Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §12.001 and §382.017; the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Procedural Rules of the Texas Air Control Board (TACB), §103.11(4), the TACB and the Texas Department of Health (TDH) will conduct a public hearing to receive testimony concerning revisions to their joint rules. The joint rules of the two agencies consist of TACB Regulation XI (31 TAC 121) and TDH Subchapter Q of Chapter 325 (31 TAC 325), both entitled Control of Air Pollution from Municipal Solid Waste Facilities.

Until June of 1989, the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, required the TACB to perform air quality reviews for municipal landfill permit applications submitted to the TDH. The 71st Legislature (1989) revised the statute to limit TACB review of such applications to those for municipal solid waste incinerators only. In addition, the statute was retitled Chapter 361, Texas Health and Safety Code. The proposed revisions to the agencies' joint rules will carry out the provisions of the revised statute by limiting future TACB permit review activities to applications for municipal solid waste incinerators. Also, all references to the previous statute title will be updated and one additional revision is proposed to clarify that the definition of municipal solid waste incinerator does not include a unit which incinerates the gases emanating from decaying solid waste. The TDH is soliciting public comment on the Memorandum of Understanding (MOU) which describes the agreement between the two agencies regarding review of air contaminant emissions as affecting the permit review process with regard to municipal landfills. The specifications of the MOU reflect the requirements of the joint rules, as well as the review activities conducted by each agency.

The hearing will be held at 10 a.m. on April 26, 1990, in the Auditorium of the Texas Department of Health located at 1100 West 49th Street, Austin. The hearing is structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted, however, TDH and TACB staff members will be available to answer questions informally before and after the hearing.

Written comments not presented at the hearing may be submitted until May 4, 1990, and should be submitted to both agencies at the following addresses: Barry Irwin, Regulation Development Section, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723; and Glendon Eppler, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Materials received by 4 p.m. on May 4 will be considered by the agencies prior to any final action on the proposed revisions. Five copies of all written comments would be helpful to the agencies in making their review. Copies of

the proposed revisions are available at the central office of the TACB, 6330 Highway 290 East, Austin, Texas 78723; at the regional offices of the TACB; and at the Bureau of Solid Waste Management, TDH, 1100 West 49th Street, Austin, Texas 78756. For more information, call Barry Irwin, TACB, at (512) 451-5711 or Glendon Eppler, TDH, at (512) 458-7271.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003367 Steve Spaw, P.E.  
Executive Director  
Texas Air Control Board

Filed: April 2, 1990

For further information, please call: (512) 451-5711, ext. 354

## Ark-Tex Council of Governments Request for Proposal

The Ark-Tex Council of Governments (ATCOG) is in the process of requesting proposals for implementation of projects funded under the Job Training Partnership Act (JPTA), §123.

Those interested in submitting a proposal must have the capability for developing model programs with special focus on basis education, career awareness, computer literacy, and cultural enrichment, combined with a work preparation component. The projects must be implemented in the Northeast Texas Region encompassing Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus Counties.

The proposals selected will be expected to meet the requirements set forth in the request for proposals (RFPs) and evaluated in terms of type of service and methodology of implementation, cost of service and training for staff/individuals served, past performance of services, project management, innovative approach, and local match (cash or in-kind). Selection will be made by the Ark-Tex Private Industry Council.

Those interested in receiving a request for proposal packet should contact Peggy White, Manager of Employment and Training, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636. The deadline for receiving proposals is April 27, 1990.

Issued in Wake Village, Texas, on March 26, 1990.

TRD-9003270 James D. Goerke  
Executive Director  
Ark-Tex Council of Governments

Filed: March 28, 1990

For further information, please call: (214) 832-8636

**Texas Department of Commerce**  
**Bi-Weekly Report on the 1990**  
**Allocation of the State Ceiling on**  
**Certain Private Activity Bonds**

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1990 is \$849,550,000.

