Texas Register

Volume 15, Number 63, August 21, 1990 Pages 4735-4855

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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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.

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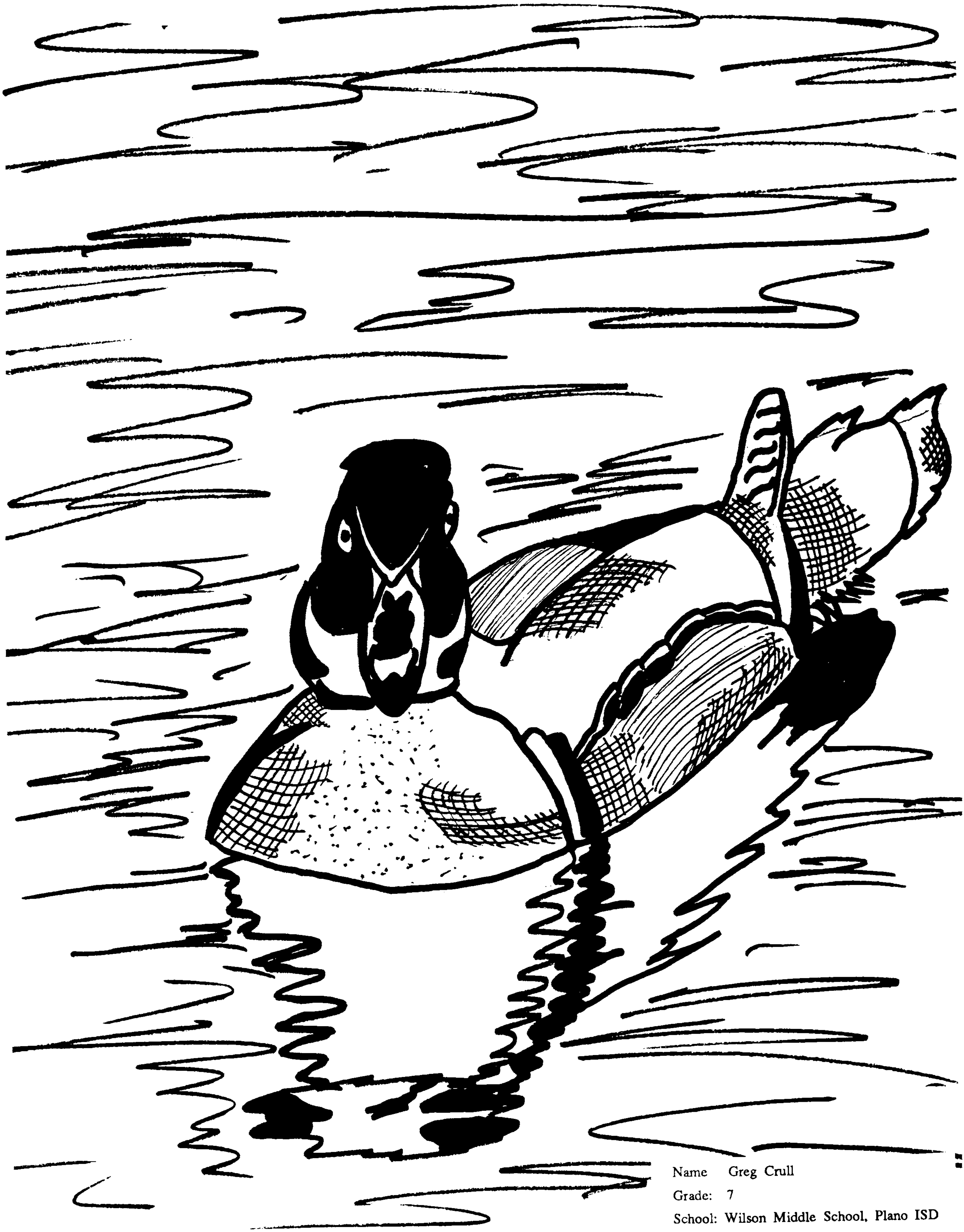

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TAC Titles Affected–August

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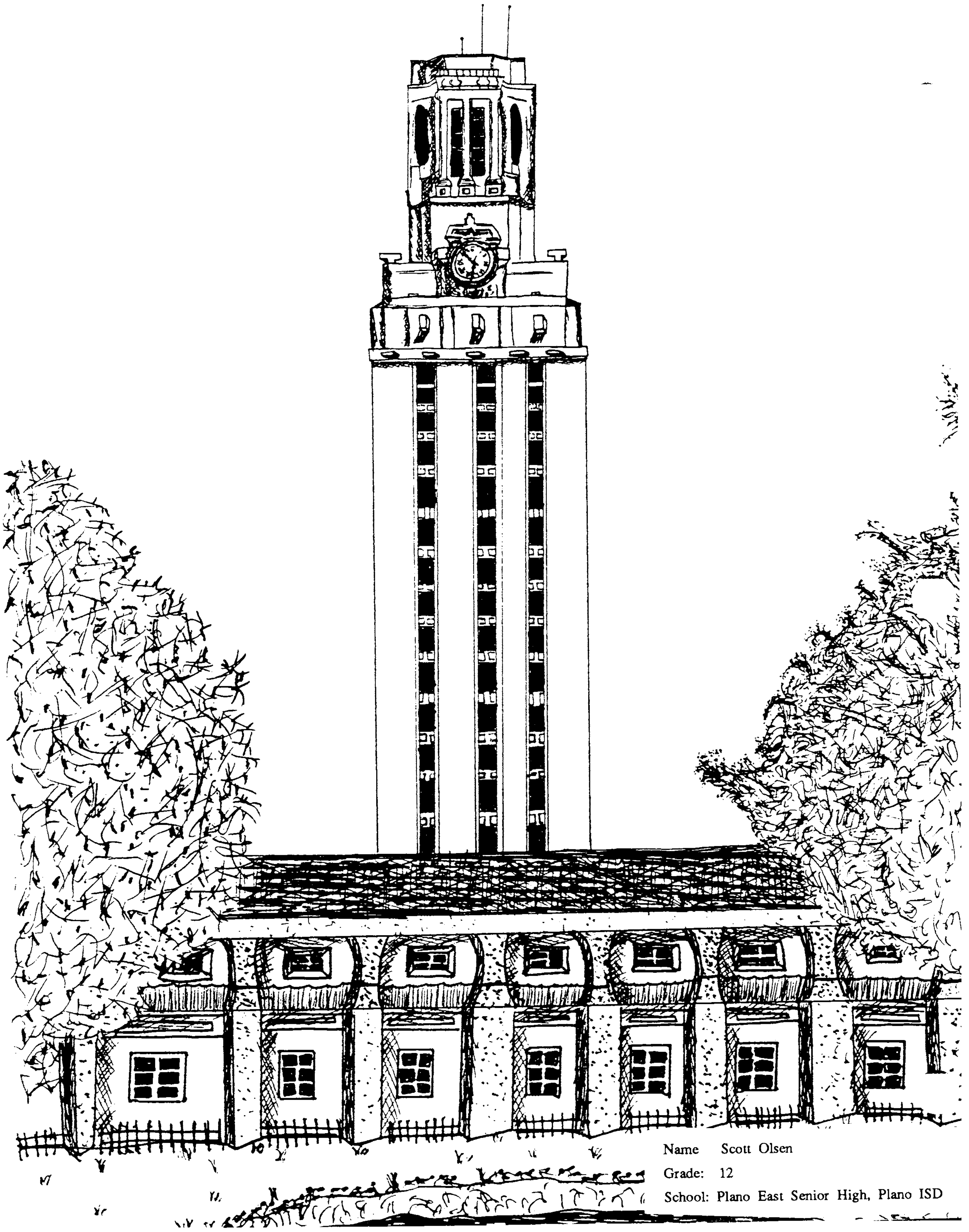

Name Scott Olsen
Grade: 12
School: Plano East Senior High, Plano ISD

The Governor

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

Appointments Made July 17, 1990

To be a member of the **Teacher' Professional Practices Commission** for a term to expire August 31, 1992: Irene Rieck, 1110 East Broadway, Brownfield, Texas 79316. Mrs. Rieck will be replacing Diane Ewing of Irving whose term expired.

To be a member of the **Teacher' Professional Practices Commission** for a term to expire August 31, 1991: John E. Wilson, 3507-A Van Tassel, Amarillo, Texas 79121. Dr. Wilson will be replacing Arnold D. Oates of San Antonio whose term expired.

Appointments Made August 7, 1990

To be a member of the **Texas Juvenile Probation Commission** for a term to expire August 31, 1993: Elvin Lee Caraway, 2120 Tremont, Fort Worth, Texas 76107. Mr. Caraway will be replacing Mr. Robert J. Lerma of Brownsville who was not confirmed by the senate.

To be a member of the **Gulf Coast Waste Disposal Authority** for a term to expire August 31, 1992: Philip Allen Werner, 4925 Fort Crockett #421, Galveston, Texas 77551. Mr. Werner is being reappointed.

To be a member of the **Rio Grande Valley Pollution Control Authority** for a term to expire April 30, 1992: James Daniel Carpenter, 125 West Cherokee Avenue, Pharr, Texas 78577. Mr. Carpenter is being reappointed.

To be a member of the **Rio Grande Valley Pollution Control Authority** for a term to expire April 30, 1992: Manuel Nunez Carmona, 920 East Flynn Street, Harlingen, Texas 78550. Mr. Carmona is being reappointed.

Appointments Made August 10, 1990

To be a member of the **Texas Veterans Commission** for a term to expire December 31, 1993: William R. Crawford, 1805 Hawthorne, Plano, Texas 75074. Mr. Crawford will be filling the unexpired term of James Endicott, Jr. of Killeen who resigned.

To be a member of the **Texas Veterans Commission** for a term to expire December 31, 1995: Manual A. Cano, Route 1, Box K, Mercedes, Texas 78570. Mr. Cano will be replacing Arturo Benavides of Bruno whose term expired.

To be a member of the **On-site Wastewater Treatment Research Council** for a term to expire September 1, 1992: Willis Leo Wood, 1603 Hutto Road, Georgetown, Texas 78626. Mr. Wood is being reappointed to this position.

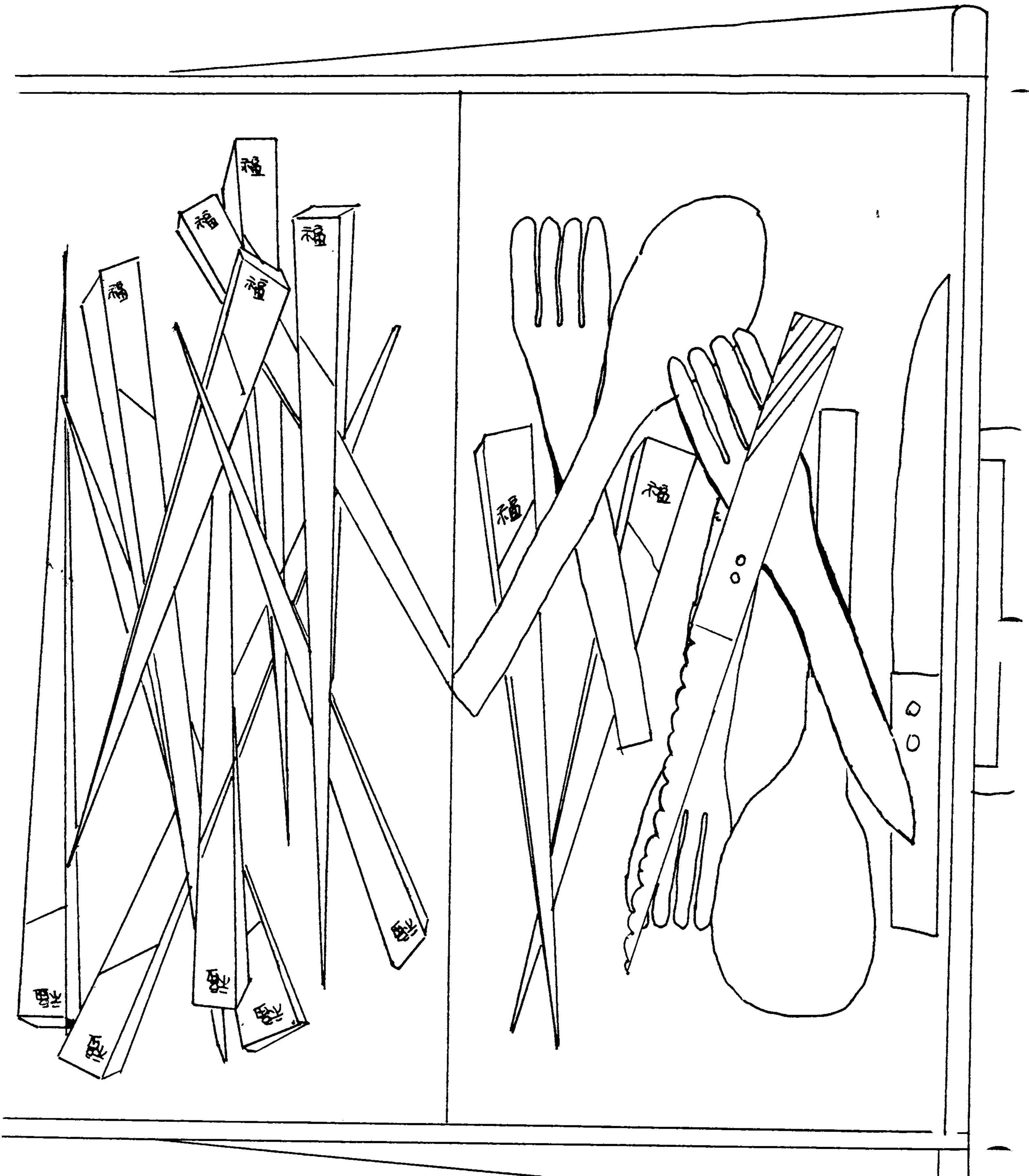
To be a member of the **On-site Wastewater Treatment Research Council** for a term to expire September 1, 1992: William W. Tenison, Route 1, Box 845, Big Sandy, Texas 75755. Mr. Tenison is being reappointed to this position.

To be a member of the **On-site Wastewater Treatment Research Council** for a term to expire September 1, 1992: Mark Vernon Lowry, 15125 County Road 272, East Bernard, Texas 77435-0031. Mr. Lowry is being reapointed to this position.

To be a member of the **On-site Wastewater Treatment Research Council** for a term to expire September 1, 1992: Samuel B. Vaughn, Jr., ST-28 Lake Cherokee, Henderson, Texas 75652. Mr. Vaughn is being reappointed to the position.

Issued in Austin, Texas, on August 14, 1990.

TRD-9008147 William P. Clements, Jr.
Governor of Texas



Name: Annie Tao

Grade: 11

School: Richardson High School, Richardson I.S.D.

Proposed Sections

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

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

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 165. Allocation of the State's Limit of Certain Private Activity Bonds

• 10 TAC §165.2

The Texas Department of Commerce proposes an amendment to §165.2, concerning the allocation and reservation system of the state's ceiling for private activity bonds. The amendments to this section clarify the priority system which has been established for issuers of Mortgage Revenue Bonds.

Dan A. McNeil, manager of business finance, 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. McNeil also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the more efficient operation of the program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Bruce W. Anderson, General Counsel, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, within 30 days after the date of this publication.

The amendment is proposed under Texas Civil Statutes, Article 5190.9a, which provide Commerce with the authority to adopt rules pertaining to the adoption, implementation, and administration of the allocation of the state's ceiling on private activity bonds.

§165.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after January 2, the department will accept applications for reservation from issuers authorized to issue private activity bonds. The department shall not grant a reservation to any issuer prior to January 10. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in the Act, §2(b)[(1)], the department shall conduct a lottery establishing the order of priority of each such application for reservation. Once the order of priority for all applications for reservation filed on or before January 10 is established, reservations for each issuer within the categories described in the Act, §2(b) shall be granted in the order of priority established by such lottery. **If more than ten applications are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates.** [; provided, however, that the] The order of priority for reservations in the category described in the Act, §2(b)(1), shall further be determined as provided in the Act, §3(c).

(1) The first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year.

(2) The second category of priority shall include those applications for a reservation filed by housing finance corporations to which state ceiling could not be made available by August 31 for that calendar year because of the application of the Act, §4(b).

(3) The third category of priority shall include those applications for a reservation not included in the first and second categories of priority.

(4) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the department by lot. All applications for a reservation filed after January 10 by any issuer for the issuance of bonds shall be accepted by the department in their order of receipt.

(c) If any issuer which was subject to the lottery conducted as described [in subparagraph (1)] above does not, prior to September 1 of that year, receive the amount requested by such issuer in its application for reservation filed on or before January 10, and if state ceiling becomes available on or after September 1 such issuer, subject to the provisions of the Act, §3(a), shall receive a reservation for any state ceiling becoming available on or after September 1 in the order of priority established by such lottery, without regard to the provisions of the Act, §3(c), relating to the order of priority for the category described in the Act, §2(b)(1).

(d) An application for a reservation may not be submitted after December 14.

[(d) The second category of priority referred to in the Act, §3(c) shall be applicable to housing finance corporations which:

[(1) in the previous calendar year are precluded from filing an application for reservation prior to August 31 of such calendar year, because of the application of the Act, §4(b) and §4(a)(6); and

[(2) did not receive a reservation during such previous calendar year, regardless of whether such housing finance corporation filed an application for reservation in such previous calendar year.]

[(e) All applications for a reservation filed after January 10 by an issuer shall be accepted for filing by the department in their order of receipt.]

(e)[(f)] The amount of the state's ceiling that has not been reserved prior to December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation, may be designated, by the department, as carryforward for the carryforward purposes outlined in the code through submission of the application for carryforward and any other required documentation.

(f)[(g)] **An issuer may submit an application for carryforward to the department at any time during the year through the last business day in December.**

(g)[(h)] Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

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

Issued in Austin, Texas, on August 14, 1990.

TRD-9008195 William D. Taylor
Executive Director
Texas Department of Commerce

Earliest possible date of adoption: September 21, 1990

For further information, please call: (512) 472-5059

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 519. Practice and Procedure

• 22 TAC §519.17

(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 State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Public Accountancy proposes the repeal of §519. 17, concerning motions, relating to disciplinary actions. The repeal is proposed to allow for revisions to the requirements to file a motion.

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 set forth the process and information required to file a motion. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

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 practice and procedure.

§519.17. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters before the Board.

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

Issued in Austin, Texas, on August 10, 1990.

TRD-9008174 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption: September 21, 1990

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

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The Texas State Board of Public Accountancy proposes new §519.17, concerning motions, relating to disciplinary actions. The new section sets forth the process and information required to file a motion.

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 clarification of the timing, procedures, and information required to file a motion. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to 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 practice and procedure.

§519.17. Motions Relating to Disciplinary Actions.

(a) All motions shall:

(1) be in writing;

(2) be filed with the executive director;

(3) be served on all interested parties, not less than five days prior to the hearing in accordance with §519.30 of this title (relating to Service by Mail);

(4) be accompanied by a certificate of service signed by the movant in accordance with §519.31 of this title (relating to Certificate of Service);

(5) set forth, under oath, the specific factual grounds upon which the motion is based; and

(6) reference all prior motions filed in the same proceeding.

(b) At any time prior to a hearing, disposition of all motions shall rest in the sound discretion of the executive director. The hearing on the executive director's denial of a motion shall be held at the time and place of the originally scheduled hearing unless otherwise agreed by the parties.

(c) Once the hearing has begun, disposition of all motions shall rest in the sound discretion of the presiding officer or board member.

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 August 10, 1990.

TRD-9008172 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption: September 21, 1990

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 13. Health Planning and Resource Development

Designation of Sites Serving Medically Underserved Populations

• 25 TAC §§13.31-13.34

The Texas Department of Health proposes new §§13.31-13.34, concerning the designation of sites serving medically underserved populations. The new sections cover purpose and scope, definitions, criteria for designating sites serving medically underserved populations, and the application process.

The new sections will implement the provisions of the Omnibus Health Care Rescue Act, House Bill 18, §19, Regular Session, 1989, which requires the department to establish criteria for the designation of sites providing services to medically underserved populations. House Bill 18 also allows physicians assistants and advanced nurse practitioners to qualify for expanded prescriptive authority, in accordance with the program rules developed by the Texas Board of Nurse Examiners and Texas Board of Medical Examiners, when practicing under appropriate physician supervision in medically underserved areas. The new sections define terms used in the designation process, establish criteria for designation as set forth in the law; and identify the application procedures for such designation.

Stephen Seale, Chief Accountant III, has determined that for the first five years that the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Seale has also determined that for each year of the first five years that the sections as proposed are in effect the public benefits will

be: improved access to primary care services in medically underserved areas; expanded implementation of the federal "rural health clinic" program as described in the Rural Health Clinic Services Act, Public Law 95-210; and an increase in the availability of primary care services in rural areas. There will be no cost to small or large businesses as a result implementing the sections; no economic cost to persons who are required to comply with the sections; and there will be no impact on local employment.

Comments on the proposal may be submitted to Carol S. Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7261. Comments will be accepted for 30 days following publication of the proposed sections in the Texas Register.

The new sections are proposed under Texas Civil Statutes, Article 4495b, §3. 06, as amended by House Bill 18, §19, 71st Legislature, 1989, which provides the Texas Department of Health with the authority to designate sites providing services to medically underserved populations; and Health and Safety Code, §12. 001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§13.31. Purpose and Scope.

(a) Purpose. The purpose of these sections is to implement the provisions in Texas Civil Statutes, Article 4495b, §3.06, by the establishment of program rules for the determination of sites serving medically underserved populations. Designated sites will be eligible for qualified advanced nurse practitioners and physicians assistants to carry out prescription drug orders in accordance with the program rules developed by the Texas Board of Nurse Examiners and Texas Board of Medical Examiners.

(b) Scope. The scope of these sections is to describe the criteria and procedures which the Department of Health (department) will use in determining sites serving medically underserved populations. The criteria will apply to sites not already qualified under the other definitions of eligible sites identified in Texas Civil Statutes, Article 4495b, §3.06.

(c) Administration. The department shall designate sites determined to be serving a medically underserved population.

§13.32. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Area–A county, census tract, group of census tracts, or other identifiable geographic area in which the majority of the site's patients live.

Board–The Texas Board of Health.

Department–The Texas Department of Health.

Eligible client populations–Residents meeting the eligibility criteria for participation in any of the following programs:

(A) federally funded health care programs, including, but not limited to: AIDS (health care delivery programs); community and migrant health centers (public health service sections 330 and 329 grantees), family planning, homeless (including public health service section 340 grantees), medicaid, and medicare;

(B) state funded health care programs, including, but not limited to: AIDS (health care delivery programs), chronically ill and disabled children (CIDC), Maternal and Child Health Improvement Act (MIHIA), Medicaid, state primary care, and student health centers (state funded colleges and universities);

(C) locally funded health care programs, including, but not limited to: locally supported non-profit health care programs, programs funded by city or county governmental entities, and programs funded by hospital districts. Omnibus Health Care Rescue Act-House Bill 18, 71st Legislature, Regular Session, 1989, which amends Texas Civil Statutes, Article 4495b, §3.06. Primary care physicians-Physicians practicing in family/general practice, obstetrics/gynecology, internal medicine or pediatrics.

§13.33. Criteria for Designating Sites Serving Medically Underserved Populations.

(a) The Texas Department of Health (department) will designate a site located in an area that has an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs if it is determined that:

(1) the ratio of population-to-primary care physicians for the site's service area is above 3,000: 1; or

(2) the ratio of population-to-primary care physicians is above 3, 000:1 for the geographic area surrounding the site. This applies to sites that draw patients from a broad geographic area, such as an entire city or county, where the site's total service area may not have a ratio above 3,000:1 as required under paragraph (1) of this subsection, but the site may be located in an area with a shortage of physicians.