State legislation, Texas Civil Statutes, Article 5190.9(a), (the Act), established the allocation process for the State of Texas. The Act specifies that 33% of the state ceiling is to be made available to qualified mortgage bonds and of that amount one-third is available to the Texas Housing Agency and two-thirds is available to local issuers. Fifteen percent of the state ceiling is available to state-voted issues, 10% of the state ceiling is available for issuers of bonds for manufacturing and related facilities, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is \$280,351,500, with \$186,904,500 available to local housing authorities and \$93,447,000 is available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$127,432,500, the amount for manufacturing and related facilities is \$84,955,000, and the amount for all other bonds requiring an allocation is \$356,811,000.

Generally, the state ceiling is allocated by lottery for applications received from January 2-January 10, and thereafter on a first-come, first-served basis, with the Texas Department of Commerce administering the allocation system.

The information that follows is a report of the allocation activity for the period, March 12, 1990-March 23, 1990.

Total amount of state ceiling remaining unreserved for the \$280,351,500 subceiling for qualified mortgage bonds under the Act as of March 23, 1990: \$95, 141,000.

Total amount of state ceiling remaining unreserved for the \$127,432,500 subceiling for state-voted issues under the Act as of March 23, 1990: \$127,432, 500.

Total amount of state ceiling remaining unreserved for the \$84,955,000 subceiling for manufacturing and related facilities under the Act as of March 23, 1990: \$31,355,000.

Total amount of state ceiling remaining unreserved for the \$356,811,000 subceiling for all other bonds under the Act as of March 23, 1990: \$3,234,000.

Total amount of the \$849,550,000 state ceiling remaining

unreserved as of March 23, 1990: \$257,162,500.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from March 12, 1990-March 23, 1990: San Antonio Housing Finance Corporation, Prime Group, Inc., All Other Issue, \$3,627,000; Terrell Industrial Development Corporation, Tejas Resources, Inc., Qualified Small Issue, \$7,500,000.

Following is a comprehensive listing of bonds issues which previously received a reservation for allocation and have either been withdrawn or been canceled from March 12, 1990-March 23, 1990: Orange County Navigation and Port District Industrial Development Corporation, BGMB (USA), Inc., Qualified Small Issue, \$8,000,000; Weatherford Industrial Development Corporation, Lightech International, Inc., Qualified Small Issue, \$5,000,000.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from March 12, 1990-March 23, 1990: Matagorda County Navigation District Number One, Central Power and Light, All Other Issues, \$50,000,000; Sabine River Authority of Texas, Texas Utilities Electric Company, All Other Issues, \$40,000, 000; City of El Paso Industrial Development Authority, Inc., El Paso S.D., Limited, Qualified Small Issue, \$6,000,000; Brazos River Authority, Texas Utilities Electric Company, All Other Issues, \$50,000,000; Capital Area Housing Finance Corporation, Eligible Borrowers, Qualified Mortgage, \$21,890,000; Stephenville Industrial Development Corporation, Universal Blanchers, Inc., Qualified Small Issue, \$2,100,000; Mesquite Housing Finance Corporation, Eligible Borrowers, Qualified Mortgage, \$13,305,000; Harris County Industrial Development Corporation, David J. Joseph Company, Qualified Small Issue, \$5,000, 000.

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

TRD-9003307 William D. Taylor  
 Executive Director  
 Texas Department of Commerce

Filed: March 29, 1990

For further information, please call: (512) 472-5059



**Office of Consumer Credit**  
**Commissioner**

**Notice of Rate Ceilings**

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> /Agri-cultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/26/90-04/01/90	18.00%	18.00%
Monthly Rate Art. 1.04(c) <sup>(1)</sup>	03/01/90-03/31/90	18.00%	18.00%



Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	04/01/90-06/30/90	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) <sup>(3)</sup>	04/01/90-06/30/90	15.13%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) <sup>(2)</sup>	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	04/01/90-06/30/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/90-06/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	04/01/90-04/30/90	10.00%	10.00%

- (1) For variable rate commercial transactions only.  
(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.  
(3) Credit for personal, family or household use.  
(4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on March 19, 1990.

TRD-9003302 Al Endsley  
Consumer Credit Commissioner

Filed: March 29, 1990

For further information, please call: (512) 479-1280

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> /Agricultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/02/90-04/08/90	18.00%	18.00%
Monthly Rate Art. 1.04(c) <sup>(1)</sup>	04/01/90-04/30/90	18.00%	18.00%

Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	04/01/90-06/30/90	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) <sup>(3)</sup>	04/01/90-06/30/90	15.13%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) <sup>(2)</sup>	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	04/01/90-06/30/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/90-06/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	04/01/90-04/30/90	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.
- (3) Credit for personal, family or household use.
- (4) Credit for business, commercial, investment or other similar purpose.

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

TRD-9003260      Al Endsley  
Consumer Credit Commissioner

Filed: March 28, 1990

For further information, please call: (512) 479-1280

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### Texas Education Agency Request for Public Comment

The State Board of Education is scheduled to consider the Chapter 2 state application for Chapter 2 funds for 1990-1991 during the May 11-12, 1990, board meeting. To meet requirements of Public Law 100-297 and in preparation for this board meeting, the Texas Education Agency is providing public notice and disseminating pertinent information regarding the State Chapter 2 Advisory Committee recommendations on the use of Chapter 2 federal funds.

For 1990-1991, Texas will receive approximately \$32,467,071 from Chapter 2 of the Elementary and

Secondary Education Act (ESEA). Of the total amount received, the law requires 80% (\$25,800,000) to be funded to public schools on a formula basis and 20% ((\$6,667,071) to be used to fund special projects, technical assistance and administration. The proposed formula to be used to allocate the 80% portion of funds to local school districts (as constrained by ESEA, Chapter 2 law, Public Law 100-297, §1512) is: Step 1-Determine public and private school enrollment by Local Education Agency (LEA) and for the State. Step 2-Determine high cost students (those on free and reduced lunch) by LEA and for the State. Compare the number and percentage for each category of high cost students (as defined by Public Law 100-297, §1527 (b)(2)(A)) by LEA to the statewide average number and percentage of high cost students. Only those LEAs having numbers or percentages in excess of the average statewide number of percentage shall be eligible to include high cost students in the computations. Step 3-Calculate the per capita amount for the State by dividing the sum of Step 1 plus Step 2 into 80% of the State grant award for Chapter 2. Step 4-Multiply the per capita amount computed in Step 3 times the sum of Step 1 plus Step 2 for each LEA. Based upon the most recent data available, the per capita amount for fiscal year 1991

(school year 1990-1991) is \$5.49.

The special projects recommended by the Chapter 2 Committee on March 20, 1990, are: involving principals, superintendents, central office administrators and school board members in the school accreditation process (\$208,000); implementing the effective schools program through the performance-based accreditation process: the role of the cooperative superintendency program fellows in the effective schools data research unit of the division of accreditation (\$282,427); education service center funding for targeted campuses using effective schools correlates and practices (\$1,200,000), parent and community involvement (\$400,000); public education information management system (\$100,000); parenting skills for limited English proficient (LEP) parents (\$150,000); family involvement toward education for at-risk children and at-risk parents (\$755,528); extended day programs for at-risk latchkey school aged children (\$500,000); enhancing the quality and retention of minority teachers and teachers in critical shortage areas (\$300,000); priority staff development model for increasing student mastery of academic skills (\$300,000); increasing at-risk gifted minority student involvement in problem solving skills (\$49,935); cooperative learning/continuous progress at-risk programs for PK-8 students (\$330,000); literacy program for (LEP) students entering school without previous schooling (\$375,000); innovative instructional program for academically talented teachers of tomorrow and ExCET skills training for teachers of today (\$50,000); Texas Education Agency training and professional development for effective schools programs (\$180,000); alternative summer tutorial program for at-risk students (\$175,000); state administration-A maximum of \$1,666,767 may be reserved by the agency for administrative expenditures related to planning, supervising, monitoring, evaluating and operating Chapter 2 programs, to provide technical assistance in implementing targeted assistance programs, and for activities to carry out effective schools programs. The Chapter 2 State Advisory Committee's recommendations and any public comments received will be submitted to the State Board of Education at the May 11-12, 1990 meeting. Any comments should be addressed to Earin Martin, ESEA Chapter 2 State Coordinator, 1701 North Congress Avenue, Austin, Texas 78701, and must be received by April 15, 1990. Any questions regarding this matter should be directed to Ms. Martin at (512) 463-9269.