(b) The department will designate a site serving a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs if it is determined that:

(1) over 50% of the site's patients are from eligible client populations; or

(2) the proportion of the site's patients representing eligible client populations is at least twice the proportion of persons from eligible client populations in the site's service area.

§13.34. Application Process.

(a) Applicants must submit an application form, provided by the Texas Department of Health (department), which includes the following information:

(1) identification of the geographic area and types of population served by the site, along with a brief history of the site's operation;

(2) a description of the types of services offered at the site, clinic hours, anual utilization rates, and number of each type of health professional staffing the site (including information on full-time-equivalency);

(3) adequate demonstration that the site:

(A) is located in an area that has an insuffucient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(B) serves a disproportionate number of clients eligible to participate in a federal, state, or locally funded health care programs; and

(4) additional information, as determined necessary by the department.

(b) After making a determination that a site serves a medically underserved population, the department will notify the applicant in writing and publish notice of the designation in the Texas Register, providing opportunity for public comment.

(c) If a site is determined ineligible based on the criteria defined in §13.33 of this title (relating to Criteria for Designating Sites Serving Medically Underserved Populations), the department will notify the applicant in writing.

(d) Applications should be directed to Carol S. Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

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 August 13, 1990.

TRD-9008130 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: October 27, 1990

For further information, please call: (512) 458-7261

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Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.21

The Texas Department of Health proposes new §97.21, concerning control of communicable diseases. The new section will adopt by reference the department publication titled, "Model Policies for the Handling, Care, and Treatment of HIV/AIDS-Infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers and District Probation Departments" which will implement the provisions of Senate Bill 959, 71st Legislature, 1989, §§1, 7, 11, 13, and 22, Regular Session, which requires the department to develop such policies.

The new section establishes model policies for three specific areas of responsibility: the first part concerns the provision of education for employees, contractors, subcontractors, volunteers and detainees; infection control supplies, equipment and training; access to appropriate services; and confidentiality of medical records relating to HIV infection; the second part concerns the process by which employees, contractors, subcontractors, and volunteers should document and report an incident which might qualify as exposure to a reportable disease, including HIV infection, during the performance of job duties; the third part concerns HIV testing, segregation, and isolation of persons in the custody of correctional facilities or under the supervision of specified entities, their contractors and subcontractors. Each entity specified in the model policies must develop policies that are substantially similar to the model policies and are appropriate to the needs of that entity.

Stephen Seale, Chief Accountant III, Budget Office, has determined that for the first five years that the section will be in effect there will be fiscal implications as a result of enforcing or administering the section as proposed.

There will be a cost to the department which will include the salary, travel, and other operating expenses associated with the development and distribution of these policies, including consultation provided to entities which are required to implement policies and education programs. This cost is approximately $36,000 per year each year for the first five years, but has been absorbed as a cost factor in existing §97.20 concerning model HIV/AIDS workplace guidelines, effective March 1, 1990.

There will be costs to those entities which are charged with the supervision, custody, or detention of designated individuals and entities which provide emergency medical services. These entities include state agencies, contractors, subcontractors, volunteers, and private providers. These entities must now provide education; infection control supplies, equipment and training; access to appropriate services; confidentiality of medical records relating to HIV infection; and criteria for HIV testing and counseling to determine possible occupational exposure or HIV infection of persons under supervision/custody.

Costs to state agencies to implement these services are approximately $5.00 per employee and $2.00 per supervised individual (the majority of these costs have been previously absorbed when implementing existing §97.20). The estimated cost of these educational materials, infection control supplies, equipment and training, and HIV testing is between $50 and $195,000 per entity the first year (including expenses incurred as the result of §97.20). Costs for materials, supplies, equipment/training and testing in each of the four subsequent years should decrease to approximately $2.00 per employee and $0.75 per supervised individual, or between $50 and $70,000 per entity.

(B)There will be a cost to local governmental agencies that provide local or contracted correctional facilities, probation or client supervision departments, law enforcement agencies, fire departments, or emergency medical services. Depending on the size and client load of each local service and its utilization of existing state resources, it is estimated that the cost to each local government will be $5.00 per employee and $2.00 per supervised individual, or between $50 and $125,000 the first year. Most costs include funds expended to comply with previously existing health and safety requirements. Expenditures for each of the four subsequent years should decrease to approximately $2.00 per employee and $0.75 per supervised individual, or between $50 and $50,000 per entity.

Stephen Seale, Chief Accountant III, Budget Office, has determined that for each year of the first five years the section as proposed is in effect, the benefits anticipated as a result of enforcing the section will be: increased awareness about HIV infection; increased knowledge about HIV transmission and prevention; increased utilization of infection control precautions to minimize the risk of occupational exposure; and improved handling, care and treatment of HIV-infected individuals. For every case of HIV infection which is prevented, approximately $80,000-$140,000 in medical costs will be saved. HIV education will hopefully increase knowledge and productivity in the workplace; decrease fear, the potential for discrimination, medical and workers' compensation costs, and legal liability costs. There will be a cost to private businesses which provide private or contracted correctional facilities, client supervision facilities or services, fire protection, or emergency medical services. Costs would be similar to those previously described for local governmental agencies. There is no anticipated impact on local employment and no anticipated economic cost to individuals to comply with the section as proposed.

Oral and written comments on the proposal may be submitted to Rosemary Hanicak, Public Health Promotion Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (Phone (512) 458-7405). Comments will be accepted for 30 days following publication of this proposal in the Texas Register.

The new section is being proposed under Texas Civil Statutes, Article 4419b-3 (Senate Bill, 959 §11, 71st Legislature, 1989) which provides the Department with the authority to develop model workplace policies regarding the handling, care, and treatment of persons with AIDS or HIV who are in the custody of the Texas Department of Criminal Justice, state and local law enforcement agencies, municipal and county correctional facilities, and district probation departments; Article 4419b-4 (Senate Bill 959, §1, which provies the Board of Health with authority to adopt rules to implement the Human Immunodeficiency Virus Services Act; Article 6203c-12 (Senate Bill 659, §7) which requires the Texs Department of Corrections (TDC) in consultation with the Texas Department of Health, to establish education programs for TDC inmates and employees; the Code of Criminal Procedure, Texas Codes Annotated, Article 46A.01 (Senate Bill 959, §13), which authorizes and delineates testing, segregation, and disclosure by specified entities; Health and Safety Code, §81.048 (Senate Bill 959, §22), which delineates mandatory testing criteria as the result of exposure while performing job duties; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§97.21. Model Policies for the Handling, Care and Treatment of HIV/AIDS-Infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers and District Probation Departments.

(a) The Department of Health adopts by reference the department publication titled, "Model Policies for the Handling, Care and Treatment of HIV/AIDS-Infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers and District Probation Departments." The model policies consist of three sections, as follows.

(1) The first part consists of policies concerning the provision of education for employees, inmates, and probationers; provision of information and training relating to infection control procedures; provision of infection control supplies, equipment, and training; provision of access to appropriate services; and provision of confidentiality of medical records relating to HIV infection.

(2) The second part consists of policies concerning potential exposure to HIV infection while performing job duties.

(3) The third part consists of policies concerning HIV testing, segregation, and isolation of detainees in correctional facilities or specified supervisory

entities. All specified entities must develop and implement HIV/AIDS workplace policies similar to the model policies.

(b) Copies of the policies are available for review in the Public Health Promotion Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.

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

Issued in Austin, Texas, on August 13, 1990.

TRD-9008131 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: October 27, 1990

For further information, please call: (512) 458-7405

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 293. Water Districts

The Texas Water Commission (commission) proposes the repeal of §293.87 and new §§293.141-293.152, concerning adoption of utility availability fees or charges and the renumbering of §293.88 to §293.87 and the adoption by districts of standby fees.

New §§293.141-293.152 implement the provisions of Chapter 1218, Texas Session Laws, 1989, which amends the Water Code, §50.056 and §50.301(b), and adds the Water Code, new §50.304, and which provides that water control and improvement districts and municipal utility districts, whether created by either general or special law, providing retail water or sewer service as their principal functions, must obtain Texas Water Commission approval prior to the adoption of a standby (service availability) fee. Although the Water Code sections are relatively detailed, new §§293.141-293.147 further amplify and clarify the procedural steps and requirements which must accompany an application for standby fee approval. Standards by which the commission will evaluate the proposed fees are provided, as are guidelines for calculating the proposed fees. The public hearing and notice requirements, as required by the Water Code, §50.056, are specified. The required actions of the district following standby fee approval are given. New §293.148 provides for automatic termination of standby fees. New §293.149 provides procedures by which developers or landowners may obtain Texas Water Commission review of their standby fees which were either in effect prior to the effective date (August 28, 1989) of said Chapter 1218, Texas Session Laws, 1989, or which were thereafter adopted by the district. New §293.150 exempts standby fees contained in deed restrictions from commission jurisdiction. New §293.151 authorizes the Texas Water Commission to waive certain requirements where a district has become financially dependent on a standby fee enacted prior to August 28, 1989. New §293.152 contains a form of notice for the public hearing before the Texas Water Commission on the application for approval of adoption of standby fees.

The repeal of §293.87 is necessitated by the enactment of Chapter 1218, Texas Session Laws, 1989, which amended the Water Code §50.056, and which repealed the Water Code, §54.2041. Because of the enactment of Chapter 1218, §293.87 is no longer relevant. In order to avoid a gap in the numbering of the commission's rules, upon the repeal of §293.87, the commission proposes to renumber §293.88 to §293.87 but, other than the renumbering, no change is proposed for §293.88.

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

Mr. Bourdeau 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 consistency with legislative intent regarding the Texas Water Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal and request for public hearing may be submitted to Alan Petrov, Senior Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

(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.)

Other Actions Requiring Commission Consideration for Approval

• 31 TAC §293.87

The repeal is proposed under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§293.87. Adoption of Utility Availability Fee or Charge.

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 August 15, 1990.

TRD-9008209 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 21, 1990

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

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Application for Approval of Standby Fees

• 31 TAC §§293.141-293.152

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provides 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, to establish and approve all general policies of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.141. Standby Fees.

(a) Standby fees means a charge, other than a tax, imposed on undeveloped property for the availability of water or wastewater facilities and services. Standby fees does not mean an impact fee, tap fee, or a connection fee.

(b) Undeveloped property means a tract, lot, or reserve in the district to which no water or wastewater connections have been made to serve the property utilizing substantially the full amount of the capacity allocated to the property as shown in the district's bond applications or by written commitment and for which:

(1) water or wastewater facilities and services are available;

(2) water supply or wastewater treatment plant capacity sufficient to serve the property is available; or

(3) major water supply lines or wastewater collection lines with capacity sufficient to serve the property are available.

(c) A district may not impose a standby fee unless the facilities and services available to the property were financed by the district.

(d) Standby fees levied under this section may be used for the purpose of paying the following costs:

(1) operation and maintenance costs associated with maintaining the facilities financed by the district; and/or

(2) debt service payments on bonds outstanding for water and wastewater facilities.

(e) Commission approval and adoption of standby fees is valid for a period of not more than three years. A district may file an application to increase or renew its standby fee at any time.

(f) It is not required that standby fees be uniform throughout the district, only that the fees fairly allocate the cost of district-financed water and wastewater

facilities and service among property owners of the district. The standby fee may be a single fee expressed as a unit cost per single family equivalent connection or the fee per single family equivalent unit may be divided into separate components for water distribution facilities, water supply facilities, wastewater collection facilities, or wastewater treatment facilities.

(g) Standby fees may be imposed for monthly, quarterly, or annual billing periods, as approved by the commission, but may not be imposed retroactively or in arrears beyond January 1 of the calendar year in which such standby fees are adopted. A district may not require payment of standby fees in advance of a current billing period as established and approved by the commission.

(h) To the extent that standby fees are imposed and collected in contravention of applicable rules or order(s) of the commission, the commission may require that such improperly collected fees be refunded, together with interest thereon.

§293.142. Application Requirements for Imposition of Standby Fees To Be Used to Supplement the Debt Service Account.

(a) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenues to supplement the debt service account:

(1) the district's combined debt service tax rate as defined under §293.59(f) of this title (relating to Economic Feasibility of Projects) and calculated as described in subsection (c)(1) of this section, excepting standby fees and developer contribution, over the period over which standby fees are to be levied exceeds those limits defined under §293.59(k)(3) of this title (relating to Economic Feasibility of Projects), for the county in which the district is situated. Any increases in assessed valuation used in calculating the combined projected debt service tax rate shall be based on historical growth rates experienced in the district; and

(2) the district's actual buildout is less than the buildout projected under the most recent bond issue.

(b) In determining whether a district which meets the requirements of subsection (a) of this section is to be allowed to impose standby fees and the amount of the standby fees authorized to be imposed, the following factors may be considered:

(1) the tax rate projected in the district's most recent bond application;

(2) actual buildout compared to projected buildout;

(3) actual tax bill for various types of land uses compared to projected tax bills for such land uses, which have resulted from increases or decreases in appraised values or the granting or denial of exemptions or special valuations;

(4) historical tax rates of the district;

(5) whether the developer(s) or other landowner(s) have made or have agreed to make contributions;

(6) whether the developer(s) or other landowner(s) have materially reduced the value of their unimproved property from that projected in the district's bond application or other representations to the district;

(7) the availability of other funds for debt service purposes or the availability of advance refunding to reduce debt service;

(8) a comparison of actual buildout to projected buildout as between various developers or landowners within the district; and

(9) evidence of an active building program not otherwise demonstrated by historical growth rates;

(c) Standby fee amounts shall be determined so that:

(1) the resultant combined projected debt service tax rate is not less than those limits defined under §293.59(k)(3) of this title (relating to Economic Feasibility of Projects) when calculated based on:

(A) the current debt service fund balance, less 25% of the average annual debt service payment, being drawn down equally over the life of the outstanding bonds;

(B) interest earnings on the ending debt service fund balance being applied toward the next year's debt service payments for the first two years of a standby fee levy;

(C) the cumulative ending debt service fund balance not increasing to an amount greater than 25% of the next year's debt service payment; and

(D) not less than 90% collection of ad valorem taxes and standby fee(s) unless the district's historical collection rate(s) justify different percentage(s);

(2) the total taxes and standby fee assessment for debt service against undeveloped property does not exceed the amount of district taxes levied against a comparable lot or tract with completed improvements. In the absence of a comparable lot or tract with completed improvements, the projected value of the lot or tract with completed improvements as contained in the district's bond application(s) shall be used; and

(3) in the case of nonuniform standby fees, the relative standby fee assessments are consistent with the level of service available. A suggested form for calculating nonuniform fees may be obtained from the commission on request.

(d) Applications shall include the following items:

(1) a filing fee of $100;

(2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee, the intervals or periods of billing for such standby fee, either monthly, quarterly, or annually, and the projected debt service tax rate the district expects to achieve through the levy of the standby fee;

(3) a copy of the proposed notice of hearing;

(4) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information cannot be located in commission files, the commission staff may require that water and/or wastewater facilities serving those properties and financed by the district be identified. An accounting of district-financed water supply and wastewater treatment facilities and capacity available in those facilities may also be required;

(5) a copy of the most recent tax appraisal roll by the central appraisal district accompanied by a table prepared by the district which delineates the district's assessed valuation. The table should list each component of the district's assessed valuation attributable to raw acreage and acreage with and without vertical improvements. The component attributable to acreage with vertical improvements should be further divided into single family residential sections according to similar home value, multi-family sections, commercial sections, industrial sections, and any other type of vertical development existing within the district;

(6) a table which compares the cumulative buildout for the current fiscal year to the cumulative buildout for the same fiscal year projected at the time of the bond issue. Indicate according to section, the number of lots, homes, commercial and industrial development, etc., and raw acreage within the district;

(7) a list by source of the following tax rates:

(A) the combined debt service tax rate projected at the time of the most recent bond issue;

(B) the actual combined debt service tax rate set for the current fiscal year; and

(C) the combined debt service tax rate projected over the period during which the standby fee will be levied. Any increases in assessed valuation for this calculation should be based on the district's historical growth rate;

(8) a debt service schedule for all bonds outstanding;

(9) a cash flow table based on the reduced combined projected debt service tax rate the district expects to achieve through the standby fee levy. Distinguish between debt service revenues obtained from taxes and other sources of debt service revenues. List as a separate column the additional revenues required to produce the reduced debt service tax rate. Any increases in assessed valuation shown on this table should be based on the historical buildout rate experienced in the district. If the district's assessed valuation has been declining, show the assessed valuation as fixed at the current value. The district shall use the latest certified assessed value or estimated assessed valuation provided by the central appraisal district;

(10) a comparison of the actual versus the approved cost summary from the district's most recent bond issue with separate costs shown for water, wastewater, and drainage projects;

(11) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein;

(12) in the event that a district provides the commission with a written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (5) and (6) of this subsection except that the district shall provide a copy of the most recent tax appraisal roll by the central appraisal district.

§293.143. Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund.

(a) In calculating standby fees to be used to supplement the operation and maintenance fund, the following definitions apply.

(1) Connection, as used in this section, means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards. Connections shall be used to calculate the standby fee. Connections may be described in terms of single family equivalent connections, living unit equivalents, or any other generally accepted unit of consumption typically attributable to a single family household. The assumed population equivalent per connection should be indicated.

(2) Active connection, as used in this section, means a lot or tract with vertical improvements and a meter in service.

(3) Inactive connection, as used in this section, means a lot or tract where water and/or wastewater connections were made but service is not being provided and no bill for services is being sent.

(4) Undeveloped property (expressed in terms of connections), as used in this section, means a tract, lot, or reserve in the district to which no water or wastewater connections exist and for which:

(A) water or wastewater facilities and services are available;

(B) water supply or wastewater treatment plant capacity sufficient to serve the property is available; or

(C) major water supply lines or wastewater collection lines with capacity sufficient to serve the property are available.

(b) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenue to supplement the operation and maintenance fund:

(1) all capitalized funds or reserves for operating purposes which were derived from all prior bond issues (except an amount not to exceed a three-month reserve) have been depleted or are projected to be depleted within a reasonable time; and

(2) the operation and maintenance fund is operating at a deficit or is projected to operate at a deficit within a reasonable time period with:

(A) rates for the first 10, 000 gallons of water and sewer usage for residential users (or equal or greater amounts for other users) which exceed $30; or

(B) if the district is a provider of only water or sewer services, rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed $22.

(c) In determining the revenue to be generated from water and sewer rates if such rates do not equal or exceed the rates stated in subsection (b)(2) of this section, an amount will be added to the minimum charge such that the total bill for 10,000 gallons of usage will equal the rates stated in subsection (b)(2) of this section.

(d) Standby fee amounts shall be determined so that all of the following are true.

(1) The total revenue projected to be generated from the fee is not more than that necessary to balance the projected operation and maintenance budget assuming:

(A) a 90% collection rate of the proposed fee;

(B) maintenance tax revenue based on a 90% collection rate is applied toward the budget;

(C) all of the water and sewer revenue projected for the coming year is applied toward the budget with rates established or assumed at the rate equal to or higher than those in the preceding subsection (b)(2) of this section; and

(D) an operating reserve not to exceed three months included in the first year's budget if that reserve is not already existing.

(2) The fee amount shall not exceed an amount related to the fixed operating costs for the existing water and sewer facilities.

(3) The fee amount shall not exceed the rate charged to active connections for 10,000 gallons actual water and sewer usage.

(4) The fee amount equitably distributes the fixed costs of operating and maintaining the district's water and wastewater facilities among active connections, inactive connections, and undeveloped property owners. In the absence of an allocation of a district's budget to fixed and variable expenses in an application, the staff shall make its own determination based on a predetermined fixed and variable allocation, a copy of which shall be made available from the Districts Section. A district may submit, with supporting and substantiating documentation, an allocation specific to that district.

(e) In determining whether a district which meets the foregoing requirements be allowed to impose standby fees for operation and maintenance revenue and the amount of the standby fee levy against the various categories of development authorized to be imposed, the following factors may be considered:

(1) the amount of the operating deficit;

(2) the rates charged or proposed to be charged for water and sewage usage;

(3) the efficiency and prudence of utilization of operating funds;

(4) the amount of surplus capacity of the various components of the system;

(5) the projected buildout compared to actual buildout;

(6) the rates charged by districts with comparable land uses;

(7) maintenance tax levy, if any.

(f) Applications shall include the following:

(1) a filing fee of $100;

(2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee, and the intervals or periods of billing for such standby fees (either monthly, quarterly, or annually);

(3) a copy of the proposed notice of hearing;

(4) a proposal for the standby fee amount including substantiating calculations to show how the standby fee was derived;

(5) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information is not available within commission files, the commission staff may require that district-financed water and/or wastewater facilities serving those properties be identified. An accounting of district financed water supply and wastewater treatment facilities and capacity available in those facilities may also be required;

(6) a table indicating the ultimate number of connections according to section for which the district has water and/or wastewater facilities. Indicate active connections, inactive connections, and the number of connections attributable to undeveloped property;

(7) a copy of the district's operating budget for the past two years and the proposed budget for the coming year. Indicate those fixed costs required to operate and maintain the water and wastewater facilities, including a proportionate share of consultant and organizational fees attributable to operating and maintaining the water and wastewater facilities and those expenses not related to operating and maintaining the district's water and wastewater facilities, such as mowing of drainage ditches and operating a recreational facility;

(8) an indication of revenues available for operation and maintenance costs and the sources of those revenues. Include water consumption records and wastewater flow records (if used in determining charge for service) for the previous two years and projected for the coming year as reflected in the proposed budget;

(9) a certified copy of the district's most current water and/or sewer rate order;

(10) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein;

(11) in the event that a district provides the commission with written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (4), (6), and (7) of this subsection except that the district shall provide a copy of the district's operating budget for the past two years and the coming year.

§293.144. Application Requirements for Imposition of Standby Fees to Supplement the Debt Service Account and the Operating and Maintenance Account. Applications for standby fees to be used for both debt service costs and operating and maintenance costs should distinguish between that portion of the fee intended for debt service costs and that portion intended for operating and maintenance costs. Each application requirement listed under §293.142 of this title (relating to Application requirements for Debt Service) and §293.143 of this title (relating to Application Requirements for Operating and Maintenance) should be addressed for that portion intended for debt service and that portion intended for operating and maintenance costs. Only one $100 filing fee is required.

§293.145. Public Hearing and Notice Requirements.

(a) The commission shall schedule a hearing date on its uncontested agenda and advise the district of the scheduled time and date of the hearing. If the item is contested, the commission may remand the item to be heard before a hearings examiner.

(b) The district shall publish notice of the hearing. Notice of the hearing shall be published in a newspaper of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing.

(c) The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the district identified on the district's tax rolls. Notice of the hearing must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the district not later than the 60th day before the date of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description.

(d) The district shall submit an affidavit certifying compliance with the requirements of §293.145(b) and (c) of this title (relating to Public Hearing and Notice Requirements) to the commission at least one week prior to the commission hearing.

§293.146. District Actions Following Approval of a Standby Fee.

(a) The governing board of the district shall, within 30 days from the date of the adoption of a standby fee by the district pursuant to commission order, cause a certified copy of the commission order approving the standby fee to be recorded in the office of the county clerk of each county in which a portion of the district lies.

(b) The governing board of the district shall, within seven days from the date of the district's order adopting the standby fees, file with the commission's executive director and the county clerk of each county in which a portion of the district lies an update of the information required by the Texas Water Code, §50.302.