Issued in Austin, Texas, on March 27, 1990.

TRD-9003310 W. N. Kirby  
Commissioner of Education

Filed: March 29, 1990

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

## Texas Department of Health Correction of Errors

The Texas Department of Health submitted proposed amendments to Chapter 325, relating to solid waste management, which were published with an error in the March 2, 1990, *Texas Register* (15 TexReg 1143).

In §325.567 (b)(6), subparagraphs (E) and (F) are new language and should be in boldface print.

The Texas Department of Health submitted adopted sections relating to the State Employee Health Fitness and

Education Programs, which contained an error as submitted by the department for the December 19, 1989, issue of the *Texas Register* (14 TexReg 6649).

In §1.61 and §1.62, the first sentence of the preamble the reference to §1.161 and §1.162 should read "§1.61 and §1.62".

## Texas Housing Agency Request for Proposals

In the March 16, 1990, issue of the *Texas Register* (15 TexReg 1540), the Texas Housing Agency published a request for proposals, concerning notice of invitation for offers of consulting services: low income tax credit (LITC) underwriter. The deadline for the submission of written proposals was March 30, 1990, 5 p.m. Notice is hereby given that the Texas Housing Agency is extending the deadline to April 10, 1990, 5 p.m.

Further information about this notice of extension or the request for proposals for selection of low income tax credit underwriter guidelines may be obtained from Tish Gonzalez, Acting Executive Administrator or Richard Garza, Director of Programs, by calling (512) 474-2974.

Issued in Austin, Texas, March 30, 1990.

TRD-9003342 Patricia F. Broline  
General Counsel  
Texas Housing Agency

Filed: March 30, 1990

For further information, please call: (512) 474-2974

## Texas Commission on Human Rights Correction of Error

The Texas Commission on Human Rights submitted proposed sections which were published with errors in the February 16, 1990, issue of the *Texas Register* (15 TexReg 835).

In §335.1, in the definition for "A charge" the phrase "occurred or it about to occur" should read "occurred or is about to occur."

The definition for "Public uses areas" should read "Public use areas."

In §337.2(a), paragraph (3) should read as follows.

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

In §339.7(c)(1), the word "solicitations" should not be hyphenated.

In §340.27(b), there should be a comma after the word "interest".

In §341.09(b)(2), the paragraph should read as follows.

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

In paragraph (3) the phrase "upon each other part" should read "upon each other party".

In §341.14, the word "ten" should read "10".

In §341.23(e), a comma should follow "Texas Fair Housing Act,".

In §341.24, the last sentence, the word "bearing" should

read "hearing".

In §341.30(a), paragraph (6) should read as follows.

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

In §341.32, the reference to "Austin" should read "Austin, Texas", and the words "or god cause" should read "or good cause".

In §341.38, the word "bearing" should read "hearing".

In §341.44, the phrase "as ii read or received" should read "as if read or received".

In §341.42 "cognizable" is misspelled.

In §341.52, "Ii" should read "If".

In §341.54(1), "must he prepared" should read "must be prepared".

In §341.64(c), a period is omitted.

In §342.3, "commission" is misspelled.

In §345.1, "access court costs" should read "assess court costs".