§293.147. Material Changes. A developer or landowner who owns undeveloped property may petition the commission to review its authorization of standby fees if there is a material change in the financial condition of the district subsequent to the commission's approval. The burden of proof will be on the landowner to show that there has been a material change and that the district no longer meets eligibility requirements set forth in §293.142 of this title (relating to Application Requirements for Imposition of Standby Fees to be used to Supplement the Debt Service Account) and §293.143 of this title (relating to Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund) or that the amount of the standby fee should be reduced. If the executive director is satisfied that the landowner has presented a prima facie case, then the district will be required to submit information and/or materials in rebuttal. Only if the landowner presents a prima facie case to the executive director will the commission review its authorization of a standby fee.

§293.148. Termination of Standby Fees. Standby fees for water or wastewa-

ter facilities, or both, shall cease and no longer be valid or enforceable with respect to a particular lot or parcel at the end of the current billing period, as approved by the commission, during which connection is made to the district's water distribution system or wastewater collection system, or both, and construction of the building slab or foundation for such improvements is completed.

§293.149. Prior Standby Fees. Standby fees adopted by a district prior to August 28, 1989, are subject to review by the commission upon written request of a property owner. Upon receipt of such request the commission shall notify the district to submit an application in compliance with this chapter within 60 days. If such application is not submitted within such time period, the standby fees shall be terminated. If an application is submitted, the standby fees may be continued until the commission either approves of disapproved the standby fees contained in the application.

§293.150. Deed Restrictions. Standby fees and associated items which inure to the benefit of a district and are authorized by recorded deed restrictions or covenants shall be enforceable in accordance with their terms and applicable general law and shall not be subject to review or approval by the commission.

§293.151. Variance Provision. A district may request a variance if it does not meet the guidelines contained in 293.142(a) of this title (relating to Application Requirements for Imposition of Standby Fees to be used to Supplement the Debt Service Account); §293.143(b) of this title (relating to Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund); a majority of a district's board of directors finds by resolution that the district would be justified in requesting a variance; the fee was in place on August 28, 1989, and had been previously approved by the commission; and the elimination of the fee would cause a significant increase in the taxes or rates currently being assessed by the district. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance.

§293.152. Form of Notice of a Public Hearing on Adoption of Standby Fees. The following form should be used to provide notice of the public hearing on the adoption standby fees. Such notice should be published and mailed in accordance with §293.145 of this title (relating to Public Hearing and Notice Requirements).

Notice is hereby given that a Public Hearing will be held at _______ o'clock, on ________, before the Texas Water Commission (the "Commission"), in its office at the Stephen F. Austin State Office Building, 1700 Congress Avenue, Austin, Travis County, Texas, upon Resolution Requesting Approval of Standby Fees for _______ District (the "District"). The resolution is filed and the hearing is held under the authority of Chapter 50, Subchapter A, Texas Water Code Texas Administrative Code Sections 293.141-293.152 and under the procedural rules of the Commission. The Resolution has been executed by the board of directors of the District.

The nature and purpose of standby fees is to distribute a fair portion of the cost burden for operating and maintenance of the District facilities and/or for financing capital costs of the District facilities to owners of property who have not constructed improvements but have water and/or wastewater facilities or capacity available. Any revenues collected from the standby fees shall be used to pay (operation and maintenances expenses) (debt service on the bonds) (or both). The amount of the standby fee requested is $____ per _____.

The Commission may approve the standby fee as requested or it may approve a lower standby fee but it will not approve a standby fee greater than that requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of the obligation on transfer of title to the property. On January 1 of each year, a lien attaches to undeveloped property to secure payment of any standby fee imposed and the interest, if any, on the fee. The lien has the same priority as a lien for taxes of the District.

Any person wishing to appear at the hearing and protest the application for approval of the standby fees is requested to file a written notice of such protest with the Chief Clerk of the Commission at least one week prior to the hearing date with copies furnished to the District, Executive Director and Public Interest Counsel of the Commission. Such notice of protest should briefly state the persons interest in the standby fee and the reasons for the protest. Any person may appear at the hearing and present evidence and testify for or against the standby fee.

Issued:

TEXAS WATER COMMISSION

BY ______________________________

Chief Clerk

(seal)

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 August 15, 1990.

TRD-9008208 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 21, 1990

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

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Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

The Texas Water Commission (TWC) proposes amendments to §§305.42, 305.51, 305.53, 305.61-305.64, 305.92, 305.93, 305.96, 305.98, 305.99, 305.102-305.106, 305.127, 305.144, 305.171, 305.172, 305.174, 305.184, and new §305.69, concerning consolidated permits. The sections are proposed to be changed in order to conform to the federal rules promulgated in the September 28, 1988, issue of the *Federal Register* (53 FedReg 37912).

Section 305.42(a) is amended to require a permit application for modifications to permits. The cite to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(f)(2) in subsection (b) is proposed to be deleted as this article was repealed. This reference is proposed to be substituted with a cite to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, §361.082(e). Section 305.51(a), which addresses revisions of applications for hazardous waste permits, is amended to apply to owners or operators of hazardous waste management facilities who qualify for interim status under the federal regulations. Additionally, §305. 51(a) is proposed to no longer apply to those owners and operators who have not yet filed a Part B application. Section 305.53(b) is amended to require a fee from applicants seeking modified permits.

The heading of Subchapter D, entitled "Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits" is proposed to be amended to include the term "Modifications." Section 305.61 is proposed to be amended so that the provisions of Subchapter D apply to modifications. Section 305.62(a), which addresses causes for amendment, is proposed to be amended to except the provisions of §305.69. Section 305.62(b), concerning applications for amendment, is proposed to except the provisions of §305.69. Section 305.62(c)(2)(C), concerning solid waste permit amendments, is proposed to be deleted in its entirety. Section 305.62(c)(2)(D), addressing minor amendments to NPDES permits, is proposed to be renumbered as §305.62(c)(2)(C). Section 305.63, concerning permit renewal, is proposed to be amended. The cite in §305.63 to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, is proposed to be deleted as this article was repealed. This reference is proposed to be substituted with a cite to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361. Section 305.63(3), addressing applications for renewal requesting modifications of requirements and conditions in existing permits, is proposed to require that an application for modification be filed if an application for renewal requests a modification of requirements and conditions of the existing permit. Section 305.64(a), concerning transfer of permits, is proposed to correct a typographical error. The word "person" is proposed to be corrected to state "personam." Section 305.64(g), concerning transfer of permits involving hazardous waste, is proposed to state that modifications to hazardous waste permits to reflect changes in ownership or operational control may be made as a Class 1 modifications. Subsection (g) is proposed to require that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittee be submitted to the executive director. This subsection is proposed to require the new owner or operator of a facility to submit a revised permit application no later than 90 days prior to the scheduled change. The cite to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, is proposed to be deleted because this article has been repealed. This reference is proposed to be substituted with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361. Additionally, the words "if," "of a facility," and "in writing" are proposed to be deleted.

Section 305.92, addressing commission action on permit applications, is proposed to be amended to allow public hearings on applications for Class 3 modifications. Section 305.93(b) is proposed to be amended to state that the commission may take action on an application for a Class 3 modification at a regular meeting after the required 60-day public notice period has expired. Section 305.93(b) is proposed to state that all other hazardous waste permits shall have a 45-day public notice period before final commission action is taken. This subsection is additionally proposed to delete the reference to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, as this article has been repealed. This reference is proposed to be substituted with a cite to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361. Section 305.96, concerning actions on applications, is proposed to apply to modifications also. Section 305.96(a) is proposed to state that the section applies to Class 3 modifications. Section 305.96(c) is proposed to be deleted. A new §305.96(c), which allows the commission to take action on Class 2 solid waste permit modifications at a regular meeting without holding a public hearing provided the notice provisions of §305.63(b) have been followed, is proposed. A new §305.96(d) is proposed to state that the commission shall conduct a hearing for a major amendment or a Class 3 solid waste permit modification except in the event that no person requests a hearing on the permit application, and the permittee consents and waives its right to a hearing, in which case the provisions of §305.96(a) would apply. Section 305.98, concerning scope of proceedings, is proposed to be amended to apply to permit modifications. Section 305.99(a) is proposed to allow the commission to take action on permit modifications. Section 305.99(b) is proposed to delete the reference to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and the Act, 4(f)(2), as this article has been repealed. Subsection (b) is proposed to cite the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, and the Act, 361.082(e), in substitute. Section 305. 102, addressing notice by publication, is proposed to except the provisions of §305.69(b)(2) and §305.69(c)(2). Section 305.103 is proposed to except the provisions of §305.69(b)(2) and §305.69(c)(2) because these provisions contain separate notice by mail requirements. Section 305.104, concerning radio broadcasts, is proposed to except the provisions of §305.69. Section 305.105, concerning requests for public hearings, is proposed to require that a request for public hearing for a Class 3 modification must be in writing and submitted within 60 days after the first publication of the notice of application. Section 305.106, which delineates commission response requirements to comment requirements, is proposed to require the commission to make public a brief description of comments filed with the commission during the 60-day comment period. Additionally, §305.106 is proposed to delete the cite to the Texas Civil Statutes. This reference is proposed to cite Texas Revised Civil Statutes Annotated.

Section 305.127(4), which delineates the requirements for individual programs, is proposed to be amended in subparagraphs (C) and (D). Subparagraph (C) is proposed to apply to modifications and the term "applicable" has been inserted for clarification. Subparagraph (D) is proposed to apply to modified permits.

Section 305.144, addressing certification and inspection, is proposed to be amended to except §305.69, relating to solid waste permit modifications, at the request of the permittee.

Section 305.171, addressing determination of operational readiness, is proposed to allow the permit to be modified pursuant to the requirements of §305.69, relating to solid waste permit modification, at the request of the permittee. Section 305.172(10) is proposed to be amended to state that the commission shall set operating requirements in a final permit in accordance with §305.62, relating to permit amendments, or §305.69, relating to solid waste permit modifications at the request of the permittee. Section 305.174, which addresses requirements for existing incinerators, is proposed to state that the applicant must submit a trial burn plan in accordance with 40 Code of Federal Regulations (CFR), §270.19(b) or 40 CFR, §270.19(c). The plan must be submitted prior to issuance of the permit. Section 305.174 is additionally proposed to require that when the applicant submits the plan with the Part B application, the executive director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

Section 305.184, concerning permit amendments, is proposed to apply to permit modifications. Section 305.184(1) is proposed to also state that permit amendments or modifications may proceed under either §305.62 or §305.69. Additionally, §305.184(1) is proposed to state that if a permit modification or amendment is necessary, the second phase of the permit becomes effective only after the modification or amendment has been made. Section 305.184(2) is proposed to also apply to modifications. Additionally, the reference to minor amendments is proposed to be deleted. Section 305.184(3) is proposed to be deleted.

Roger 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 increased environmental protection and clarification of regulatory authority. There will be effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Samita Mehta, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m. for a period of 30 days following the date of this publication. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

• 31 TAC §§305.42, 305.51, 305.53

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.42. Application Required.

(a) Any person who is required to obtain a permit, or who requests an amendment, **modification,** or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and the Solid Waste Disposal Act, **Texas Health and Safety Code Annotated, Chapter 361, §361.082(e)** [Texas Civil Statutes, Article 4477-7, §4(f)(2)], shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations, §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, **Texas Health and Safety Code Annotated Chapter 361** [Texas Civil Statutes, Article 4477-7], or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §6901 et seq., that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations, §270.73, and certify that such a facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, **who qualify for interim status pursuant to 40 Code of Federal Regulations (CFR) Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal**

Hazardous Waste), and who filed a Part A permit application pursuant to 40 CFR, §270.10 [and have not yet filed a Part B application], shall file a revised Part A application with the executive director **for any of the following changes during interim status** [if]:

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

(b) (No change.)

§305.53. Application Fees.

(a) (No change.)

(b) An applicant shall also include with each application for a new, [or] amended, **or modified** permit a fee of $50 to be applied toward the cost of providing required notice. A fee of $15 is required with each application for renewal.

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 August 15, 1990.

TRD-9008215 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 21, 1990

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

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Subchapter D. Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

• 31 TAC §§305.61-305.64, 305.69

The amendments and new section are proposed under the Texas Water Code, §5.103 and §5.105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.61. Applicability. The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, **modifications,** renewals, transfers, corrections, revocations, and suspensions of permits.

§305.62. Amendment.

(a) Causes for amendment. Except as provided in **§305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66** [§305.65] of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment to a permit. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). **If the permittee requests a modification of a solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).** If an affected person requests an amendment, such request shall be submitted to the executive director for review. If the executive director determines such a request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.

(b) (No change.)

(c) Types of amendments.

(1) (No change.)

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause a potential deterioration of quality of water in the state nor relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to, the following:

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

(C) **for NPDES permits, only the following changes:**

***(i)* correct typographical errors;**

***(ii)* require more frequent monitoring or reporting by the permittee;**

***(iii)* change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;**

***(iv)* change a new source construction schedule or delete a point source outfall as follows:**

(I) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 Code of Federal Regulations §122.19;

(II) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

***(v)* when the permit becomes final and effective on or after March 9, 1982, conform to changes to 40 Code of Federal Regulations, §122.41(e), (1), (m)(4)(i)(B), (n)(3)(i), and §122.42(a) issued September 26, 1984; or**

***(vi)* incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR, §403.11, adopted by §305.541 of this title (relating to Effluence Guidelines and Standards for NPDES Permits) as enforceable conditions of the POTW's permit.**

[(C) for solid waste permits, the following changes:]

[(i) change in the estimates of maximum inventory under 40 Code of Federal Regulations, §263.112(a)(2);

[(ii) change in the estimates of expected year of closure or schedules for final closure under 40 Code of Federal Regulations, §264.112(a) (4);

[(iii) extension of periods longer than 90 days or 180 days under 40 Code of Federal Regulations, §264.113(a) and (b);

[(iv) change in the ranges of the operating requirements set in the permit to reflect the results of a trial burn, provided that the change is minor;

[(v) a minor change to the operating requirements set in the permit for conducting a trial burn;

[(vi) an extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste;

[(vii) change in the treatment program requirements for land treatment units under 40 Code of Federal Regulations, §264.271 to improve treatment of hazardous constituents, provided that the change is minor;

[(viii) a minor change to any conditions specified in the permit for land treatment units to reflect the results of

field tests or laboratory analyses used in making a treatment demonstration in accordance with §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

[(ix) authorization for a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by the regulations contained in 40 Code of Federal Regulations, §264.272(a), which are in effect as of April 1, 1983, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration;

[(x) change in ownership or operational control of a facility where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the executive director and provided that the requirements of §305.64 of this title (relating to Transfer of Permits) have been satisfied; or

[(xi) authorization of the treatment of hazardous wastes not previously specified in the permit if:

[(I) the hazardous waste has been prohibited from one or more methods of land disposal under the regulations contained in 40 Code of Federal Regulations Part 268 Supbpart C, which are in effect as of June 4, 1987, and treatment standards have been established under the regulations contained in 40 Code of Federal Regulations Part 268 Subpart D, as adopted in Subchapter 0 of this chapter (relating to Land Disposal Restrictions);

[(II) treatment is in accordance with the standards established under the regulations contained in 40 Code of Federal Regulations, §268.41 which are in effect as of June 4, 1987, or a variance established under the regulations contained in 40 Code of Federal Regulations, §268.44 which are in effect as of June 4, 1987;

[(III) handling and treatment of the restrict waste will not present risks substantially different from those wastes listed in the permit; and

[(IV) federal or state approval of a minor permit modification request is granted. No permit change can occur except for the addition of new waste codes and administrative or technical changes necessary to handle new wastes. Changes in treatment processes or physical equipment may not be made under this clause.]

(d) Good cause for amendments. **If good cause exists,** the executive director may initiate and the commission may order an amendment to a permit [if good cause exists] **, and the executive director may request an updated application if necessary.** Good cause includes, but is not limited to, the following:

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

(3) the standards or regulations on which the permit or a permit condition was based have been changed by **statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued** [new standards or regulations or by judicial decision];

(4) (No change.)

[(5) for permits to store, process or dispose of hazardous waste:

[(A) when modification of a closure plan is required under 40 Code of Federal Regulations, §264.112(b) or §264.118(b);

[(B) after the executive director receives the modification of expected closure under 40 Code of Federal Regulations, §264.113, when the executive director determines that extension of the 90- or 180-day periods under 40 Code of Federal Regulations, §264.113, modification of the 30-year post-closure period under 40 Code of Federal Regulations, §264.117(a), continuation of security requirements, or permission to disturb the integrity of the containment system under 40 Code of Federal Regulations, §264.117(c) are warranted;

[(C) when the permittee has filed a request under 40 Code of Federal Regulations, §264.147(d) for a variance to the level of financial responsibility or when the executive director demonstrates under 40 Code of Federal Regulations, §264.147(e) that an upward adjustment of the level of financial responsibility is required;

[(D) to include a detection monitoring program meeting the requirements of §335.164 of this title (relating to Detection Monitoring Program), when the owner or operator has been conducting a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program) or a compliance period ends before the end of the post-closure care period for the unit;

[(E) to include conditions applicable to units at a facility that were not previously included in the facility's permit; or

[(F) when a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.]

(5)[(6)] for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed.

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

§305.63. Renewal. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. For permits involving hazardous waste under the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361** [Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], any hazardous waste management facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment **or modification** shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4)-(6) (No change.)

§305.64. Transfer of Permits.

(a) A permit is issued in **personam** [person] and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually, approved by the commission.

(b)-(f) (No change.)

(g) For permits involving hazardous waste under the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361** [Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], changes in the ownership or operational control of a facility may be

made as **Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).** [if the] **The** new owner or operator **must submit** [submits] a revised permit application no later than 90 days prior to the scheduled change. **A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director.** When a transfer of ownership or operational control [of a facility] occurs, the old owner or operator shall comply with the requirements of 40 Code of Federal Regulations Part 264, Subpart H, as adopted by reference in §335.152(a) (6), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 Code of Federal Regulations Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 Code Federal Regulations Part 264, Subpart H requirements within six months of the date of the change **of** [in the] ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 Code of Federal Regulations Part 264, Subpart H, the executive director shall notify the old owner or operator [in writing] that he no longer needs to comply with 40 Code of Federal Regulations Part 264, Subpart H as of the date of demonstration.

(h)-(j) (No change.)

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) Class 1 modifications of solid waste permits.

(1) Except as provided in subsection (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §§305. 41-305.53 of this title (relating to Application for Permit), §§305.171-305. 174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (b) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (b)(1) of this section.

(b) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), and §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the commission evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with subsection (b)(5) of this section, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with subsection (b)(4) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee);

(C) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in subsection (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, the commission must:

(A) approve the modification request, with or without changes, and modify the permit accordingly;

(B) deny the request;

(C) determine that the modification request must follow the procedures in subsection (c) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days; or

(E) notify the permittee that it will decide on the request within the next 30 days.

(7) If the commission notifies the permittee of a 30-day extension for a decision, the commission must, no later than 120 days after receipt of the modification request:

(A) approve the modification request, with or without changes, and modify the permit accordingly;

(B) deny the request;

(C) determine that the modification request must follow the procedures in subsection (c) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days.

(8) If the commission fails to make one of the decisions specified in subsection (b)(7) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in subsection (b)(6), (7), or (8) of this section, such action cancels the temporary or automatic authorization.

(9) In the case of an automatic authorization under subsection (b)(8) of this section, or a temporary authorization under subsection (b)(6)(D) or (7)(D) of this section, if the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §305.103(b) of this title (relating to Notice by Mail), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in subsection (b)(9) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in subsection (b)(13) of this section, if the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or §305.63 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335. 127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the commission in accordance with subsection (b)(6) or (7) of this section, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (e) of this section or a reclassification to a Class 3 modification is made in accordance with subsection (b)(6)(C) or (7)(C) of this section, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission may deny or change the terms of a Class 2 permit modification request under subsection (b)(6)-(8) of this section for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of §§335.151-335.179 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(c) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and

§§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses).

(2) The permittee must send a notice of the modification request by first-class mail to all personals listed in §305.103 of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request. The notice must meet the requirements of §305.100 of this title (relating to Notice of Application) and must also include:

(A) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with §305.69(c) (4) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee);

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in subsection (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of §§305.91-305.106 of this title (relating to Actions, Notice, and Hearing). When a permit is modified, only the conditions subject to modification are reopened.

(d) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in subsection (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(e) Temporary authorizations.

(1) Upon request of the permittee, the commission may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in subsection (e)(5)(B) of this section; and

(B) any Class 3 modification that meets the criteria in subsection (e)(5)(B)(i) or (ii) of this section, or that meets any of the criteria in subsection (e)(5)(B)(iii)-(v) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with 40 CFR Part 264 standards.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the standards of 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks or containers of restricted wastes in accordance with 40 CFR Part 268;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (b)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (c) of this section are conducted.

(f) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §305.103(b) of this title (relating to Notice by Mail) within 10 working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within 10 working days after an automatic authorization for a Class 2 modification goes into effect under subsection (b)(8) or (11) of this section.

(2) The commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13(a).

(g) Newly listed or identified wastes.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261 if the permittee:

(A) was in existence as a hazardous waste facility with respect to the newly listed or characteristic waste on the effective date of the final rule listing or identifying the waste;

(B) submits a Class 1 modification request on or before the date on which the waste becomes subject to the new requirements;

(C) is in substantial compliance with the standards of 40 CFR Part 265;

(D) in the case of Classes 2 and 3 modifications, also submits a complete permit modification request within 180 days after the effective date of the final rule listing or identifying the waste; and

(E) in the case of land disposal units, certifies that each unit is in compliance with all applicable 40 CFR Part 265 ground-water monitoring and financial responsibility requirements on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(h) Appendix I. The following appendix will be used for the purposes of Subchapter D which relates to solid waste permit modification at the request of the permittee.

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes............	1
2. Correction of typographical errors..................	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)...	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance............	1
b. Other changes................................	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director.......	1[1]
b. Extension of final compliance date.............	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director..........................	1[1]
7. Changes in ownership or operational control	

of a facility, provided the procedures of

§305.65(g) are followed........................... 1[1]

B. General Standards

1. Changes to waste sampling or analysis methods:

a. To conform with agency guidance or

regulations.................................. 1

b. Other changes................................. 2

2. Changes to analytical quality assurance/

control plan:

a. To conform with agency guidance or

regulations.................................. 1

b. Other changes................................. 2

3. Changes in procedures for maintaining the

operating record.................................. 1

4. Changes in frequency or content of inspection

schedules... 2

5. Changes in the training plan:

a. That affect the type or decrease the

amount of training given to employees.......... 2

b. Other changes................................. 1

6. Contingency plan:

a. Changes in emergency procedures

(i.e., spill or release response

procedures)................................... 2

b. Replacement with functionally equivalent

equipment, upgrade, or relocate emergency equipment listed.............................. 1

c. Removal of equipment from emergency equipment list................................ 2

d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan............. 1

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Ground-water Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system.. 2

b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well............................. 1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director................. 1[1]

3. Changes in statistical procedure for determining

whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director.................. 1[1]

4. Changes in point of compliance....................... 2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):

   a. As specified in the groundwater protection standard....................................... 3

   b. As specified in the detection monitoring program.. 2

6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix......... 2

7. Compliance monitoring program:

   a. Addition of compliance monitoring program pursuant to §335.164(8)(D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program)................. 3

   b. Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix.... 2

8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program).................... 3

b. Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix........... 2

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director............................ 1[1]

b. Changes in the closure schedule or any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director.. 1[1]

c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director...................... 1[1]

d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director....... 1[1]

e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix..................... 2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e)...................... 2

2. Creation of a new landfill unit as part of closure.. 3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments.......................... 3

b. Incinerators.................................... 3

c. Waste piles that do not comply with 40 CFR 264.250(c)............................. 3

d. Waste piles that comply with 40 CFR 264.250(c)............................. 2

e. Tanks or containers (other than specified below).. 2

f. Tanks used for neutralization, dewatering, phase separation, or component separation,

with prior approval of the executive director.................................1[1]

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan........................ 1

2. Extension of post-closure care period............... 2

3. Reduction in the post-closure care period........... 3

4. Changes to the expected year of final closure, where other permit conditions are not changed....... 1

5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure... 2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below............................. 3

b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below... 2

c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the

applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)....... 1[1]

2. a. Modification of a container unit without increasing the capacity of the unit............ 2

   b. Addition of a roof to a container unit without alternation of the containment system...................................... 1

3. Storage of different wastes in containers, except as provided in F(4) below:

   a. That require additional or different management practices from those authorized in the permit.................................. 3

   b. That do not require additional or different management practices from those authorized in the permit.................................. 2

Note: See §305.69(g) of this title (relating to Newly Listed

Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

   a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8 (a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)........................ 1[1]

   b. That do not require the addition of units or a change in the treatment process or management standards,

and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)....... 1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation).. 2

G. Tanks

1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix................. 3

   b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix............................... 2

   c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.................. 2

d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation...... 1[1]

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).............................. 1[1]

2. Modification of a tank unit or secondary containment system without increasing the

capacity of the unit.............................. 2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:........ 1

   a. The capacity difference is no more than 1500 gallons;

   b. The facility's permitted tank capacity is not increased; and

   c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice.......... 2

5. Management of different wastes in tanks:

   a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..................... 3

   b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below................................ 2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a) (1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).. 1[1]

d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).................. 1

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification

procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity... 3
2. Replacement of a surface impoundment unit........... 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2
4. Modification of a surface impoundment management practice.. 2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit........... 3
   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit................................ 2
   c. That are wastes restricted from land

disposal that meet the applicable
treatment standards or that are
treated to satisfy the standard
of "use of practically available
technology that yields the greatest
environmental benefit" contained in
40 CFR 268.8(a)(2)(ii), and provided
that the unit meets the minimum
technological requirements stated
in 40 CFR 268.5(h)(2). This modifi-
cation is not applicable to dioxin-
containing wastes (F020, 021, 022,
023, 026, 027, and 028)........................ 1

d. That are residues from wastewater
treatment or incineration, provided
that disposal occurs in a unit that
meets the minimum technological
requirements stated in 40 CFR
268.5(h)(2), and provided further
that the surface impoundment has
previously received wastes of the
same type (for example, incinerator
scrubber water). This modification
is not applicable to dioxin-containing
wastes (F020, 021, 022, 023, 026,
027, and 028).................................. 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

1. Modification or addition of waste pile units:

   a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.............................. 3

   b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity................................. 2

2. Modification of waste pile unit without increasing the capacity of the unit................. 2

3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit... 1

4. Modification of a waste pile management practice.... 2

5. Storage or treatment of different wastes in waste piles:

   a. That require additional or different

management practices or different design of the unit.................................. 3

b. That do not require additional or different management practices or different design of the unit.................................. 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.................................. 3

2. Replacement of a landfill.......................... 3

3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system.............. 3

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system....................................... 2

5. Modification of a landfill management practice...... 2

6. Landfill different wastes:

a. That require additional or different management practices, different design of the liner, leachate collection system,

or leachate detection system.................. 3

b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system...................... 2

c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)........................ 1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously

received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).............. 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent...... 3
2. Modification of run-on control system................ 2
3. Modify run-off control system....................... 3
4. Other modifications of land treatment unit component specifications or standards required in the permit.. 2
5. Management of different wastes in land treatment units:
   a. That require a change in permit operating conditions or unit design specifications....... 3
   b. That do not require a change in permit operating conditions or unit design specifications................................ 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be

used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:

   a. Increase rate or change method of waste application.. 3

   b. Decrease rate of waste application............. 1

7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions 2

8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops..................... 3

9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2).............. 3

10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different

from permit requirements.......................... 3

11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements...... 2

12. Changes in background values for hazardous constituents in soil and soil-pore liquid........... 2

13. Changes in sampling, analysis, or statistical procedure.. 2

14. Changes in land treatment demonstration program prior to or during the demonstration................ 2

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received....................................... 1[1]

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially

the same as the conditions for the first demonstration and have received the prior approval of the executive director.................. 1[1]

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.............. 3

18. Changes in vegetative cover requirements for closure... 2

L. Incinerators

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a waste feed rate limit; or an organic chlorine feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means....... 3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a waste feed rate limit; or an organic chlorine feed

rate limit. The executive director will
require a new trial burn to substantiate
compliance with the regulatory performance
standards unless this demonstration can be
made through other means............................ 2

3. Modification of an incinerator unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl or particulate from the combustion gases, or by changing other features of the incinerator that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means....... 3

4. Modification of an incinerator unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compli-

ance with the regulatory performance standards...... 2

5. Operating requirements:

a. Modification of the limits specified in the permit for minimum combustion gas temperature, minimum combustion gas residence time, or oxygen concentration in the secondary combustion chamber. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means................ 3

b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.................................... 3

c. Modification of any other operating condition or any inspection or record-keeping requirement specified in the permit.... 2

6. Incineration of different wastes:

a. If the waste contains a POHC that is more difficult to incinerate than authorized by the permit or if incineration of the waste requires compliance with differ-

ent regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means....... 3

b. If the waste does not contain a POHC that is more difficult to incinerate than authorized by the permit and if incineration of the waste does not require compliance with different regulatory performance standards than specified in the permit...................................... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

7. Shakedown and trial burn:

a. Modification of the trial burn or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn........... 2

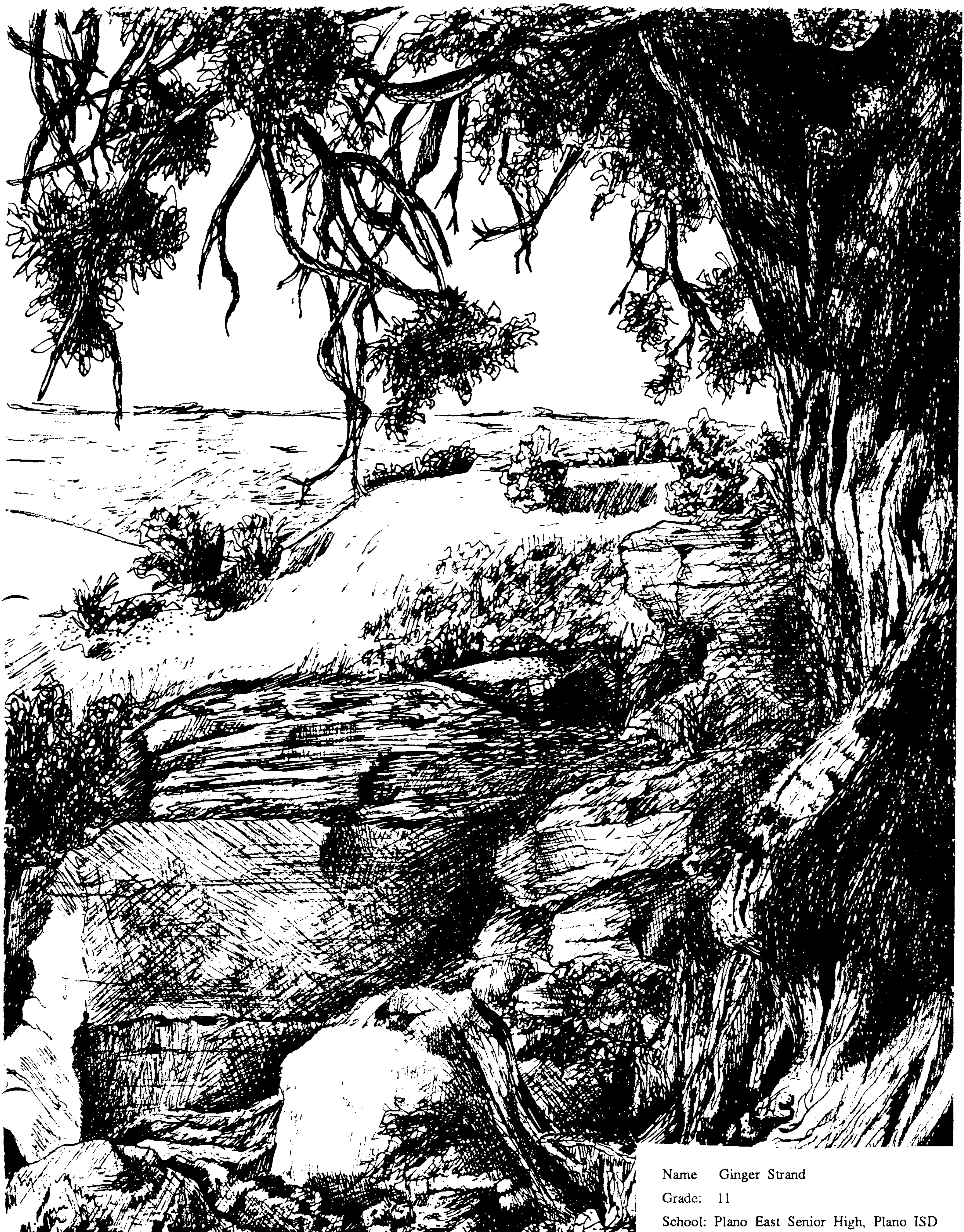
b. Authorization of up to an additional 720 hours of waste incineration during

the shakedown period for determining operational readiness after construction, with the prior approval of the executive director.. 1[1]

c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director.. 1[1]

d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director....... 1[1]

8. Substitution of an alternate type of fuel that is not specified in the permit................. 1



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

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

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Subchapter E. Actions, Notice, and Hearing

• 31 TAC §§305.92-305.93, 305.96, 305.98-305.99, 305.102-305. 106

These amendments are proposed under the Texas Water Code, §5.103 and §5. 105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.92. Action on Applications. The commission may conduct a public hearing on any application. The commission shall conduct a public hearing on an application for permit, major amendment, **Class 3 modification,** or renewal covered by this chapter, if a request for hearing is made by a commissioner, the executive director, or an affected person who objects to the application and files a request in accordance with commission rules. If a hearing is held, notice of hearing shall be given by publication and by mail, as required by law.

§305.93. Action on Application for Permit.

(a) (No change.)

(b) The time limits of subsection (a) of this section **shall be 60 days for Class 3 modifications of hazardous and solid waste permits and** shall be 45 days for **other** applications involving hazardous waste under the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361** [Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7].

(c) (No change.)

§305.96. Action on Application for Amendment or Modification.

(a) Except as provided in subsection **(d)** [(c)] of this section, the commission may take action on an application for a major amendment **or a Class 3 solid waste permit modification** in the manner prescribed by §305. 93 of this title (relating to Action on Application for Permit).

(b) (No change.)

(c) **(The commission may take action on a request for Class 2 solid waste permit modification at a regular meeting of the commission without holding an evidentiary hearing, provided the notice procedures of §305.103 of this title (relating to Notice by Mail) have been completed** [The commission shall conduct a public hearing on a petition for a major amendment, unless no person requests a hearing and the permittee files sufficient consent and waiver of hearing, in which case the provisions of (a) of this section apply].

(d) **The commission shall conduct an evidentiary hearing on a petition for a major amendment, or a request for a Class 3 solid waste permit modification unless no person requests a hearing and the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.**

§305.98. Scope of Proceedings. The commission may limit consideration in permit renewal, or amendment, **or modification** proceedings, to only those portions or provisions of a permit for which the application or petition requests action. All terms, conditions, and provisions of an existing permit remain in full force and effect during such proceedings, and the permittee shall comply with an existing permit until a new, or amended, **or modified** permit is issued.

§305.99. Commission Action.

(a) The commission may grant or deny an application or petition in whole or in part, suspend the authority to conduct an activity or disposal of waste for a specified period of time, dismiss the proceedings, amend **or modify** a permit or other order, or take any other action as may be appropriate. For applications involving hazardous waste under the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361** [Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], the commission may issue or deny a permit for one or more units at the facility. The interim status of any facility unit compliant with the provisions of the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, §361.082(e)** [Texas Solid Waste Disposal Act, §4(f)(2)], and §335.2(c) of this title (relating to Permit Required) for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

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

§305.102. Notice by Publication.

(a) If notice by publication is required, the applicant shall cause the notice approved by the commission to be published in a newspaper regularly published, and generally circulated within the county and area wherein the proposed facility or discharge is to be located, and within each county and area wherein persons reside who would be affected by the facility or proposed discharge. For applications for solid waste permits, **except as provided by §305.69(b)(2) and (c)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), notice shall be published in each county and area which is adjacent or contiguous to each county wherein the proposed facility or discharge is to be located.**

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

§305.103. Notice by Mail.

(a) If notice by mail is required, the commission will transmit the notice by first-class mail to persons listed in subsection (b) of this section and to other persons[,] who in the judgment of the commission, may be affected. **Except as provided by §305.69(b)(2) and (c)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), personal** [Personal] **service may be substituted for mailing.**

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

§305.104. Radio Broadcasts. For an application to store, process, or dispose of hazardous waste under the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 [Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], except for modifications under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee),** the applicant shall cause the public notice prepared by the commission to be broadcast over one or more local radio stations which are located in the affected area of a pending hazardous waste permit application. For purposes of this section, the affected area is an area to be determined by the commission on each application which includes the county in which the site is to be located and may include contiguous counties at the discretion of the commission. If the applicant does not cause the notice approved by the commission to be broadcast in the affected area within 30 days of receipt of the notice from the commission, the commission may cause the notice to be broadcast and the applicant shall reimburse the commission for the cost of the broadcast within 30 days of each broadcast.

§305.105. Request for Public Hearing.

(a) A request for public hearing under this chapter must be made in writing and submitted by an affected person to the commission within 30 days after the first publication of the notice of application, except that a request must be submitted within 45 days after the first publication of the notice of an application involving hazardous waste **or 60 days after the first publication of the notice of a Class 3 modification of a solid waste permit** under the Texas Solid Waste Disposal Act [, Texas Civil Statutes, Article 4477-7]. The commission may extend the time allowed for submitting a request for public hearing.

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

§305.106. Response to Comments. This section shall apply only to applications for hazardous waste permits under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7 and is adopted for the purposes of conforming commission procedures to 40 Code of Federal Regulations §124.17. The commission, through the executive director or the office of hearings examiners, shall prepare and make available to the public a brief description and response to all significant comments on the draft permit which are filed with the commission during the 45-day comment period in accordance with the provisions of §305.93 of this title (relating to Action on Application for Permit), **or which are made during the 60-day comment period in accordance with the provisions of §305.69(c) of this title (relating to Class 3 Modifications of Solid Waste Permits** or which are made during the public comment session of a hearing held pursuant to §305.105 of this title (relating to Request for Public Hearing) and the Texas Administrative Procedure and Texas Register Act, **Texas Revised Civil Statutes Annotated** [Texas Civil Statutes], Article 6252-13a. The response to comments shall include a specification of which provisions of the draft permit, if any, have been changed in response to comments and the reasons for the change. If a hearing is held and a hearings examiner's proposal for decision is issued, the response to comments may be incorporated into the proposal for decision.

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

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TRD-9008213 Jim Haley
Director, Legal Division
Texas Water Commission

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

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Subchapter F. Permit Characteristics and Conditions

• 31 TAC §305.127

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.127. Conditions to be Determined for Individual Permits. The following conditions are to be determined on a case by case basis according to the criteria set forth herein, and when applicable shall be incorporated into the permit expressly or by reference.

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

(4) Requirements for individual programs.

(A) (No change.)

(B) Any **applicable** statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, **modification,** or suspension and reissuance of a permit shall be included in the permit.

(C) New amended, **modified,** or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title (relating to Underground Injection Control) for injection well standards. Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, Chapter 309 of this title (relating to Effluent Standards) waste discharge standards) and Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(5)-(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.

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Director, Legal Division
Texas Water Commission

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Subchapter G. Additional Conditions for Solid Waste Storage, Processing or Disposal Permits

• 31 TAC §305.144

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.144. Certification and Inspection. For a new facility, the permittee may not commence storage, processing, or disposal of solid waste; and for a facility being modified, the permittee may not process, store, or dispose of solid waste in the modified portion of the facility, **except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)** until:

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

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

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Subchapter I. Hazardous Waste Incinerator Permits

• 31 TAC §§305.171-305.172, 305.174

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all other laws of the State of Texas, and to establish and approval all general policy of the commission.

§305.171. Determining Operational Readiness. For the purposes of determining operational readiness following completion of physical construction of a hazardous waste incinerator, the commission shall establish permit conditions including, but not limited to, specification of allowable

...ste feeds and operating conditions, in a permit for a new hazardous waste incinerator. These permit conditions will be effective for a minimum required time, not to exceed 720 hours operating time for treatment of hazardous waste, to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn. The commission may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be **modified** [amended] to reflect the extension pursuant to **§305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee** [§305.62(c) (2)(C)(vii)] of this title (relating to Amendment].

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

§305.172. Determining Feasibility of Compliance and Adequate Operating Conditions. For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations, §264.343 and of determining adequate operating conditions under 40 Code of Federal Regulations, §264 345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1)-(9) (No change.)

(10) Based on the results of the trial burn, the commission shall set the operating requirements in the final permit according to 40 Code of Federal Regulations, §264.345. The permit amendment **or modification** shall proceed [as a minor amendment] according to §305.62[c] of this title (relating to amendment **or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)**.

§305.174. Existing Incinerators. For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR), §264.343 and of determining adequate operating conditions under 40 CFR, §264.345, the applicant for a permit for an existing hazardous waste incinerator **must** [may] prepare and submit a trial burn plan and perform a trial burn in accordance with **40 CFR, §270.19(b) and §305.172(2)-(9) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) or, instead, submit other information as specified in 40 CFR, §270.19(c). Applicants submitting information specified in 40 CFR, §270.19(a) are exempt from compliance with 40 CFR, §264.343 and §264.345 and, therefore, are exempt from the requirement to conduct a trial burn.** Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in §305.172 of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the executive director to establish a later date for submission of the Part B application or the trial burn results. **Trial burn results must be submitted prior to issuance of the permit. When** [If] the applicant submits a trial burn plan with Part B of the permit application, **the executive director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.** [the trial burn shall be conducted and the results submitted within a time period to be specified by the executive director]

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 August 15, 1990.

TRD-9008211 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption September 21, 1990

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

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Subchapter J. Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analysis

• 31 TAC §305.184

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.184. Permit Amendment or Modification. If the commission determines that the results of the field tests or laboratory analyses meet the requirements of 40 Code of Federal Regulations, §264 272, it shall amend the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with requirements applicable to land treatment, based upon the results of the field tests or laboratory analyses

(1) This permit amendment may proceed [as a minor amendment] under §305. 62[c] of this title (relating to Amendment) **or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)**, provided any such change is **minor**, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment). **If such modifications or amendments are necessary, the second phase of the permit will become effective only after those modifications or amendments have been made.**

(2) If not amendments of the second phase of the permit are not necessary, [or if only minor amendments are necessary and have been made,] the commission shall give notice in accordance with §305.96(b) of this title (relating to Action On Application For Amendment **or Modification**). The second phase of the permit then will become effective as specified in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

[(3) If amendments under §305.62(d) of this title (relating to Amendment) are necessary, the second phase of the permit will become effective only after those amendments have been made.]

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 August 15, 1990.

TRD-9008210 Jim Haley
Director, Legal Division
Texas Water Commission

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

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities

• 31 TAC §335.112

The Texas Water Commission (TWC) proposes amendments to §§335.112, 335.152, 335.157, 335.158, 335.163-335.165, concerning Industrial Solid Waste and Municipal Hazardous Waste. The TWC proposes amendments to §335.112, Subchapter E, concerning interim standards for owners and operators of hazardous waste storage, processing, or disposal facilities, in order to conform to the federal rules promulgated in the August 14, 1989, issue of the *Federal Register* (54 FedReg 33376). The TWC proposes amendments to §335.152, Subchapter F, concerning permitting standards for owners and operators of hazardous waste storage, processing or disposal facilities. This amendment is proposed in order to conform to the federal rules

promulgated in the August 14, 1989, issue, of the *Federal Register* (54 FedReg 33376). The TWC proposes amendments to §§335.157-335.158, 335.163-335.165, Subchapter F, concerning permitting standards for owners and operators of hazardous waste storage, processing or disposal facilities. These sections are proposed to conform to the federal rules promulgated in the October 11, 1988, issue of the *Federal Register* (53 FedReg 39720).

Section 335.112 is amended to adopted by reference new changes to Subparts B, G, and H of 40 Code of Federal Regulations Part 265, regarding "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities." The cite to the Texas Solid Waste Disposal Act, Texas Civil Statues, Article 4477-7, is proposed to be deleted as this article was repealed. This reference is proposed to be substituted with a cite to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361.

Section 335.152 is amended to adopt by reference new changes to Subparts B, G, and H of 40 Code of Federal Regulations Part 264, regarding "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities." The cite to the Texas Solid Waste Disposal Act, Texas Civil Statues, Article 4477-7 is proposed to be deleted as this article was repealed. This reference is proposed to be substituted with a cite to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361. Additionally, two section symbol signs have been inserted as they had been inadvertently overlooked.

Section 335.157 is amended to require that owners or operators must conduct a groundwater monitoring and response program wherever hazardous constituents are detected at the compliance point or whenever the groundwater protection standard is exceeded.

Section 335.158 is amended to propose that owners and operators must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents detected in the groundwater from regulated unit do not exceed concentration limits in the uppermost aquifer underlying the waste management area during the compliance period. This groundwater protection standard will be established by the commission in the compliance plan when hazardous constituents have been detected in the groundwater from a regulated unit.

Section 335.163 is amended to propose that if a facility contains more than one waste management area, separate groundwater monitoring systems must be installed. In addition, this section sets forth the requirements that the owner or operator must comply with any groundwater monitoring system developed for a waste management area. These requirements include specifications for the number, location and depth of monitoring wells, adequacy of groundwater samples, proper casing of monitoring wells, prescribed sampling and analysis procedures for the groundwater monitoring program, and the statistical methods to be used in evaluating monitoring data for each hazardous constituent specified in the unit permit.

Section 335.164 is amended to propose the minimum responsibilities that an owner or operator must discharge to establish a detection monitoring program which must monitor for indicator parameters (e.g. specific conductance, total organic carbon, or total organic halogens), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit. The owner or operator must also maintain a record of groundwater analytical data as measured by and in a form necessary for the determination of statistical significance. The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit. This section is also amended to propose the procedures that an owner or operator must follow upon a determination that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents at any monitoring well at the compliance point.

Section 335.165 is amended to propose certain minimum responsibilities that an owner or operator must discharge to establish a compliance monitoring program. The commission will specify the sampling procedures and statistical methods appropriate for the constituents and the facility and the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination. This section is also amended to propose the procedures that an owner or operator must follow after a determination has been made that concentration limits are being exceeded at any monitoring well at the point of compliance. The owner or operator must prepare, submit, and retain an annual summary to include the groundwater quality data and groundwater flow rate and direction.

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

Mr. Bourdeau also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated will not be effected as a result of enforcing the sections as proposed. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on proposed amendments may be submitted to Carlos Celestino, Legal Division, Texas Water Commission, P.0. Box 13087, 1700 North Congress Avenue, Austin, Texas 78711-3087, (512) 463-8069.