In §346.1(c), the subsection should read as follows.

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

## Texas Department of Human Services

### Public Notice of Pilot Project—Request for Proposals

The Texas Department of Human Services (TDHS) is requesting proposals for a case manager pilot project to be funded under TDHS's Services to Runaways and At-risk Youth Program. Two pilot projects will be funded to serve runaway and at-risk youth in mid-size and rural communities.

**Description.** The goals of the case manager pilot project are to: expand services for runaway and at-risk youth into unserved geographic areas; address gaps in current service delivery systems for runaways and at-risk youth; and assess the applicability of an alternative service model to meet the needs of runaway and at-risk youth. Contractors will be required to provide or make available non-residential and residential services for the target population.

**Limitations.** Applicants are limited to private non-profit organizations. Funds provided through the project may not be used to replace existing federal, state, or local funding. Applications will only be accepted for services to be provided in counties of less than 250,000 (based on Texas Department of Health population projections for 1990) that did not have a TDHS services to runaways and at-risk youth contractor during the period September 1, 1989-August 31, 1990. The contract awarded under this request for proposal (RFP) will be for a 12-month period.

**Term and total value.** The contract period will be September 1, 1990-August 31, 1991, and funding will not exceed \$175,000 in mid-size counties (100,000 to 250,000) or \$100,000 for rural counties (under 100,000). No match is required.

**Contact person.** To obtain a complete copy of the request for proposal, please contact Thomas Chapmond, Program Specialist, Texas Department of Human Service,

P.O. Box 149030 (MC 579-W), Austin, Texas 78714-9030, (512) 450-3309. Request for proposal packets will be available after April 6, 1990.

**Evaluation and selection.** A panel of TDHS staff, private citizens, and staff from other state agencies will rank and score each proposal. Procedures to be used to evaluate offers will include evaluation of the following criteria: needs assessment, program services, staffing, community collaboration, and cost.

**Closing date.** The last day to receive offers is June 12, 1990.

Issued in Austin, Texas on April 2, 1990.

TRD-9003362 Cathy Rossberg  
Agency liaison, Policy Communication  
Services  
Texas Department of Human Services

Filed: April 2, 1990

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

## Request for Consultant Proposal

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) is requesting proposals for consultant services.

**Description of services.** After the implementation of the financial management information system (FMIS), areas have been identified that require further development, modification, and enhancement.

**Limitation.** The contract period will be from May 1, 1990 through April 30, 1991, for completion of additional development, modification, and enhancement. The funding will not exceed \$150,000. Proposals which are not fully integrated with the existing FMIS will not be considered.

**Contact person.** To obtain a complete copy of the request for proposal packet, please contact Bob Becker, FMIS Transition Coordinator; P. O. Box 149030, MC 470-C; Austin, Texas 78714-9030.

**Evaluation and selection.** Evaluation criteria will include national experience in providing consultation in financial operations and system requirements for a large multi-level state agency; demonstrated effectiveness of the bidder; experience of key personnel; quality of proposed approach; and cost. This is an expansion of a prior project performed by Arthur Anderson and Company, 816 Congress Avenue, Austin, Texas 78701. Unless a substantially better offer is received, an award will be made to this firm.

**Closing date.** The last day offers will be received is May 1, 1990.

Issued in Austin, Texas on April 2, 1990.

TRD-9003363 Cathy Rossberg  
Agency liaison, Policy Communication  
Services  
Texas Department of Human Services

Filed: April 2, 1990

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

## Middle Rio Grande Development Council

### Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Middle Rio Grande Development Council (MRGDC) is in the process of selecting a consultant to upgrade its existing

computer system to provide certain new capabilities. These include modifications to its existing software and hardware to accommodate special financial, administrative, and programmatic needs of its operations. These changes are to be integrated into and work seamlessly with the regional council management system that is currently in operation at the agency. These modifications include additions and modifications to the existing participant tracking, accounts payable, subcontract management, project costing, participant and staff payroll, fixed assets, and general ledger systems. Also included in these changes are upgrades to the Novell network including a larger file server, a communication server, and other modifications to the existing Novell network. MRGDC wishes that all of this work be done as a unit by one vendor. The existing software and hardware was installed and is supported by T H Enterprises, Inc. For this reason MRGDC intends to have this work done by T H Enterprises unless a more favorable option is available.

Those firms interested in receiving a request for proposal should contact Ramon S. Johnston, Deputy Director, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. The deadline for requesting the preceding proposal is April 10, 1990, 5 p.m. In order to be considered for selection, proposals must be received by MRGDC on/or before May 9, 1990, 5 p.m.

The contract will be awarded based on the applicant's abilities, experience, and qualifications as defined in detail in the request for proposal. Selection will be made by the Middle Rio Grande Development Council. Middle Rio Grande Development Council reserves the right to accept or reject any and all proposals and waive all formalities.

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

TRD-9003269 Ramon S. Johnston  
Deputy Director  
Middle Rio Grande Development Council

Filed: March 28, 1990

For further information, please call: (512) 876-3533

## Texas Parks and Wildlife Department Texas Review and Comment System

The Parks and Wildlife Department (department) has requested a state and regional clearinghouse TRACS review of proposed modifications to local government project review and scoring system procedures addendum to the Texas outdoor recreation plan (TORP). These are used in part to evaluate and rank local government park grant applications. After TRACS review has been completed, the department will seek finalization of the procedures in preparation for their distribution and use.

For further information, please contact Johnny L. Buck, Comprehensive Planning Branch, Parks Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4911.

Issued in Austin, Texas, on March 30, 1990.

TRD-9003328 Charles D. Travis  
Executive Director  
Texas Parks and Wildlife Department

Filed: March 30, 1990

For further information, please call: (512) 389-4911

## Texas Department of Public Safety Correction of Error

The Texas Department of Public Safety submitted adopted §§23.91 and §23.92 which contained an error as published in the March 27, 1990, *Texas Register* (15 TexReg 1698).

In §23.91 and §23.92, the effective date and proposal publication date were reversed. The effective date should read April 9, 1990, and the proposal publication date should read January 12, 1990.

## Texas Racing Commission Correction of Error

The Texas Racing Commission submitted emergency and proposed sections which were published with typographical errors in the March 6, 1990, and March 20, 1990, issues of the *Texas Register* (15 TexReg 1218, 1559).

In the March 6 issue, in §305.91 (c)(3), the paragraph should read as follows. "(3) the reasons why the amendment is necessary to bring the application into compliance with the Act or the rules of the commission."

In the March 20 issue in §305.71 (c)(3), the paragraph should read as follows. "(3) \$1,200, on each race day that the total handle is at least \$500,000, but less than \$800,000;"

## The Texas A&M University System Consultant Proposal Request—Strategic Information Reporting System

Under the provision of Texas Civil Statutes, Article 6252-11c, The Texas A&M University System is currently seeking proposals from private consultants to provide technical advice and counsel to the Office of Budgets and Information Systems within The Texas A&M University System. Any qualified private consulting firm is invited to submit a proposal for this analysis. The closing date for receiving offers for such services is 2 p.m. on May 9, 1990. Consultant proposals will be evaluated and a contract awarded based on procedures set forth in the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4.

The consultant shall provide The Texas A&M University System (TAMUS) administration with managerial and technological expertise in the definition of a Strategic Information Reporting System for the TAMUS Board of Regents and senior administrators within TAMUS. This study will identify performance measures and key indicators to be reported to decision makers within TAMUS. The base information for this Reporting System will be derived from the financial accounting management information system currently being implemented by The Texas A&M University System.

The consultant will be asked to present in the proposal specific reference to: knowledge of Board and executive strategic information reporting systems, especially with regards to financial and accounting information; experience with higher education systems and operations nation-wide; knowledge of the State of Texas higher education reporting requirements; and experience with higher education in the State of Texas, including specifically system definition and design support.