The amendment is proposed under the Texas Water Code §5.103 and §5.105 which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of this State and to establish and approve all general policies of the commission. These amendments are also proposed under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.024(a) (Vernon Supplement 1990), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste including rules relating to the permitting standards for hazardous waste storage, processing, or disposal facilities. Under §361.017(a)-(b) of the Texas Solid Waste Disposal Act, the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 361.017(c) also grants to the commission the powers and duties specifically described in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.112. Standards.

(a) Except to the extent that they are clearly inconsistent with the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361.** [Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7,] or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations Part 265) including all appendices to Part 265), which are in effect as of June 4, 1987, are adopted by reference:

(1) Subpart B–General Facility Standards, **including amendments as of August 14. 1989;**

(2)-(5) (No change.)

(6) Subpart G–Closure and Post-Closure, **including amendments as of August 14, 1989;** except 40 Code of Federal Regulations §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H–Financial Requirements, **including amendments as of August 14, 1989;** except 40 Code of Federal Regulations §265.142(a)(2); and facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended December 12, 1987;

(8) -(16) (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 August 15, 1990.

TRD-9008207 Jim Haley
Director, Legal Division
Texas Water Commission

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

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Subchapter F. Permitting Standards for Owners and Operator of Hazardous Waste Storage, Processing, or Disposal Facilities

• 31 TAC §§335.152, 335.157, 335.158, 335.163-335.165

The amendments are proposed under the Texas Water Code, §5.103 and §5. 105, and the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§335.152. Standards.

(a) Except to the extent that they are clearly inconsistent with the **Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361,** [Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7,] or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations, Part 264 (including all appendices to Part 264), which are in effect as of June 4, 1987, are adopted by reference:

(1) Subpart B–General Facility Standards, **including amendments of August 14, 1989;** in addition, the facilities subject to regulation under 40 Code of Federal Regulations, §264.15(b)(4) and §264.18(b)(1)(ii), as amended January 1, 1988;

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

(5) Subpart G–Closure and Post-Closure**, including amendments of August 14, 1989**; facilities which are subject to 40 Code of Federal Regulations, §264 Subpart X are subject to 40 Code of Federal Regulations, §§264.90(d), 264.111(c), 264.112(a)(2), 264. 114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1), (2)(**k**) and (ii), as amended January 1, 1988;

(6) Subpart H–Financial Requirements, **including amendments of Auoust 14, 1989;** except 40 Code of Federal Regulations §264.142(a)(2); facilities which are subject to 40 Code of Federal Regulations §264, Subpart X are subject to 40 Code of Federal Regulations, §§264.142(a), 264.144(a), and 264.147(b), as amended January 1, 1988; and facilities which qualify for the corporate guarantee for liability are additionally subject to §264.147(g)(2) and §264.151(h)(2), as amended December 12, 1987;

(7)-(14) (No change.)

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

§335.157. Required Programs.

(a) Owners and operators subject to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response); this section, and §§335.158-335.166 of this title (relating to Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance, Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program, and Corrective Action Program) must conduct a monitoring and response program as follows.

(1) Whenever hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) from a regulated unit are detected at the compliance point under §335.161 of this title (relating to Point of Compliance), the owner or operator must institute a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program). **"Detection" is defined as statistically significant evidence of contamination as described in §335.164(6) of this title (relating to Detection Monitoring Program).**

(2) Whenever the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard) is exceeded, the owner or operator must institute a corrective action program under §335.166 of this title (relating to Corrective Action Program). **"Exceeded" is defined as statistically significant evidence of increased contamination as described in §335.165(4) of this title (relating to Compliance Monitoring Program).**

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

(b) (No change.)

§335.158. Groundwater Protection Standard. The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) **which have been detected in** [entering] the groundwater from a regulated unit do not exceed the concentration limits under §335.160 of this title (relating to Concentration Limits) in the uppermost aquifer underlying the waste management area beyond the point of compliance during the compliance period under §335.162 of this title (relating to Compliance Period). The commission will establish this groundwater protection standard in the compliance plan when hazardous constituents have **been detected in** [entered] the groundwater from a regulated unit.

§335.163. General Groundwater Monitoring Requirements. If a facility contains more than one waste management area, separate groundwater monitoring systems must be installed. The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy §335.164 through 335.166 of this title (relating to Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) .

(1) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of background water that has not been affected by leakage from a regulated unit;

***(i)* a determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and**

***(ii)* Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;** [and]

(B) represent the quality of groundwater passing the point of compliance; **and** [.]

(C) allow for detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

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

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed and shall follow generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant released to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and in-

terval for each hazardous constituent listed in the facility permit. This sampling procedure shall be:

(A) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(B) an alternate sampling procedure proposed by the owner or operator of the facility and approved by the commission.

[(7) Where appropriate the groundwater monitoring program must establish background groundwater quality for each of the hazardous constituents or monitoring parameters or constituents specified in the permit.

[(A) In the detection monitoring program under §335.164 of this title (relating to Detection Monitoring Program), background groundwater quality for a monitoring parameter or constituent must be based on data from quarterly sampling of wells upgradient from the waste management area for one year.

[(B) In the compliance monitoring program under §336.165 of this title (relating to Compliance Monitoring Program), background groundwater quality for a hazardous constituent must be based on data from upgradient wells that:

[(i) is available before the compliance plan is approved;

(ii) accounts from Measurement errors in sampling and analysis; and

[(iii) accounts, to the extent feasible, for seasonal fluctuations in background water quality if such fluctuations are expected to affect the concentration of the hazardous constituent.]

[(C) Background quality may be based on sampling of wells that are not upgradient from the waste management area where:

[(i) hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; or

[(ii) sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells.

[(D) In developing the data base used to determine a background value for each parameter or constituent, the owner or operator must take a minimum of one sample from each well and a minimum of four samples from the entire system used to determine background groundwater quality; each time the system is sampled.]

(8) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the commission, will be specified in the facility's permit on a unit by unit basis. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (POLs) are used in any of the following statistical procedures to comply with paragraph (9)(E) of this section, the (POL) must be proposed by the owner or operator and approved by the executive director. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (9) of this section.

(A) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(B) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(D) A control chart approach that gives control limits for each constituent.

(E) Another statistical test method submitted by the owner or operator and approved by the executive director.

[(8) The owner or operator must use the following statistical procedure in determining whether background values or concentration limits have been exceeded.

[(A) If, in a detection monitoring program, the level of a constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00:

[(i) the owner or operator must take at least four portions from a sample at each wall at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the 0.05 level using the Cochran's approximation to the Behrens Fisher Student's Test as described in 40 Code of Federal Regulations Part 264, Appendix IV. If the test indicates that the difference is significant, the owner or operator must repeat the same procedure with at least the same number of portions as used in the first test) with a fresh sample from the monitoring well. If this second round of analyses indicates that the difference is significant the owner or operator must conclude that a statistically significant change has occurred; or

[(ii) the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The commission will specify such a procedure in the facility permit if it finds that the alternative procedure reasonably balances the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in paragraph (8)(A)(i) of this section.

[(B) In all other situations in a detection monitoring program and in a compliance monitoring program, the owner or operator must use a statistical procedure providing reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be indicated. The commission will specify a statistical procedure in the facility permit or compliance plan that it finds:

[(i) is appropriate for the distribution of the data used to establish background values or concentration limits; and]

[(ii) provides a reasonable balance between the probability of falsely identifying a non contaminating regulated unit and the probability of failing to identify a contaminating regulated unit.]

(9) Any statistical method chosen under paragraph (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate.

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the commission if it finds it to be protective of human health and the environment.

(D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the commission if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any (POL) approved by the executive director under paragraph (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with paragraph (7) of this section including actual levels of constituents must be maintained in the facility operating record. The commission will specify in the permit when the data must be submitted for review.

§335.164. Detection Monitoring Program. An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

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

(2) (No change.)

(3) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in its permit pursuant to paragraph (1) of this section in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements). The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements).

[(3) The owner or operator must establish a background value for each monitoring parameter or constituent specified in the permit pursuant to paragraph (1) of this section. The permit will specify the background values for each parameter or specify the procedures to be used to calculate the background values.]

(A) The owner or operator must comply with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data base used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title (relating to General Groundwater Monitoring requirements).

(4) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this section in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring.

[(4) The owner or operator must determine groundwater quality at each monitoring well at the compliance point at least semi-annually during the active life of a regulated unit (including the closure period) and the post closure care period. The owner or operator must express the groundwater quality at each monitoring well in a form necessary for the determination of statistically significant increases under §335.163 (8) of this title (relating to General Groundwater Monitoring Requirements).]

(5) (No change.)

(6) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to paragraph (1) of this section at a frequency specified under paragraph (4) of this section.

(A) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements). These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable

period of time after completion of sampling. The commission will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

[(6) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of §335.163 of this title (relating to General Groundwater Monitoring Requirements).]

(7) If the owner or operator determines pursuant to paragraph (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(B) immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of Appendix IX of 40 Code of Federal Regulations Part 264 are present, and if so, in what concentration;

(C) for any Appendix IX compounds found in the analysis pursuant to paragraph (7) (B) of this section, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does resample for the compounds found pursuant to paragraph (7)(B) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring;

(D) within 90 days, submit to the executive director an application for a permit amendment or modification to establish a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The application must include the following information:

(i) an identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335.165 of this title (relating to Compliance Monitoring Program);

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §335.165 of this title (relating to Compliance Monitoring Program); and

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek an alternate concentration limit under §335.160(b) of this title (relating to Concentration Limits);

(E) within 180 days, submit to the executive director:

(i) all data necessary to justify an alternate concentration limit sought under §335.160(b) of this title (relating to Concentration Limits);

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §335.166 of this title (relating to Corrective Action Program, unless:

(I) all hazardous constituents identified under paragraph (7)(B) of this section are listed in Table 1 of §335.160 of this title (relating to Concentration Limits) and their concentrations do not exceed the respective values given in that Table; or

(II) the owner or operator has sought an alternate concentration limit under §335.160(b) of this title (relating to Concentration Limits) for every hazardous constituent identified under paragraph (7)(B) of this section;

(F) if the owner or operator determines, pursuant to paragraph (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit amendment or modification application under paragraph (7)(D) of this section; however, the owner or operator is not relieved of the requirement to submit a permit amendment or modification application within the time specified in paragraph (7)(D) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the executive director an application for a permit amendment or modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under this section.

[(7) The owner or operator must determine whether there is a statistically significant increase over background values for any parameter or constituent of this section each time he determines groundwater quality set the compliance point under paragraph (4) of this section.

[(A) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality at each monitoring well at the compliance point for each parameter or constituent to the background value for that parameter or constituent, according to the statistical procedure specified in the permit under §335.163(8) of the title (relating to General Groundwater Monitoring Requirements).

[(B) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of

laboratory facilities to perform the analysis of groundwater samples.

(8) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit amendment or modification to make any appropriate chances to the program.

[(8) If the owner or operator determines, pursuant to paragraph (7) of this section, that there is a statistically significant increase for parameters or constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

[(A) Notify the executive director of this finding in writing within seven days. The notification must indicate what parameters of constituents have shown statistically significant increases;

[(B) Immediately sample the groundwater in all monitoring wells and determine whether constituents identified in the listing 40 Code of Federal Regulations, Part 264, Appendix IX are present and if so, in what concentration.

[(C) Establish a background value on each constituent found in the groundwater at each monitoring well at the compliance point under paragraph (8) (B) of this section, as follows:

[(i) the owner or operator must comply with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data based used to determine background values;

[(ii) the owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements); and

[(iii) in taking samples used in determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title (relating or General Groundwater Monitoring Requirements);

[(D) within 90 days, submit to the executive director an investigation report describing a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The report must include the following information:

[(i) an identification of the concentration of each constituent found in the groundwater at each monitoring well at the compliance point;

[(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335. 165 of this title (relating to Compliance Monitoring Program);

[(iii) any proposed changes to the monitoring frequency, sampling and analysis procedures or methods, statistical procedures used at the facility necessary to meet the requirements of §335.165 of this title (relating to Compliance Monitoring Program);

[(iv) for each hazardous constituent found at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek a variance under §335.160(b) of this title (relating to Concentration Limits); and

[(E) within 180 days, submit to the executive director:

(i) all data necessary to justify any variance sought under §335. 160(b) of this title (relating to Concentration Limits); and]

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §335.166 of this title (relating to Correction Action Program), unless:

(I) all hazardous constituents identified under paragraph (8)(B) of this section are listed in Table 1 of §335.160 of this title (relating to Concentration Limits) and their concentrations do not exceed the respective values given in that table; or

(II) the owner or operator has sought a variance under §335.160 of this title (relating to Concentration Limits) for every hazardous constituent identified under paragraph (8)(B) of this section.

[(9) If the owner or operator determines, pursuant to paragraph (7) of this section, that there is a statistically significant increase of parameters or constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting an investigation report under paragraph (8)(D) of this section, he is not relieved of the requirement to submit an investigation report within the time specified in paragraph (8)(D) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

[(A) notify the executive director in writing within seven days of determining a statistically significant increase at the compliance point that he intends to make a demonstration under this subparagraph;

[(B) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling analysis, or evaluation;

[(C) within 90 days, submit to the executive director an application for a permit amendment to make any appropriate change to the detection monitoring program at the facility; and

[(D) continue to monitor in accordance with the detection monitoring program established under this section.

[(10) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

[(11) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard) are taken during the term of the permit and within the compliance schedule established in the compliance plan.]

§335.165. Compliance Monitoring Program. An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

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

(3) The commission will specify the sampling procedures and statistical methods appropriate for the constituents at the facility, consistent with §335.163(7) and (8) of this title (relating to General Groundwater Monitoring Requirements).

(A) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with

§335.163(7) of this title (relating to General Groundwater Monitoring Requirements).

(B) The owner or operator must record groundwater analytical data as measured by and in a form necessary for the determination of statistical significance under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements) for the compliance period of the facility.

[(3) Where a concentration limit established under paragraph (1)(B) of this section is based on background groundwater quality, the commission will specify the concentration limit in the plan as follows:

[(A) If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the owner or operator may establish the concentration limit through sampling at upgradient wells each time groundwater is sampled at the compliance point. The commission will specify the procedures used for determining the concentration limit in this manner in the plan. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

[(B) If a hazardous constituent is identified on Table 1 under §335.160 of this title (relating to Concentration Limits) and the difference between the respective concentration limit in Table 1 and the background value of that constituent under §335.163(7) of this title (relating to General Groundwater Monitoring Requirements) is not statistically significant, the owner or operator must use the background value of the constituent as the concentration limit. In determining whether this difference is statistically significant, the owner or operator must use a statistical procedure providing reasonable confidence that a real difference will be indicated. The statistical procedure must:

[(i) Be appropriate for the distribution of the data used to establish background values; and

[(ii) Provide a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

[(C) The owner or operator must:

[(i) Comply with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data base used to determine background values;]

[(ii) Express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements); and

[(iii) Use a groundwater monitoring system that complies with §335.163(1)(A), (2) and (3) of this title (relating to General Groundwater Monitoring Requirements).]

(4) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (1) of this section, at a frequency specified under paragraph (6) under this section.

(A) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements). The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with §335.163 of this title (relating to General Groundwater Monitoring Requirements).

(B) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

[(4) The owner or operator must determine the concentration of hazardous constituents in groundwater at each monitoring well at the compliance point at least quarterly during the compliance period. The owner or operator must express the concentration at each monitoring well in a form necessary for the determination of statistically significant increases under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements).]

(5) (No change.)

(6) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility.

[(6) The owner or operator must analyze samples from all monitoring wells at the compliance point to determine whether constituents identified in the listing 40 Code of Federal Regulations Part 264, Appendix IX are present and if so, at what concentration at least annually to determine whether additional Appendix IX constituents are present in the uppermost aquifer. If the owner or operator finds Appendix IX constituents in the groundwater that are not identified in the permit as monitoring constituents, the owner or operator must report the concentrations of these additional constituents to the executive director within seven days after completion of the analysis.]

(7) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of 40 Code of Federal Regulations Part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §335.164(6) of this title (relating to Detection Monitoring Program). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the executive director within seven days after completion of the initial analysis and add them to the monitoring list.

[(7) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of §335.163(4) and (5) of this title (relating to General Groundwater Monitoring Requirements).

[(8) The owner or operator must determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to paragraph (1) of this section each time he determines the concentration of hazardous constituents in groundwater at the compliance point.

[(A) In determining whether a statistically significant increase has occurred, the owner or operator must com-

pare the groundwater quality at each monitoring well at the compliance point for each hazardous constituent to the concentration limit for that constituent according to the statistical procedure specified in the plan under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements).

[(B) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point, within a reasonable time period after completion of sampling. The commission will specify that time period in the plan after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.]

(8)[(9)] If the owner or operator determines, pursuant to paragraph **(4)** [(8)] of this section, that **any concentration limits under §335.160 of this title (relating to Concentration Limits) are** [the groundwater protection standard is] being exceeded at any monitoring well at the point of compliance he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §335.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §335.164(7)[(8)](E) of this title (relating to Detection Monitoring Program). The report must at a minimum include the following information:

(i) a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (1) of this section; and

(ii) a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(9)[(10)] If the owner or operator determines, pursuant to paragraph **(4)**[(8)] of this section, that the groundwater **concentration limits are** [protection standard is] being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the **contamination** [increase] or that the **detection** [increase resulted from] **is an artifact caused by** error in sampling, analysis, or evaluation **or natural variation in groundwater.** [While the owner or operator may make a demonstration under this paragraph in addition to or in lieu of submitting an investigation report under paragraph (9)(B) of this section, he is not relieved of the requirement to submit an investigation report application within the time specified in paragraph (9)(B) of this section unless the demonstration made under this section successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation.] In making a demonstration under this subsection, the owner or operator must:

(A) notify the executive director in writing within seven days that he intends to make a demonstration under this section;

(B) within 90 days submit a report to the executive director which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis or evaluation;

(C) within 90 days submit to the executive director an application for a compliance plan amendment or compliance modification to make any appropriate change to the compliance monitoring program at the facility; and

(D) continue to monitor in accord with the compliance monitoring program established under this section.

(10)[(11)] If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

[(12) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard) are taken during the term of the permit.]

(11)[(13)] The owner or operator shall prepare an annual summary to include the groundwater quality data and groundwater flow rate and direction required under paragraphs (3) [(4)] and (5) of this section. Such annual summary shall be submitted to the executive director by January 21 of each year on forms provided or approved by the executive director. An owner or operator must keep a copy of the summary for a period of at least three years from the due date of the summary. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

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 August 15, 1990.

TRD-9008206 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 21, 1990

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

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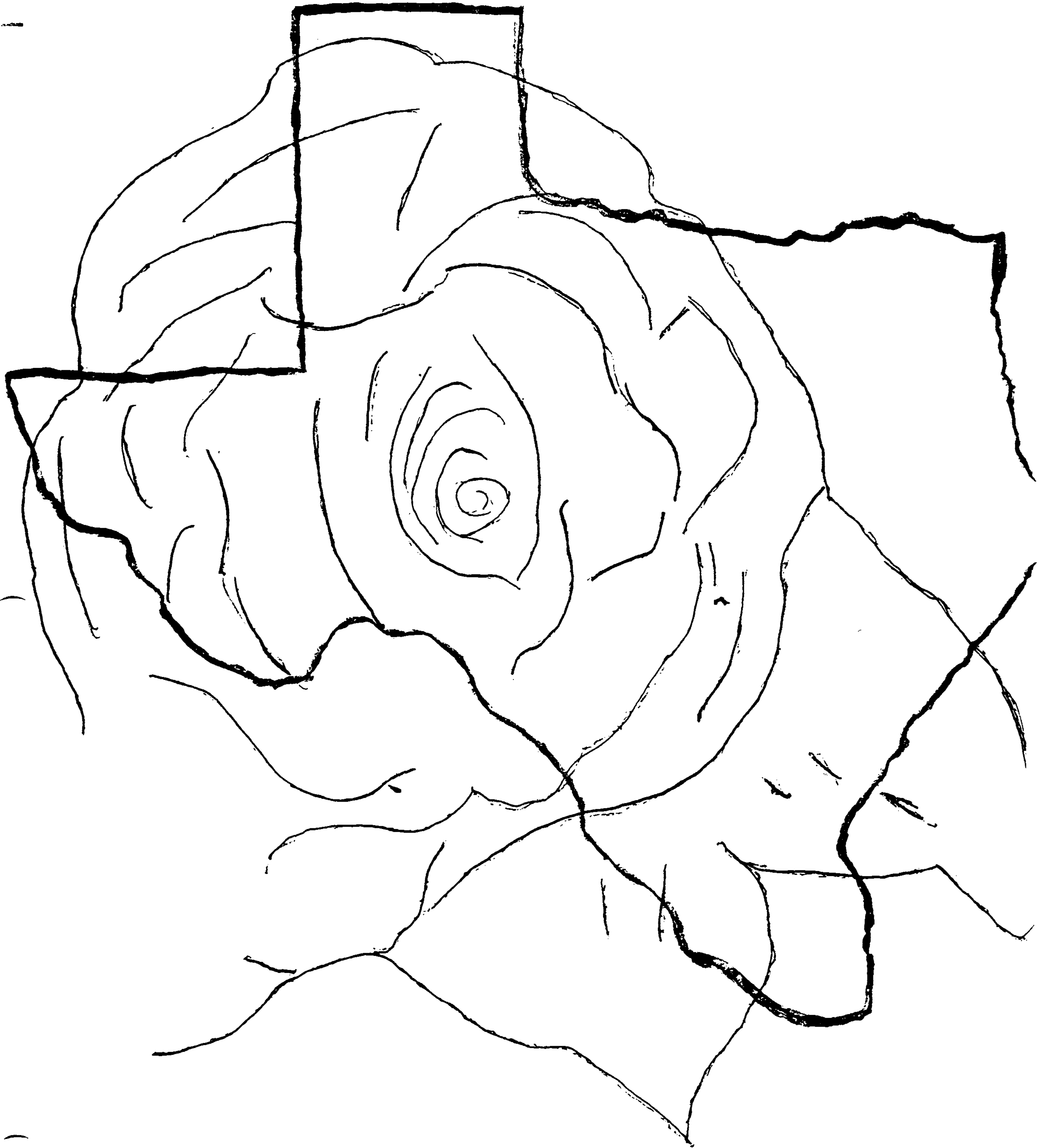
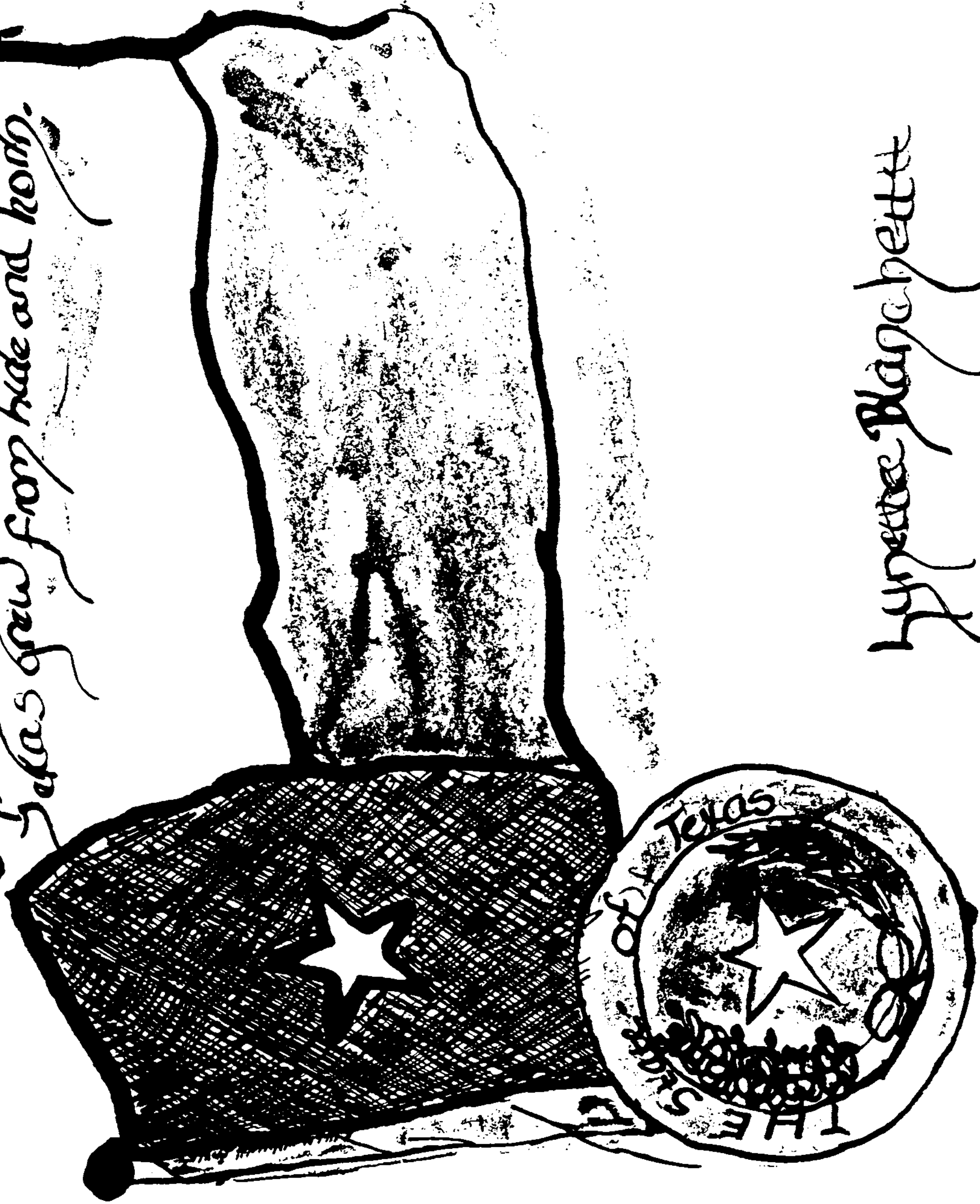


Name Nicole Moreau

Grade: 8

School: Burnet Jr. High, Burnet C.I.S.D.



Name: Lynette Blanchett

Grade: 8

School: Burnet Jr. High, Burnet C.I.S.D.

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filling or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 80. Practice of Chiropractic

• **22 TAC §80.2**

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed new §80.2, submitted by the Texas Board of Chiropractic Examiners has been automatically withdrawn, effective August 14, 1990. The new section as proposed appeared in the February 13, 1990, issue of the *Texas Register* (15 TexReg 756).

TRD-9008159

Name Jim Stewart

Grade: 12

School: Plano East Senior High, Plano ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 75. Rules of Practice

• 22 TAC §75.6

The Texas Board of Chiropractic Examiners adopts new §75.6, without changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 755).

The new section will require licensees against whom complaints of professional misconduct have been filed to respond to the board's inquiry. If the licensee does not respond, it could be grounds for disciplinary proceedings.

The new section will make it a separate violation should licensees fail to respond to the board's request for information/explanation on complaints filed against the licensees.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512b, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

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 August 13, 1990.

TRD-9008132 Jennie Smetana
Executive Director
Texas Board of Chiropractic Examiners

Effective date: September 3, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 343-1895

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Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions

• 22 TAC §281.33

The Texas State Board of Pharmacy adopts an amendment to §281.33, without changes to the proposed text as published in the June 8, 1990, issue of the *Texas Register* (15 TexReg 3314).

The amendment to this section clarifies that witnesses may be reimbursed for travel expenses at the same rate as for state employees.

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §16 and §27, which provide the board with the authority to adopt rules necessary to enforce the Texas Pharmacy Act and to take disciplinary action in conformance with the Administrative Procedure Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 15, 1990.

TRD-9008198 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 5, 1990

Proposal publication date: June 8, 1990

For further information, please call: (512) 832-0661

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• 22 TAC §281.51

The Texas State Board of Pharmacy adopts amendments to §281.51, without changes to the proposed text as published in the June 8, 1990, issue of the *Texas Register* (15 TexReg 3314).

The amendment to this section allows the board to require an applicant to petition for reinstatement of a license on a form prescribed by the board.

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §16 and §28 which provide the board with the authority to adopt rules necessary to enforce the Act and to re-issue or remove a restriction on a pharmacist license.

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 August 15, 1990.

TRD-9008199 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 5, 1990

Proposal publication date: June 8, 1990

For further information, please call: (512) 832-0661

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Chapter 291. Pharmacies Community (Class A) Pharmacies

• 22 TAC §§291.31-291.36

The Texas State Board of Pharmacy adopts amendments §§291.31-291.36. Sections 291.32-291.34 are adopted with changes to the proposed text as published in the March 20, 1990, issue of the *Texas Register* (15 TexReg 1563). Sections 291.31, 291.35, and 291.36 are adopted without changes and will not be republished.

The amendments: implement the recommendations of the board's Advisory Committee on Automated Technology concerning the use of data processing systems and automated drug dispensing systems; set out the requirements pharmacists must follow when dispensing a prescription which has been carried out by a registered nurse or physician assistant as allowed by House Bill 18 passed the 71st Legislature; add a requirement that pharmacy personnel wear name badges which identify them by name and title; correct rule references to articles which were placed in the Health and Safety Code by the 71st Legislature; delete rule language relating to a system for reporting and inquiring about stolen or lost triplicate prescriptions, since the system is not active; and clarify several sections of rule language through non-substantive changes.

Two comments were received for and against portions of these sections, one from an individual and one from the Texas Society of Hospital Pharmacists. One comment concerned the labeling requirements for prescription drug orders carried out by a registered nurse or physician assistant contained in §291.33(c)(3). This commenter asked that the language be clarified to clearly indicate what name must appear on the label: the practitioner, the registered nurse/physician assistant, or both. The board disagrees with this comment since the section clearly indicates that both names must appear on the prescription label. The practitioner's name must be on the label because this information is required by the Texas Dangerous Drug Act (the Health and Safety Code, Chapter 481). The name of the registered nurse or physician assistant should also be on the label since this is the person who actually saw the patient and carried out the prescription drug order.

The other commenter suggested that the section regarding back-up systems for records maintained in a data processing system, be amended to include a requirement that the system be backed at least every three months and that the manner in which the report is sorted and printed be modified.

The board agrees with the concept of a minimum requirement for back-up of a data processing system, however, they believe that a requirement for back-up every month would be more appropriate. Regarding the suggestion as to the manner in which the report is sorted and printed, the board agrees with the comment and has amended the rule.

The amendments are adopted under Texas Civil Statutes, Article 4542a-1, §§5, 17, 29, and 30 which provide the Texas State Board of Pharmacy with the authority to govern the practice of pharmacy and pharmacists and the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy must meet to qualify for licensing or relicensing as a pharmacy.

§291.32. Personnel.

(a) Pharmacist-in-charge.

(1) (No change.)

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A)-(I) (No change.)

(J) establishment and maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(K) maintenance of records in a data processing system such that the data processing system is in compliance with Class A (Community) Pharmacy requirements; and

(L) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy.

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

(d) Identification of pharmacy personnel. Supportive personnel and pharmacist interns shall be identified as follows.

(1) Supportive personnel. All supportive personnel shall wear an identification tag or badge which bears the person's name and identifies him or her as a supportive person.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

§291.33. Operational Standards.

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

(c) Prescription dispensing and delivery.

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

(3) Labeling. At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(A)-(J) (No change.)

(K) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, §40, the statement "Substituted for Brand Prescribed;"

(L) the name of the registered nurse or physician assistant, if the prescription is carried out by a registered nurse or physician assistant in compliance with the Medical Practice Act, §3.06(d); and

(M) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner.

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

(g) Prepackaging of drugs and loading bulk unlabeled drugs into an automated drug dispensing systems.

(1) Prepackaging of drugs.

(A) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(B) The label of a prepackaged unit shall indicate:

(i) brand name and strength of the drug; or if no brand name then the generic name, strength, and name of the manufacturer or distributor;

(ii) facility's lot number;

(iii) expiration date; and

(iv) quantity of the drug, if the quantity is greater than one.

(C) Records of prepackaging shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) facility's lot number;

(iii) manufacturer or distributor;

(iv) manufacturer's lot number;

(v) expiration date;

(vi) quantity per prepackaged unit;

(vii) number of prepackaged units;

(viii) date packaged;

(ix) name or initials of the prepacker; and

(x) signature of the responsible pharmacist.

(D) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(2) Loading bulk unlabeled drugs into automated drug dispensing systems.

(A) Automated drug dispensing systems may be loaded with bulk unlabeled drugs only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(B) The label of an automated drug dispensing system container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distrib[illegible]r.

(C) Records of loading bulk unlabeled drugs into an automated drug dispensing system shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) [illegible] added to the automated drug dispensing system;

(vi) date of loading;

(vii) [illegible]e or initials of the person loading the automated drug dispensing system; and

(viii) [illegible] of the responsible pharmacist.

(D) [illegible] automated drug dispensing system shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (C) of this paragraph.

(h) (No change.)

§291.34. records.

(a) Maintenance of records.

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

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contains all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard-copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Written prescription drug orders.

(A)-(E) (No change.)

(F) prescription drug orders carried out by a registered nurse or physician assistant.

(i) A pharmacist may dispense a prescription drug order for a dangerous drug which is carried out by a registered nurse or physician assistant provided:

(I) the prescription is for a dangerous drug and not for a controlled substance; and

(II) the registered nurse or physician assistant is practicing in accordance with the Medical Practice Act, §3.06(d).

(ii) Each practitioner shall designate in writing the name of each registered nurse or physician assistant authorized to carry out a prescription drug order pursuant to the Medical Practice Act, §3.06(d). A list of the registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific registered nurse or physician assistant.

(G) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on a triplicate prescription form as required by the Texas Controlled Substances Act, §481.075.

(2) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) If a prescription drug order is transmitted to a pharmacist verbally, the pharmacist shall note any substitution instructions by the practitioner or practitioner's agent on the file copy of the prescription drug order. Such file copy may follow the two-line format indicated in paragraph (1)(B) of this subsection, or any other format that clearly indicates the substitution instructions.

(D) A pharmacist may not dispense a verbal prescription drug order for a Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act.

(E) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(3) (No change.)

(4) Original prescription drug order records.

(A) The term "Original prescriptions" as used in this and any other subsections, are the original written or original verbal prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(B) Original prescriptions shall be maintained by the pharmacy in numerical order for a period of two years from the date of filling or the date of the last refill dispensed.

(C) (No change.)

(D) Original prescriptions shall be maintained in three separate files as follows:

(i) -(iii) (No change.)

(E) Original prescription records other than triplicate prescriptions may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:.

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(5) Prescription drug order information.

(A) All original prescriptions issued by practitioners shall bear:

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

(B) All original prescriptions for dangerous drugs carried out by a registered nurse or physician assistant in accordance with the Medical Practice Act, §3.06(d) shall bear:

(i) name and address of the patient;

(ii) name, address, telephone number, and original signature of the practitioner;

(iii) name, identification number, and original signature of the nurse practitioner or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out;

(v) name, strength, and quantity of the dangerous drug;

(vi) directions for use;

(vii) date of issuance; and

(viii) number of refills authorized.

(C) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(i)-(v) (No change.)

(6) (No change.)

(c) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(4)(D) of this section.

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

(d) Records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A (Community) pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (c) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(4)(D) of this section.

(C) Requirements for back-up systems.

(i) The pharmacy shall maintain a back-up copy of information stored in the data processing system using disk, tape, or other electronic back-up system and up-date this back-up copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(G) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in paragraph (2)(B) of this subsection. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

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

(G) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in paragraph (2)(B) of this subsection.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 48 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, Department of Public Safety, or Drug Enforcement Administration.

(H)-(J) (No change.)

(3)-(5) (No change.)

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

(g) Other records. Other records to be maintained by a pharmacy:

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

(3) a hard-copy of the power of attorney to sign DEA 222C order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(5) (No change.)

(6) a hard-copy of controlled substances inventories required by §291.17 of this title (relating to the Controlled Substances Inventory Requirements);

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard-copy of the Schedule V non-prescription register book;

(9) (No change.)

(10) a hard-copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

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

(h)-(j) (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 August 15, 1990.

TRD-9008200 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 5, 1990

Proposal publication date: March 20, 1990

For further information, please call: (512) 832-0661

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• 22 TAC §§291.71-291.76

The Texas State Board of Pharmacy adopts amendments to §§291.71, 291. 72, 291.73, 291.74, and 291.76. Sections 291.73, 291.74, and 291.76, are adopted with changes to the proposed text as published in the March 20, 1990, issue of the *Texas Register* (15 TexReg 1567). Section 291.71 and §291.72 are adopted without changes and will not be republished.

The amendments implement the recommendations of the board's advisory committee on automated technology concerning the use of data processing systems and automated drug dispensing systems; set out the requirements pharmacists must follow when dispensing a prescription which has been carried out by a registered nurse or physician assistant as allowed by House Bill 18 passed the 71st Legislature; add a requirement that pharmacy personnel wear name badges which identify them by name and title; correct rule references to articles which were placed in the Health and Safety Code by the 71st Legislature; clarify several sections of rule language through non-substantive changes.

A total of six persons or groups submitted comments during a Public Hearing held on May 16, 1990, and to the board office. These comments concerned the following subjects: duties of supportive personnel, prepackaging of drugs, loading automated drug dispensing system, exemption from triplicate prescription requirements for outpatient prescriptions, inpatient medication orders, requirements for back-up systems, change or discontinuance of a data processing system, maintenance of records of drug usage in a data processing system, and limitation to one type of record keeping system.

The following groups and associations made comments for and against these sections: Texas Society of Hospital Pharmacists, All Saints Episcopal Hospital, Baylor University Medical Center, and High Plains Baptist Hospital. Generally, the agency agreed with the comments and suggestions and the language has been amended to reflect these

comments. However, the agency disagrees with the following comments for the indicated reasons. Comment: Delete the requirement for recording the quantity on the prepackaging record if the quantity is one. Response: The agency believes that the quantity contained in each prepackaged unit must be recorded on the prepackaging record for accountability purposes. Comment: Delete the requirement for maintaining a record of loading an automated drug dispensing system. Response: The agency believes that a pharmacy must maintain a record of loading automated drug dispensing systems so that quality assurance checks may be conducted. Comment: Allow a pharmacy to dispense a prescription for a Schedule II drug without the receipt of a written prescription if the prescription is data entered into a computer system by a physician. Response: The language cannot be amended in this manner since the Federal and Texas Controlled Substances Act require a written prescription for Schedule II controlled substances. Comments: Delete the requirement for a data processing system to produce an audit trail of prescription drug usage and to produce a daily print out of drug usage. Response: A hospital pharmacy must be accountable for prescription drugs used within the hospital, however, because of the large numbers and volume of drugs used within a hospital, the agency has amended these sections to require a data processing system to produce an audit trail and printout for controlled substances, butorphanol, nalbuphine and tripelennamine only. Records for other noncontrolled drugs, which have a low potential for diversion and abuse, may be maintained in a manual system.

The amendments are proposed under Texas Civil Statutes, Article 4542a-1, §§5, 17, 29, and 30 which provide the Texas State Board of Pharmacy with the authority to govern the practice of pharmacy and pharmacists and the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy must meet to qualify for licensing or relicensing as a pharmacy.

§291.73. Personnel.

(a) (No change.)

(b) Pharmacist-in-charge.

(1) (No change.)

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A)-(M) (No change.)

(N) labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions and symptoms of toxicity of investigational new drugs;

(O) maintenance of records in a data processing system such that the data processing system in in compliance with Class C (Institutional) Pharmacy requirements; and

(P) meeting all inspection and other requirements of the Texas Pharmacy Act and these sections.

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

(e) Supportive personnel.

(1) (No change.)

(2) Duties. Duties may include, but need not be limited to, the following functions under the direct supervision of and responsible to a pharmacist:

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

(E) distributing routine orders for stock supplies to patient care areas;

(F) entering medication order and drug distribution information into a data processing system, provided judgemental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order; and

(G) loading bulk unlabeled drugs into an automated drug dispensing system provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her signature or electronic signature to the appropriate quality control records.

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

(f) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(1) Supportive personnel. All supportive personnel shall wear an identification tag or badge which bears the person's name and identifies him or her as a supportive person.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

§291.74. Operational Standards.

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

(f) Drugs.

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

(3) Prepackaging of drugs and loading bulk unlabeled drugs into automated drug dispensing systems.

(A) Prepackaging of drugs.

(i) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's lot number;

(III) expiration date; and

(IV) quatity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) signature or electronic signature of the responsible pharmacist.

(iv) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Loading bulk unlabeled drugs into automated drug dispensing systems.

(i) Automated drug dispensing systems may be loaded with bulk unlabeled drugs only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(ii) The label of an automated drug dispensing system container shall indicate the brand name, and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(iii) Records of loading bulk unlabeled drugs into an automated drug dispensing system shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) manufacturer or distributor;

(III) manufacturer's lot number;

(IV) expiration date;

(V) quantity added to the automated drug dispensing system;

(VI) date of loading;

(VII) name, initials, or electronic signature of the person loading the automated drug dispensing system; and

(VIII) signature or electronic signature of the responsible pharmacist.

(iv) The automated drug dispensing system shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in clause (iii) of this subparagraph.

(4) (No change.)

(5) Distribution.

(A) Medication orders.

(i)-(v) (No change.)

(B) Procedures.

(i) (No change.)

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I)-(XIX) (No change.)

(XX) preparation and distribution of IV admixtures;

(XXI) handling of medication orders when a pharmacist is not on duty;

(XXII) use of automated drug dispensing systems; and

(XXIII) use of data processing and direct imaging systems.

(g)-(h) (No change.)

§291.75. Records.

(a) Maintenance of records.

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

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, e.g., microfilm or microfiche, provided:

(A) the records in the alternative data retention system contain all of the information required on the manual record; and

(B) the alternative data retention system system is capable of producing a hard-copy of the record upon the request of the board, its representative or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Outpatient records.

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

(3) Controlled substances listed in Schedule II must be written on a triplicate prescription form in accordance with the Texas Controlled Substances Act, §481.075 and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by the Texas Controlled Substances Regulations, §13.47 (Texas Administrative Code, Title 37, Chapter 13), entitled "Exceptions to Use of Triplicate Prescription Forms." Outpatient prescriptions for Schedule II controlled substances that are exempted from the triplicate prescription requirement must be manually signed by the practitioner.

(c) Inpatient records.

(1) Each original medication order or set of orders issued together shall bear the following information:

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

(E) Signature or electronic signature of the practitioner or that of his or her authorized agent.

(2)-(5) (No change.)

(6) General requirements for records maintained in a data processing system.

(A) Effective date for compliance with data processing requirements.

(i) Data processing systems installed before March 1, 1991, shall comply with these regulations governing data processing systems in Class C (Institutional) pharmacies by March 1, 1992.

(ii) Data processing systems installed after March 1, 1991, shall comply with these regulations governing data processing systems in Class C (Institutional) pharmacies upon installation.

(B) If a hospital pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(C) Requirements for back-up systems. The facility shall maintain a back-up copy of information stored in the data processing system using disk, tape, or other electronic back-up system and up-date this back-up copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(D) Change or discontinuance of a data processing system.

(i) Records of distribution and return for all controlled substances, and butorphanol (Stadol), nalbuphine (Nubain), and tripelennamine (PBZ). A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains the same information as required on the audit trail printout as specified in paragraph (7)(B) of this subsection. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(7) Data processing system maintenance of records for the distribution and return of all controlled substances, and butorphanol (Stadol), nalbuphine (Nubain), and tripelennamine (PBZ) to the pharmacy.

(A) Each time a controlled substance, and/or butorphanol (Stadol), nalbuphine (Nubain), or tripelennamine (PBZ) is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(B) The data processing system shall have the capacity to produce a hard-copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via CRT display, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(C) An audit trail printout for each strength and dosage form of these drugs distributed during the preceeding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(D) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this paragraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(8) Failure to maintain records. Failure to provide records set outin this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(9) Data processing system downtime. In the event that a hospital pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(d) (No change.)

(e) Other records. Other records to be maintained by a pharmacy:

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

(3) a hard-copy of the power of attorney to sign DEA 222C order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(5) (No change.)

(6) a hard-copy of controlled substances inventories required by §291.17 of this title (relating to the Controlled Substances Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard-copy of the perpetual inventory on-site;

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard-copy Schedule V non-prescription register book;

(9) (No change.)

(10) a hard-copy of any notification required by the Texas Pharmacy Act or these sections including, but not limited to, the following:

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

(f)-(g) (No Change.)

§291.76. Class C Pharmacies Located in a Free Standing Ambulatory Surgical Center.

(a) (No change.)

(b) Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

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

(3) Automated drug dispensing system–An automated device that measures, counts and/or packages a specified quantity of dosage units for a designated drug product.

(4) Board–The Texas State Board of Pharmacy.

(5) Consultant pharmacist–A pharmacist retained by a facility on a routine basis to consult with the ASC in areas that pertain to the practice of pharmacy.

(6) Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedule I-V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(7) Direct copy–Electronic copy or carbonized copy of a medication order including a facsimile (FAX), tele-autograph, or a copy transmitted between computers.

(8) Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(9) Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(10) Downtime–Period of time during which a data processing system is not operable.

(11) Electronic signature–A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(12) Floor Stock–Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other ASC department (excluding the

pharmacy) for the purpose of administration to a patient of the ASC.

(13) Formulary–List of drugs approved for use in the ASC by an appropriate committee of the ambulatory surgical center.

(14) Hard-copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc).

(15) Investigational new drug–New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Federal Food and Drug Administration.

(16) Medication order–A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge–Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy–Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the ASC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug–

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device the under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order–

(A) a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to the Medical Practice Act, §3.06(d)(5), Texas Civil Statutes, Article 4495b.

(21) Supportive personnel–Those individuals utilized in ASC pharmacies whose responsibility it shall be to provide nonjudgemental technical services concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

(22) Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(23) Part-time pharmacist–A pharmacist who works less than full-time.

(24) Texas Controlled Substances Act–The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) (No change.)

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i)-(xiii) (No change.)

(xiv) labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions and symptoms of toxicity of investigational new drugs;

(xv) meeting all inspection and other requirements of the Texas Pharmacy Act and this subsection; and

(xvi) maintenance of records in a data processing system such that the data processing system is in compliance with the requirements for a Class C (Institutional) Pharmacy located in a free standing ASC.

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

(4) Supportive personnel.

(A) (No change.)

(B) Duties. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i)-(iv) (No change.)

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgemental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading bulk unlabeled drugs into an automated drug dispensing system provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her signature or electronic signature to the appropriate quality control records.

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

(5) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(A) Supportive personnel. All supportive personnel shall wear an identification tag or badge which bears the person's name and identifies him or her as a supportive person.

(B) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(d) Operational standards.

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

(5) Drugs.

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

(C) Prepackaging of drugs and loading of bulk unlabeled drugs into an automated drug dispensing systems.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date; and

(-d-) quantity of the drug, if quantitiy is greater than one.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials or electronic signature of the prepacker; and

(-j-) signature or electronic signature of the responsible pharmacist.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unlabeled drugs into an automated drug dispensing systems.