This contract will be for a five-month period provided the contractor fulfills all contract requirements and provides the quality of work desired. Any extension of time or additional work rests at the option of TAMUS.

The proposal must address how the tasks will be performed. A detailed budget must be provided specifying consultant costs, out-of-pocket expenses to be charged, and a not-to-exceed budget. The proposal must provide a resume of relevant engagements and proposed strengths that demonstrate an ability to provide the technical advice and counsel. Each reply should include a roster of all state agencies (including higher education) within the State of Texas for which the consultant has performed similar services within the last five years.

TAMUS solicits proposal from experienced consultants who will be evaluated on the basis of qualifications, demonstrated knowledge, and competence. TAMUS reserves the right to reject any or all proposals, to waive any or all formalities, and to make an award which, in the sole judgment of The Texas A&M University System, best meets its needs.

Three copies of the proposal must be submitted to Jim Brunjes, Director of Budgets and Information Systems, The Texas A&M University System, College Station, Texas 77843-1170, (409) 845-7402 by 2 p.m. on May 9, 1990.

Issued in College Station, Texas, on April 2, 1990.

TRD-9003361 Bill C. Presnal  
Executive Secretary to the Board of Regents  
The Texas A&M University System

Filed: April 2, 1990

For further information, please call: (409) 845-9600

## Texas Water Commission Enforcement Orders

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 Ken and Gary Hulstein doing business as Corral City Mobile Home Park, Permit 11064-01 on March 21, 1990, assessing \$8,800 in administrative penalties (\$5,600 deferred and possibly waived pending compliance). Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 27, 1990.

TRD-9003284 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: March 28, 1990

For further information, please call: (512) 463-7906

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 Acid Delinters, Incorporated, Solid Waste Registration Number 39164 on March 21, 1990, assessing \$43,920 in administrative penalties, with the full amount to be deferred and waived pending timely compliance.

Information concerning any aspect of this order may be obtained by contacting Stephen C. Dickman, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 27, 1990.

TRD-9003285 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: March 28, 1990

For further information, please call: (512) 463-7906

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 Williamson County MUD Number 1, Permit Number 11459-01 on March 21, 1990, assessing \$239,200 in administrative penalties (\$164,200 deferred or foregone pending compliance). Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Mark Jordan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

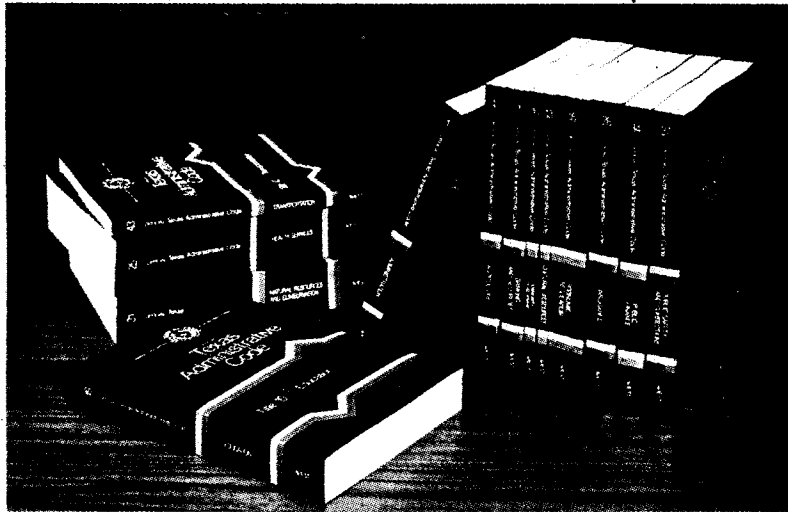
Issued in Austin, Texas, on March 27, 1990.

TRD-9003283 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: March 28, 1990

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