(I) Automated drug dispensing systems may be loaded with bulk unlabeled drugs only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(II) The label of an automated drug dispensing system container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk unlabeled drugs into an automated drug dispensing system shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) expiration date;

(-e-) quantity added to the automated drug dispensing system;

(-f-) date of loading;

(-g-) name, initials or electronic signature of the person loading the automated drug dispensing system; and

(-h-) signature or electronic signature of the responsible pharmacist.

(IV) The automated drug dispensing system shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in Subclause (III) of this clause.

(D) (No change.)

(6)-(7) (No change.)

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(A)-(P) (No change.)

(Q) preparation and distribution of IV admixtures;

(R) procedures for supplying drugs for post-operative use, if applicable; and

(S) use of automated drug dispensing systems; and

(T) use of data processing systems.

(9) (No change.)

(e) Records.

(1) Maintenance of records.

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

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, e.g., microfilm or microfiche, provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system system is capable of producing a hard-copy of the record upon the request of the board, its representative or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Outpatient records.

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

(D) Controlled substances listed in Schedule II must be written on a triplicate prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by the Texas Controlled Substances Rules, §13.47, entitled "Exceptions to Use of Triplicate Prescription Forms." Outpatient prescriptions for Schedule II controlled substances that are exempted from the triplicate prescription requirement must be manually signed by the practitioner.

(3) Inpatient records.

(A) Each original medication order or set of orders issued together shall bear the following information:

(i)-(iv) (No change.)

(v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as a licensed nurse employee or consultant/full or part-time pharmacist of the ASC.

(B)-(E) (No change.)

(F) General requirements for records maintained in a data processing system are as follows.

(i) Effective date for compliance with data processing requirements.

(I) Data processing systems installed before March 1, 1991, shall comply with these regulations governing data processing systems in Class C (Institutional) pharmacies located in a free standing ASC by March 1, 1992.

(II) Data processing systems installed after March 1, 1991, shall comply with these regulations governing data processing systems in Class C (Institutional) pharmacies located in a free standing ASC upon installation.

(ii) If an ASC pharmacy's data processing system is not in compliance with the Board's requirements, the pharmacy must maintain a manual recordkeeping system.

(iii) Requirements for back-up systems. The facility shall maintain a back-up copy of information stored in the data processing system using disk, tape, or other electronic back-up system and up-date this back-up copy on a regular basis to assure that data is not lost due to system failure.

(iv) Change or discontinuance of a data processing system.

(I) Records of distribution and return for all controlled substances, and butorphanol (Stadol), nalbuphine (Nubain), and tripelennamine (PBZ). A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains the same information as required on the audit trail printout as specified in subparagraph (G)(ii) of this paragraph. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(II) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains all of the information required on the original document.

(III) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(v) Loss of data. The pharmacist-in-charge shall report to the Board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(G) Data processing system maintenance of records for the distribution and return of all controlled substances, and butorphanol (Stadol), nalbuphine (Nubain), or tripelennamine (PBZ) to the pharmacy.

(i) Each time a controlled substances, and/or butorphanol (Stadol), nalbuphine (Nubain), or tripelennamine (PBZ) is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(ii) The data processing system shall have the capacity to produce a hard-copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(I) patient's name and room number or patient's facility identification number;

(II) prescribing or attending practitioner's name;

(III) name, strength, and dosage form of the drug product actually distributed;

(IV) total quantity distributed from and returned to the pharmacy;

(V) if not immediately retrievable via CRT display, the following shall also be included on the printout:

(-a-) prescribing or attending practitioner's address; and

(-b-) practitioner's DEA registration number, if the medication order is for a controlled substance.

(iii) An audit trail printout for each strength and dosage form of these drugs distributed during the preceeding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(iv) The pharmacy may elect not to produce the monthly audit trail print-out if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preeceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(H) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(I) Data processing system downtime. In the event that a hospital pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(4) (No change.)

(5) Other records to be maintained by a pharmacy. Other records to be maintained by a pharmacy include:

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

(C) a hard-copy of the power of attorney to sign DEA 222C order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(E) (No change.)

(F) a hard-copy of controlled substances inventories required by §291. 17 of this title (relating to the Controlled Substances Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard-copy of the perpetual inventory on-site;

(G) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) a hard-copy Schedule V non-prescription register book;

(I) (No change.)

(J) a hard-copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i)-(iii) (No change.)

(6)-(7) (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 August 15, 1990.

TRD-9008201 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 5, 1990

Proposal publication date: March 20, 1990

For further information, please call: (512) 832-0661

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Chapter 297. Vending Machines

• 22 TAC §297.1

The Texas State Board of Pharmacy adopts the repeal of §297.1, without changes to the proposed text as published in the March 20, 1990, issue of the *Texas Register* (15 TexReg 1574).

This section is repealed since requirements for the use of automated dispensing machines have been incorporated into Class A and Class C Pharmacy Rules.

The amendment is adopted under Texas Civil Statutes, Article 4542a-1, §§5, 17, and 29, which provides the Texas State Board of Pharmacy with the authority to govern the practice of pharmacy and the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy must meet to qualify for licensing or relicensing as a pharmacy.

§297.1. Vending Machines Prohibited.

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 August 15, 1990.

TRD-9008202 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 5, 1990

Proposal publication date: March 20, 1990

For further information, please call: (512) 832-0661

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Chapter 309. Generic Substitution

• 22 TAC §309.5

The Texas State Board of Pharmacy adopts an amendment to §309.5, without changes to the proposed text as published in the March 20, 1990, issue of the *Texas Register* (15 TexReg 1575).

The amendment to this section sets out the labeling requirements for a prescription carried out by a registered nurse or physicians assistant as allowed by House Bill 18 passed by the 71st Legislature.

The amendment is adopted under Texas Civil Statutes, Article 4542a-1, §5, 17, 29, and 30, which provide the Texas State Board of Pharmacy with the authority to govern the practice of pharmacy and pharmacists and the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy must meet to qualify for licensing or relicensing as a pharmacy.

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 August 15, 1990.

TRD-9008203 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 5, 1990

Proposal publication date: March 20, 1990

For further information, please call: (512) 832-0661

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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 the repeal of §511.122, without changes to the proposed text as published in the April 6, 1990, issue of the *Texas Register* (15 TexReg 1926).

The repeal will allow for the adoption of a new section that will conform with recent amendments to the Act.

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.

No comments were received regarding adoption of the repeal.

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

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 August 10, 1990.

TRD-9008171 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: September 4, 1990

Proposal publication date: April 6, 1990

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

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The Texas State Board of Public Accountancy adopts new §511.122, without changes to the proposed text as published in the April 6, 1990, issue of the *Texas Register* (15 TexReg 1926).

The new section is adopted to insure conformity with recent amendments to the Public Accountancy Act.

The new section will insure that individuals who do not currently meet acceptable experience requirements will be able to receive credit immediately.

No comments were received regarding adoption of the new section.

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

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 August 10, 1990.

TRD-9008173 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: September 4, 1990

Proposal publication date: April 6, 1990

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

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Chapter 523. Continuing Professional Education

Mandatory Continuing Education (CE) Program

• 22 TAC §523.63

The Texas State Board of Public Accountancy adopts the repeal of §523.63, without changes to the proposed text as published in the April 10, 1990, issue of the *Texas Register* (15 TexReg 1999).

The adoption of the repeal will result in the utilization of a new §523.63.

The adoption of the repeal will allow for the adoption of a new §523.63.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding mandatory continuing education requirement.

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 August 13, 1990.

TRD-9008192 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: September 5, 1990

Proposal publication date: April 10, 1990

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

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The Texas State Board of Public Accountancy adopts new §523.63, without changes to the proposed text as published in the April 10, 1990, issue of the *Texas Register* (15 TexReg 1999).

The new section is adopted to insure that all licensees maintain sufficient continuing education to insure they remain competent to serve the public and their employers.

The new section requires all licensees to maintain sufficient continuing education to insure they remain competent to serve the public and their employers.

Four individuals submitted comments in opposition to the rule based on the belief that mandatory continuing education is a burden on licensees in industry due to financial and time constraints and the perceived need that those in industry do not need the continuing education required of a licensee in public practice. One individual suggested a six-year phase-in for the requirement that licensees accumulate 120 hours every three years.

The board believes all licensees must maintain professional competency and has provided for reduced hours for individuals licensed three years, and those who reenter public accounting following an absence. Further, the board provides for case-by-case exemptions upon a showing of reason which prevents compliance.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §15A, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding mandatory continuing education requirement.

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 August 13, 1990.

TRD-9008193 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: September 5, 1990

Proposal publication date: April 10, 1990

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities

• 25 TAC §1.134, §1.135

The Texas Department of Health adopts amendments to §1.134 and §1.135. Section 1.134 is adopted with changes to the proposed text as published in April 20, 1990, issue of the *Texas Register* (15 TexReg 2235). Section 1.135 is adopted without changes and will not be republished.

The amendments cover exemptions to and the application of the definition, treatment, and disposition of special waste from health care facilities. The amendments are necessary because the disposal of extracted teeth does not pose a threat to public health or to the environment. Therefore, they are excluded from regulation as a special waste from a health care related facility. Also, certain types of pathological waste may be useful to medical research programs; the department does not intend to preclude the donation of tissues for research programs or to preclude the sale of placentas from certain facilities for acceptable purposes. Accordingly, the amendments will exclude teeth from the rules and will allow the donation of tissues and/or fetuses and/or the sale of placentas without waste management regulation requirements, and make the language of the rules conform to requirements in applicable state laws.

Concerning §1.134, the department received one written comment in support of the exclusion of teeth from the existing rules. In response to verbal requests for clarification of references to the proposed amendments, the department has revised the wording and reformatted the outline of §1.134 to improve the clarity of the section and cross-references in other sections.

Concerning §1.134(b)(2), departmental legal staff members raised questions concerning the enforceability of the rules concerning facilities which may receive donated tissue specimens. After considerable internal discussion and consultation with some authorities outside the department, new language has been placed in the section to clarify the recipients allowed to receive donations of tissue.

The department also received a number of comments which either were not applicable to the proposed amendments or which addressed topics not covered in the rules.

The Texas Dental Association commented in favor of the proposal. No comments were received in opposition. Department staff members made suggestions for clarity.

The amendments are adopted under the Health and Safety Code, §§81.081-81. 092, which provides the Texas Board of Health with the authority to prevent and control communicable diseases; §142.012, which provides the board with the authority to adopt rules concerning home health agencies; §241.026, which provides the board with the authority to adopt rules concerning hospital licensure; §243.009, which provides the board with the authority to adopt rules covering ambulatory surgical centers; §244.009, which provides the board with the authority to adopt rules covering birthing centers; §§245.009-0.010, which provides the board with the authority to adopt rules covering abortion facilities; §361.011 and §361.024, which establishes the department's jurisdiction for municipal solid waste management and provides the board with the authority to adopt rules covering municipal solid waste; §694.001, which provides the board with the authority to regulate the disposition of dead bodies; §773.041, as amended by the Acts 1989 of the 71st Legislature, Chapter 372, concerning the department's authority to regulate emergency medical service providers; 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 board, the Texas Department of Health, and the commissioner of health.

§1.134. Exemptions.

(a) These sections do not apply to waste generated by the operation of:

(1) single or multi-family dwellings; and

(2) hotels, motels, or other accommodations which provide lodging and other services for the public.

(b) These sections do not apply to:

(1) teeth;

(2) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affiliated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Code, §289; and

(3) placentas designated for sale and obtained from a licensed hospital or a licensed birthing center.

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 August 13, 1990.

TRD-9008116 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 1, 1990

Proposal publication date: April 20, 1990

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

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Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.16

The Texas Department of Health adopts an amendment to §97.16, with changes to the proposed text as published in the July 10, 1990, issue of the *Texas Register* (15 TexReg 3893). The amendment implements the provisions of Senate Bill 959, Article III, 71st Legislature, 1989, concerning the establishment of an HIV Medication Program in Texas.

The amendment expands coverage of the program to include the drugs Pentamidine for inhalation solution and sulfamethoxazole-trimethoprim (DS) tablets for eligible program patients.

No comments were received on the proposed amendment; however, department staff has

recommended that subsection (g)(2) be amended to included the associate commissioner for disease prevention on the appeal review panel and that subsection (i) be removed and incorporated into subsection (f) for clarity. The department has made these changes.

The amendment is adopted under Senate Bill 959, Art. III, 71st Legislature, 1989, which provides the Texas Board of Health with the authority to adopt rules concerning A Texas HIV Medication program; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§97.16. Texas HIV Medication Program.

(a) Purpose and scope.

(1) Purpose. These sections will implement the provisions of the Texas HIV Medication Program as authorized by Senate Bill 959, Article III, 71st Legislature, 1989. The Texas HIV Medication Program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in obtaining medications indicated by the food and drug administration for the treatment of HIV-related conditions and approved by the Texas Board of Health for program coverage.

(2) Scope. These sections cover, eligibility, criteria for financial eligibility, medication coverage, priority, application process, appeal procedures, confidentiality, procedures for obtaining the application materials, payment for approved medications, and participating pharmacies.

(b) Eligibility. A Texas resident is eligible to participate if he or she:

(1) (No change.)

(2) is under the care of a licensed physician who prescribes the medication(s); and

(3) (No change.)

(c) Criteria for financial eligibility. A person is financially eligible if he or she:

(1) is not covered for approved program medications under the Texas Medicaid Program;

(2) does not qualify for any other state or federal program available for financing the purchase of approved program medications;

(3) is not covered for the medication(s) by any other third-party payer; and

(4) (No change.)

(d) Medication coverage. The Texas HIV Medication Program will cover AZT, Pentamidine for inhalation solution, and sulfamethoxazole-trimethoprim (DS) tablets. AZT must be provided in increments of 100 capsules (i.e. 100, 200, 300, or a maximum of 400 capsules per month). Coverage for Pentamidine for inhalation solution and sulfamethoxazole-trimethoprim (DS) tablets applies to those patients with the HIV virus and a T4-cell count of 200 or less. Pentamidine for inhalation solution must be provided in one 300 mg. vial per month. Sulfamethoxazole-trimethoprim (DS) tablets must be provided in increments of 100 tablets for a maximum of 200 per month.

(e) Priority. The Texas HIV Medication Program will coordinate with the department's Bureau of Chronically Ill and Disabled Children Services for the provision of HIV Medication for all applicants under 18 years of age.

(f) Application process. An application is made by the person by submitting completed financial eligibility and medical certification forms. Application documents must be mailed to the Division of Pharmacy, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. An application packet, containing instructions and all necessary forms, may be requested by writing to the Division of Pharmacy at the previously cited address or by telephoning toll-free 1-800-255-1090.

(g) Appeal procedures.

(1) This subsection establishes the appeal procedures that are available in the event of an eligibility or funding conflict in the program. To initiate the appeal process, a person must notify the department's division of pharmacy that he wants to appeal a program decision concerning either eligibility or funding. The written notice must contain sufficient reasons for believing that an appeal is in order.

(2) A department review panel will hear the appeal. The panel consists of the associate commissioner for disease prevention, the director of the pharmacy division, and the HIV medication program administrator. The appellant may appear in person to present his views. After hearing all testimony, the panel will issue a written decision which will be final.

(h) Confidentiality. All information in the application is confidential by law and will not be released. No information that could identify an individual applicant will be released except as authorized by law. Within the TDH, physical security and administrative controls will be implemented to safeguard the confidentiality of the applications and other means of identifying the individual. Applicants should realize that, in addition to TDH, their physicians and pharmacists will be aware of their diagnosis.

(j) Payment for approved medication(s). Using specifications developed by TDH, the Texas State Purchasing and General Services Commission will enter into contract with a drug wholesaler in accordance with applicable state law and rules. TDH will pay the contract wholesaler for the medication(s) dispensed to a person by a participating pharmacy in accordance with the terms of the contract. If a person is withdrawn from the program for any reason, the TDH will cease payment as of that date. The TDH will not pay for more than one month's issue of the medication(s) during the month (TDH, e.g., will not pay to replace any drug lost, stolen, or damaged).

(k) Participating pharmacy. The program will continue using the approved pharmacies serving the federal AZT Drug Reimbursement Program and will approve additional pharmacies if an extreme hardship exists. Persons who have been approved by the TDH for HIV medication program financial assistance may be required to pay a $5.00 prescription fee (copayment) to the participating pharmacy for each month's supply of medication(s) at the time the drug is dispensed.

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 August 14, 1990.

TRD-9008151 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: September 4, 1990

Proposal publication date: July 10, 1990

For further information, please call: (512) 458-7500

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Chapter 98. HIV and STD Control

Subchapter B. HIV Education Grant Program

General Provisions

The Texas Department of Health adopts the new sections §§98.61-98.68 and §§98.81-98.89. Sections 98.63, 98.64, 98. 66-98.68, and 98.82-98.89 are adopted with changes to the proposed text as published in the May 29, 1990, issue of the *Texas Register* (15 TexReg 2960). Sections 98.61, 98.62, 98.65, and 98.81 are adopted without changes and will not be republished.

The new sections implement the provisions of the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statues, Article 4419b-4, Article 2 (Senate Bill 959, 71st Legislature, 1989), which requires the department to establish a grant program to deliver HIV education programs. The sections cover two major areas: general HIV program (program) requirements, development, evaluation and review; and AIDS/HIV education providers.

The following is a summary of comments which were received during the comment period regarding the proposed new sections. Concerning §98.66(b), a commenter ex-

pressed concern about the ability of the department to monitor and enforce the provisions under this section. The department has noted the comment for the record; however, these issues are required to be addressed by the Act. A second commenter was concerned that language contained in the Act providing guidance to the department and the Texas Board of Health (board) in structuring the program and adopting rules should be included in this section. The department disagrees because the guidance in the Act which the commenter suggested has been omitted is included elsewhere in the rules as follows: §98.82(g), which requires the program to give special consideration to non-profit community organizations whose primary purpose is serving persons under 18 years of age; and §98.86(c), which requires a provider to perform in accordance with the Act.

Concerning §98.67, a commenter expressed concern about the number of AIDS/HIV education, prevention and risk reduction advisory committee members, and the ability of the group to be easily assembled. The department has noted the comment; however, the committee has already been established by the board and met successfully. The membership of the committee was chosen to obtain the desired diversity and geographic representation. Meeting dates are scheduled at the committee's convenience and have been well attended.

Concerning §98.68, a commenter expressed concern about the necessity of program review activities through monitoring systems when contract program activities to be evaluated will be included in the quarterly reports. The provision is made in accordance with the Act and reports cannot substitute for onsite observation.

Concerning §98.68(d)(2), a commenter questioned if the department's requirement that the provider furnish fiscal and financial reports of expenditures meant all the fiscal and financial reports of the organization, or just those of the expenditures of state grant funds. The department is clear on its responsibility to monitor the expenditure of state grant program funds but agrees that the question bears further review. Therefore, the department proposes no changes to §98.68(d)(2) at this time, but will pursue clarification on this issue and will propose amendments to the rules if necessary.

Concerning §98.68(d)(4), a commenter suggested a need for further clarification of the word "materials". The department agrees and has added a new subsection (f) to §98.68.

Concerning §98.68(d)(5), a commenter requested clarification of the meaning of "a record of votes". The department agrees and has added new subsection (f) to §98.68.

Concerning §98.81(a), a commenter expressed concern that the department intended to prohibit public and private schools from applying for assistance under this grant program. The department disagrees because the rule includes governmental, public, or private non-profit entities located within the state of Texas as entities eligible to apply for grant funds.

Concerning §98.82(c), the department has made changes by reducing the required response interval to three working days.

Concerning §98.82(e)(2), a commenter expressed concern as to the necessity of a public hearing for grant or grants in the amount of $25,000 per year. One commenter expressed concern that renewal grants in excess of $25,000 are exempt from public hearings. The department disagrees since this provision is made in accordance with the Act which requires that public hearings be conducted for an initial grant or grants totaling in excess of $25,000 annually.

Concerning §98.82(f), the department has made changes by clarifying the proposal review process.

Concerning §98.82(g), a commenter opposed the use of the term "primary purpose", which grants special consideration to organizations serving persons under 18 years of age. The department disagrees in that the language is taken verbatim from the Act which also addresses the elements of an application, as do these sections. Under the Act and these sections, an application must be submitted to allow the department to evaluate the plan of operation, which includes the activities to be conducted and the number to be served.

Concerning §98.82(j), the department has made changes by describing criteria for an expedited process to review existing contracts.

Concerning §98.82(m), the department has added a provision for rule changes approved by the board to become amendments to existing contracts.

Concerning §98.83(a), the department has made changes by clarifing confidentiality of records.

One commenter suggested that rules are needed as to the process required for the public to file complaints, contest a grant application or recipient. The department has an informal procedure for responding to complaints but agrees with the need for formal procedures and will therefore propose amendments at the next meeting of the board to these sections that provide for formal complaint procedures.

• 25 TAC §§98.61-98.68

The new sections are adopted under the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, Article 2, which provides the board with the authority to adopt rules covering a grant program for HIV education services; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§98.63. Forms. Forms which have been developed by the Texas Department of Health for use in the HIV Program will be provided to applicants and providers as necessary.

§98.64. Funds. The Texas Board of Health may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer the Human Immunodeficiency Virus Services Act (Act), except as provided by other law.

§98.66. General Program Requirements.

(a) As authorized by the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill Number 959)), the Texas Board of Health, in these sections, has established the HIV Program in the Texas Department of Health (department) to provide for the delivery of education programs in local communities.

(b) The department through the grant process shall endeavor to provide for the delivery of HIV education programs to:

(1) coordinate the use of federal, local, and private funds;

(2) encourage community-based service provision;

(3) address needs that are not met by other sources of funding;

(4) provide funding as extensively as possible across regions of the state in amounts that reflect regional needs;

(5) encourage cooperation among local providers;

(6) prevent unnecessary duplication of HIV education programs within a community;

(7) complement existing HIV education programs in a community;

(8) provide HIV education programs for populations engaging in behaviors conducive to HIV transmission;

(9) initiate needed HIV education programs where none exist; and

(10) promote early intervention and treatment of persons with HIV infection.

§98.67. Development and Evaluation of Program.

(a) The Texas Board of Health (board) shall appoint a 15-member statewide AIDS/HIV Education, Prevention, and Risk Reduction Advisory Committee which is representative of:

(1) a community based youth outreach program;

(2) the Texas Youth Commission;

(3) the Windham school district, Windham, Texas;

(4) a community based drug treatment/outreach program;

(5) the planned parenthood chapter;

(6) a local health department;

(7) a community based program to reach gay/bisexual men;

(8) the Texas Association of Retarded Citizens;

(9) a member of the religious community (clergy);

(10) a community based organization for hearing impaired;

(11) a PTA representative;

(12) a parent;

(13) a teacher/principal;

(14) a community based organization to reach hispanics; and

(15) a community based organization to reach blacks.

(b) The advisory committee is created for the purpose of advising and assisting the board and the Texas Department of Health (department) in planning and administering the development of a comprehensive system of AIDS/HIV education. Advisory committee responsibilities will include:

(1) evaluation of existing education programs and unmet needs;

(2) review of the goals and targets of the RFP application/renewal packets;

(3) evaluation of ongoing program efforts;

(4) definition of both short-range and long-range goals and objectives for the program; and

(5) development of review criteria and standards for the program.

(c) . The department shall consider advisory committee recommendations during the development of provider contracts, as required in §98.82 of this title (relating to Provider Application-Selection-Contract Process).

§98.68. HIV Program Review.

(a) HIV Program (program) review activities will be accomplished through monitoring systems developed to ensure the delivery of appropriate AIDS/HIV education programs.

(b) For economies of scale, and with the consent of the commissioner of health, the program may contract for concurrent or retrospective program reviews.

(c) The Texas Department of Health (department) will establish a program review system to evaluate the delivery of education programs. The program review system will allow for technical assistance to the providers.

(d) The department will require providers to report to the department:

(1) the number and type of individuals reached by an education program;

(2) fiscal and financial management reports of expenditures;

(3) program accomplishments;

(4) copies of all materials the organization has printed or distributed related to HIV infection;

(5) a record of the votes of the local program materials review committee on each item; and

(6) a report on the networking and coordination of services with other providers.

(e) The department may require other program related data; however, the provider will be given 60 days advance notice prior to the end of the contract term.

(f) The provider must comply with the most current version of the document entitled "Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Education Sessions in Centers for Disease Control Assistance Programs" and its preface when choosing program materials. The department adopts this document by reference. Copies may be reviewed at the Texas Department of Health, Bureau of HIV and STD Control, Room G-308, 1100 West 49th Street, Austin.

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 August 13, 1990.

TRD-9008122 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: October 27, 1990

Proposal publication date: May 29, 1990

For further information, please call: (512) 458-7304

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AIDS/HIV Education–Providers

• 25 TAC §§98.81-98. 89

The new sections are being proposed under the authority of the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4, Article 2, which provides the Board with the authority to adopt rules covering a grant program for HIV education services; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§98.82. Provider Application–Selection–Contract Process.

(a) To administer the HIV Program (program) effectively and to receive the maximum benefits from available funds, the Texas Department of Health (department) shall contract for education programs on a request for proposal (RFP).

(b) The department shall publish a public notice of the RFP in the *Texas Register* at least 30 days prior to the date on which the application is due. The department also will utilize local published notices or direct contact with potential applicants.

(c) After public notice has been given, the department will forward the application packet within three working days of a request being received in the department's HIV division.

(d) Complete applications at a minimum must include:

(1) a description of the objectives established by the applicant for the conduct of the program during the contract period;

(2) documentation that the applicant has consulted with appropriate local health department or public health district officials, health authority, community groups, and individuals with expertise in HIV education and a knowledge of the needs of the population to be served or as specified in the RFP or renewal documents;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information required by this subchapter or requested by the department in the application package.

(e) The department shall conduct public hearings in the region in which the applicant(s) is located before awarding an initial grant or grants totaling in excess of $25,000 annually.

(1) At least 10 days before such a public hearing, the department shall give notice to each state representative and state senator who represents any part of the region in which any part of the contracted funds will be expended.

(2) Public hearings will not be required for the renewal of a contract.

(f) Complete applications for funding will initially be reviewed by the program and other departmental staff, and by a review panel composed in such a manner that individual panel members:

(1) are involved with education programs but are not employees of the department; and

(2) are not members of, employed by, or otherwise associated with, a particular application under review by a particular panel.

(g) After the review described in subsection (f) of this section, the program will make the final selection of providers; special consideration will be given to nonprofit community organizations whose primary purpose is serving persons under 18 years of age.

(h) Applicants approved by the program must execute contracts with the department. Applicants that are not selected will receive written notification to that effect from the department within 30 days after the awards have been approved and will be given the opportunity for an informal reconsideration conducted under the provisions of §98.87 of this title (relating to Denial of an Application to Provide AIDS/HIV Services–Procedure).

(i) A provider must agree to deliver education programs to the number and type of individuals or groups during the contract period designated and accepted by the department.

(j) The program may expedite the renewal of contracts with providers so that education programs may be provided without gaps in service.

(1) An abbreviated application format will be used to the extent deemed possible by the department.

(2) Applications for funding may be reviewed and approved by the department based upon the applicant's prior history of compliance with the applicable law and rules, its satisfactory performance of contract provisions and the quality of the services being provided. The quality of education programs provided will be verified by evaluations by the department.

(k) Contracts executed between the department and providers under this section are governed by the requirements in the Uniform Grant and Contract Management Standards (UGCMS), 1 TAC §§5.141-5.167.

(l) A provider must give assurances in the contract that the provider will abide by the requirements of the Act, the UGCMS, and this subchapter.

(m) Amendments to this subchapter adopted during the term of the contract will be sent to each contractor at the time the amendment's are adopted by the Texas Board of Health. Each contractor must acknowledge in writing the receipt of the amendments and provide an assurance that they have read and understand the content of the amendments and will comply with them as part of their contractual obligation.

§98.83. Confidentiality.

(a) Confidentiality of all records is essential. All information obtained in connection with the examination, care, or services provided to any client under a HIV program (program), which is carried out through a contract under this subchapter, shall not, without the client's consent, be disclosed, except as may be necessary to provide services to the client, or as may be required by law. Information derived from any program may be disclosed:

(1) in statistical or other summary form; or

(2) in case reports, but only if the identity of the individuals diagnosed or provided care as described in the report is not disclosed and cannot be discerned.

(b) To obtain and continue provider status, all applicants or providers must have a policy in place to protect client confidentiality and must assure the Texas Department of Health that each individual participating in the provider's activities has been informed of the policy and the fact that civil and criminal penalties exist in the Communicable Disease Prevention and Control Act for a person who commits the offense of violating the confidentiality of persons, as protected under the provisions of the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4, Article 2.

(c) Failure of an applicant or a provider to have a confidentiality policy and procedure in place is grounds for denial of an application or termination of the provider's approval and contract cancellation.

§98.84. Model Workplace Guidelines

(a) To obtain and continue provider status, all applicants or providers must have a policy in place that is consistent and at least as comprehensive as the model guidelines for HIV/AIDS policies and education programs adopted by the Texas Board of Health (board) in §97.19 of this title (relating to Model HIV/AIDS Workplace Guidelines). Copies of the board's guidelines may be obtained from the Texas Department of Health, Public Health Promotion Division, 1100 West 49th Street, Austin, Texas 78756.

(b) Failure of an applicant or a provider to have workplace guidelines and procedures in place is grounds for denial of an application or termination of the provider's approval and cancellation of the contract.

§98.85. Payment for Services.

(a) Reimbursement by the Texas Department of Health (department) to providers for services delivered will be contingent upon a valid signed contract between the provider and the department.

(b) The department will reimburse the provider for services rendered in accordance with the contract between the provider and the department. The department will only be obligated to pay those funds as specified and expended in accordance with the contract.

(c) The department will require documentation of the delivery of services by the provider, as follows.

(1) A request for payment will be denied if the request is incomplete, submitted on an improper form, contains inaccurate information, or is not submitted within 90 days from the date services were delivered.

(2) A request for payment which has been denied must be resubmitted in correct form within 30 days from the notice of denial or within the initial 90-day filing deadline, whichever is later.

(3) Corrections must be made on the original request for payment form if possible, and a copy of the denial notice must accompany the resubmitted request for payment.

(4) If a new request is submitted, the original request must accompany the new request for payment form.

(d) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, deducted from current claims due to be paid to the provider.

(e) The opportunity for a due process hearing is available for the resolution of conflicts relating to payment issues between the department and a provider in accordance with §98.88 of this title (relating to Modification, Suspension, or Termination of Provider Status–Procedure).

§98.86. Denial of Application–Modification, Suspension, Termination of Provider Approval-Criteria.

(a) The Texas Department of Health (department) may, for the reasons described in subsections (b) and (c) of this section, deny the application and modify, suspend, or terminate the approval of a provider after written notice of the proposed action and written notice of an opportunity for an informal reconsideration or an opportunity for a due process hearing, as specified in this section, has been given to the provider.

(b) An application may be denied if the applicant:

(1) has not submitted a complete application;

(2) is not an entity listed in §98.81 of this title (relating to Who May Apply to become a Provider);

(3) has not provided the assurances, policies, or procedures required by this subchapter relating to client confidentiality and workplace guidelines; or

(4) fails or refuses to execute a contract with the department.

(c) Provider status may be modified, suspended, or terminated if the provider:

(1) provides false or misleading information which is material to the approval by the department to become a provider or continue provider status;

(2) fails to perform in accordance with the requirements of the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4, Article 2, and the applicable provisions of the General Appropriations Act;

(3) fails to perform in accordance with this subchapter;

(4) dails to perform in accordance with the provisions of the contract; or

(5) fails to perform in accordance with the rules prescribed in the Uniform Contracts and Grants Management Standards, 1 TAC §§5.141-167.

(d) The department may suspend or cancel payment for services delivered if false or fraudulent requests for payments are submitted by a provider.

(e) A provider's contract may not be terminated during the pendency of due process hearing. Payments due to be paid to providers may be withheld during the pendency of a hearing, and payments shall resume if the final determination is in favor of the provider.

§98.87. Denial of an Application to Provide AIDS/HIV Services–Procedure.

(a) A applicant aggrieved by the HIV program's (program) decision to deny an application to become a provider may request an informal reconsideration from the Texas Department of Health (department) .

(b) An applicant must request an informal reconsideration in writing.

(c) The applicant's written request must be received by the department within 20 days from the receipt of the program's decision letter.

(d) The provider's failure to request reconsideration and to notify the department within the 20-day period will be deemed a waiver of the opportunity for an informal reconsideration and the proposed action will become final.

(e) An impartial panel of three members appointed by the commissioner of health will conduct the informal reconsideration. The members may not have participated in the program's decision to deny the application.

(f) The informal reconsideration will consist primarily of a review of the applicant's and department's documentation relevant to the department's decision, the Texas Board of Health's relevant rules, the authorizing statute, and the current General Appropriations Act; however, the panel may permit the applicant requesting the reconsideration and/or the department's representative to appear before the panel or submit information in writing, if desired.

(g) The panel will affirm, reverse, or modify the program's decision. The panel's decision will be binding on the program and the applicant.

§98.88. Modification, Suspension, or Termination of Provider Status–Procedure.

(a) Before the Texas Department of Health (department) may modify, suspend, or terminate a provider's status, the department must offer the provider the opportunity for a due process hearing.

(b) The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §§12-20, do not apply to the modification, suspension, or termination of provider status under this subchapter. The department shall conduct due process hearings in accordance with the Texas Board of Health's (board) informal hearing procedures, §§1.51-1.55 of this title (relating to Informal Hearing Procedures). Copies of the board's informal hearing procedures may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin, Texas 78756.

§98.89. Exceptions from Appeals Procedure. The Texas Department of Health (department) is not required to offer an informal reconsideration or an informal hearing for the denial, modification, suspension, or termination of provider status, if the department's actions result from the exhaustion of funds appropriated to the department for the administration of the Act, Article 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 13, 1990.

TRD-9008123

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

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For further information, please call: (512) 458-7304

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Chapter 229. Food and Drugs

Synthetic Narcotic Drugs in the Treatment of Drug Dependent Persons

The Texas Department of Health adopts the repeal of existing §229.141-§229.149, and new §229.141-229.152, concerning minimum standards for approved narcotic drug treatment programs. New sections 229.142, 229.144-229.146, and 229.148-229.151 are adopted with changes to the proposed text as published in the May 29, 1990, issue of the *Texas Register* (15 TexReg 2980). The repeals and new §§229.141, 229.143, 229.147, and 229.152 are adopted without changes and will not be republished.

The sections implement the provisions of House Bill 2706, 71st Legislature, 1989, concerning the permitting, inspecting, and regulating of narcotic treatment programs, and the collection of fees from the programs. The purpose is to ensure the proper use of approved narcotic drugs in the treatment of narcotic dependent persons at narcotic treatment programs by inspecting, permitting, and monitoring the programs and administering and enforcing the Health and Safety Code (Code), Chapter 466.

The sections establish minimum standards for approved narcotic drug treatment programs.

Concerning the new minimum standards for approved narcotic drug treatment programs generally, a commenter objected to the proposed standards stating that there is no need for additional regulations and recommended that the department accept audit reports or site visit reports conducted by the Federal Food and Drug Administration, Drug Enforcement Administration, and the Texas Commission on Alcohol and Drug Abuse. The department disagrees since the Code, Chapter 466, as amended by House Bill 2706 mandates the department to adopt rules regulating narcotic treatment programs.

Concerning §229.142, a commenter suggested that definitions for the terms "medical director" and "fee certificate" be added. The department agrees and has added the definitions.

Concerning §229.144, a commenter recommended that report procedures for methadone related deaths and adverse reactions to methadone be established. The department agrees and has added subsection (c) to include the reporting procedures.

Concerning §229.145(a), a commenter said that in order for Texas to prevent another "methadone war," the following statement should be added: "If a new application is received for a narcotic treatment program (NTP) which is located within four miles of an existing clinic, statistical reports such as police reports, emergency room reports, hospital inpatient reports, and letters of support from elected city officials must accompany the application showing that the addicted population is not getting adequate treatment from existing clinics. "The department agrees that there have been problems, but there is no specific provision in the Code, Chapter 466, which allows for rules to be adopted which address this issue.

Concerning §229.145(a)(3), the department has corrected a cross reference by changing the language from "paragraph (1) of this subsection" to "subsection (b)(1) of this section."

Concerning §229.145(a)(3), §229.148(b), §229.151(c)(6), and §229. 151(d)(2), a commenter suggested that NTPs should have a definite time for surrendering the existing permits to the department. The department

agrees and has added "by certified or registered mail within 24 hours following receipt of the new approved narcotic drug permit."

Concerning §229.145(b), numerous commenters objected to the proposed fees stating the amounts are excessive, unjust, and discriminatory. A commenter stated that the fees will have an adverse effect on the clients of NTPs and that these additional expenses will have to either be offset by increasing the fees charged to the clients or by securing additional sources of funding. Another commenter stated that it is excessive to fully fund the department's new employees and capital expenditures for the department's monitoring functions from the fees. A commenter stated that the fees are too costly for non-profit treatment programs and that any additional expense to the client will alienate the medically indigent clients and keep clients from seeking services or cause the clients to leave the NTPs. A commenter stated that the proposed fee structure will require NTPs receiving AIDS grants from the department to pay fees. A suggestion was made that fees for non-profit treatment programs be reconsidered and that all chemical dependency treatment programs pay the same level of licensure or permit fees. The department disagrees with the comments since the department is required by the Health and Safety Code, Chapter 466, to recover not less than 50% of the actual annual expenditures of state funds, and there are no exceptions within the Code for NTPs receiving AIDS grants or for non-profit NTPs. The proposed fees will allow the department to recover approximately 70% of the expenditures needed to regulate NTPs. This does not include potential expenditures for the department's office of general counsel, budget division, fiscal division, or other departmental personnel. The increased cost to the NTPs after initial registration will be $20 per year per patient, or approximately 38.5 cents per week which is reasonable when compared to the average NTP charge of $30-$60 per week per patient.

Concerning §229.145(b), a commenter objected to the permit fees and suggested that the fees be set at a flat rate basis of no more than $500 per year, with the base rate of $100 and the marginal rate of $4.00 per patient. The department disagrees since the department is required to recover not less than 50% of the actual annual expenditures of state funds needed to regulate NTPs, and these suggested fees would not recover a sufficient amount of funds.

Concerning §229.145(b)(1), (2), and (3) and §229.151(b)(1), numerous commenters objected to the difference in the fees required to be paid by outpatient clinics and inpatient hospitals. A suggestion was made that hospitals be charged $2,000 for initial permits. The department disagrees since hospital detoxification treatment is performed in a controlled environment on a small number of patients using methadone in decreasing doses to reach a drug free state in a period not to exceed 21 days.

Concerning §229.145(b)(1) and (4), several commenters objected to the $100 initial and annual renewal fee required of each medication unit. The department disagrees since NTP medication units will also require inspections and monitoring.

Concerning §229.145(b)(2) and §229.148(c), a commenter recommended that a time frame be established for the submission of fees for patients. The department agrees and has added "no later than 30 days after the permit is issued."

Concerning §229.145(b)(2) and (3), a commenter objected to the "approved to treat" fee formula and suggested that the fees be set on a utilization basis which is based upon the prior calendar quarter's average census, to be adjusted quarterly. The department disagrees since it is felt that the "approved to treat" formula is the most equitable means by which to assess fees and also allows for an increase in patient numbers when required.

Concerning §229.145(b)(2) and (3), numerous commenters objected to the $20 patient fees. A commenter suggested that a budget outlining how the department plans to spend the fees be mailed to every NTP. One commenter stated that it is not clear how this fee will be used or what benefit the constituents will derive from the fee. The department disagrees since the department is required to recover not less than 50% of the actual annual expenditures of state funds needed to regulate NTPs. The NTP fees will be used for permitting, administering, inspecting, and enforcing the Code, Chapter 466.

Concerning §229.145(b)(3), a commenter objected to the $20 annual renewal fee and suggested that each program be required to submit a $2.00 monthly fee for each patient that the clinic medicated rather than to base the fee on potential patients. The commenter stated that the resulting fees would be more than the $20 yearly fee for each patient. The department disagrees since it would require additional regulatory staff to monitor and collect the fees as suggested.

Concerning §229.145(c)(1), a commenter stated that the attorney general of Texas has ruled that a corporation cannot obtain a synthetic narcotic permit. The commenter objected to a partnership, unless composed of physicians, being able to obtain a synthetic narcotic permit and suggested that issuing the permits to physicians would improve the care of opiate dependent individuals as well as preventing abuse of the programs. The Department disagrees since the Code, Chapter 466, as amended by House Bill 2706, states "The department may issue a permit to a person if the person is a legal entity and if the entity is organized and operating under the laws of this state. The department may also issue a permit to a physician." The Code of Federal Regulations (CFR), Title 21, Part 291 is adopted by reference in §229.147 and addresses both program sponsor requirements and physician requirements.

Concerning §229.145(c)(1), a commenter recommended that minimum standards for physicians be established which would require the physician to attend at least 15 hours per year of continuing medical education in the field of addiction medicine and that all personnel in a NTP be required to obtain 15 hours of training per year in the field of addiction, medicine, psychotherapy, or related fields. The department disagrees since the Code does not address the specific educational requirements described by the commenter. However, NTPs must comply with CFR, Title 21, Part 291 which is adopted by reference in §229.147.

Concerning §229.145(c)(4) and (5), a commenter stated that the requirement for a new application and fees when a NTP moves to a new location is in conflict with Food and Drug Administration (FDA) requirements and suggested that the department follow FDA procedures. The department disagrees since this is required by the Code. The state is allowed to have more stringent requirements than FDA.

Concerning §229.146, a commenter stated that the section needs to address narcotic treatment program permit suspension or revocation procedures. The department agrees and has made the appropriate changes by adding new subsection (c).

Concerning §229.146, the department received a recommendation from its legal staff to include procedures for assessment of administrative penalties. The department has added subsection (c) to include administrative penalties.

Concerning §229.148(a) and §229.151(d), a commenter requested that the term "in good standing" be deleted because these subsections apply to all NTPs. The department agrees and has made the changes.

Concerning §229.148(b) and §229.151(d)(2), a commenter recommended that the words "and approval of the information on" be added after the word "evaluation" in the last sentence. The department agrees and has made the appropriate addition.

Concerning §229.149, a commenter expressed concern that the department is currently not able to inspect all narcotic treatment programs on a regular basis thus requiring those inspected to take more corrective action. The commenter suggested adding a statement that the department will perform a minimum of one inspection every two years, reserving the right to inspect more frequently. The department disagrees since the department has the right to inspect and regulate at any reasonable time, must have the flexibility to dedicate more inspection time to problem NTPs, and must coordinate inspections with the FDA.

Concerning §229.150, a commenter said that the central registry is necessary and should be given serious regulatory consideration. The commenter suggested a committee be appointed to study the proposal. The department agrees; however, there has been an ongoing dialogue with NTPs both prior to and since the passage of House Bill 2706, on this subject. Narcotic drug treatment rules have been submitted to the board of health on two previous occasions and there has been substantial dialogue with the NTPs regarding prevention of simultaneous multiple enrollment.

Concerning §229.150, numerous commenters objected to the central registry saying that it is discriminatory, will discourage new patients from entering treatment programs, and will violate patient confidentiality. Suggestions were made that the department provide program site audits as a means of preventing inappropriate take-home medication scheduling and methadone diversion. A suggestion was made that all

chemical dependency patients (i.e., narcotic, alcohol, etc.) be enrolled in a central registry. The department disagrees since adequate study has been given to multiple enrollment prevention and the central registry. A special numerical code has been developed, and patient names will not be given to the department. The code will provide for maximum patient confidentiality, help identify and prevent the simultaneous multiple enrollment of patients, and assist in the prevention of methadone diversion. The Code, Chapter 466, only authorizes the department to regulate NTPs. Therefore, other chemical dependency patients cannot be included in the central registry.

Concerning §229.150, numerous commenters objected to the central registry saying that it will be cost prohibitive and that it is not necessary. The department disagrees because it is required by the code and there may be few if any changes each month after the initial information for each patient is submitted to the central registry. The central registry will help identify and prevent the simultaneous multiple enrollment of patients and assist in the prevention of methadone diversion.

Concerning §229.150, a number of commenters also objected to the central registry saying that there has not been an impact study performed on the implementation of a central registry, there is no formal prevalence data, there are no provisions in the central registry requirement pertaining to AIDS prevention, and there is a conflict of interest between the department's Bureau of HIV and STD Control (Bureau) and NTPs. Suggestions were made that the impact on clinical areas, AIDS prevention, criminal justice, and financial implications be investigated, that the department establish a mechanism for assessing prevalence rates of multiple programming, and that there be some type of coordination between the department and the clinics to attempt to get the at risk population into treatment. The department disagrees with these comments because there has been ongoing dialogue with NTPs both prior to and since the passage of House Bill 2706. Narcotic drug treatment rules have been submitted to the board of health on two previous occasions and there has been substantial dialogue with the NTPs regarding fees and a means to prevent simultaneous multiple enrollment. Reports of methadone diversion have been received from local and federal law enforcement officials. Recent investigations by the department have discovered five methadone toxification deaths in this state and the department is continuing its investigations. As a result of investigations, the department has found that NTPs are not complying with the Code, Chapter 466 and CFR, Title 21, Part 291. The NTPs are required to report methadone related deaths and other critical information to the department and to the FDA. There is an urgent need to conduct more routine inspections and special investigations. The department recognizes that the investigational use of methadone requiring the prolonged maintenance of narcotic dependence as part of a total treatment effort has shown promise in the management and rehabilitation of selected narcotic addicts. Because of NTP noncompliance, a number of dangerous situations and abuses have arisen. House Bill 2076 does not conflict with the mandate of the Bureau since it's responsibility is to develop and implement guidelines regarding AIDS and HIV.

Concerning §229.150, a commenter expressed concern that all NTPs may not be required to use the central registry and wanted assurance that all NTPs would participate. The commenter further stated that if a clinic did not submit a client's name to the central registry, clients would enroll at that clinic rather than at the one that complied. The department disagrees since NTPs found to be in violation of the central registry will be subject to legal action.

Concerning §229.150, a commenter said that converting narcotic drug treatment programs to medical practices would help prevent potential abuse in the program and suggested that the physician adjust the dosage for the patients rather than allowing lay personnel to adjust the doses without physician instructions. The department agrees that inappropriate dispensing should be prevented, and the required guidelines for the authorized dispensing of methadone is outlined in CFR, Title 21, Part 291. NTPs that are not following these guidelines will be subject to legal action.

Concerning §229.150(e)(1), several commenters objected to the telephone notification requirement, saying that it will result in telephone congestion and be time consuming. Suggestions were made to use a fax line for both verbal and written notification, that the department provide a 1-800 number, and that only written notification be submitted weekly. The department disagrees because there may be few, if any changes each month after the initial information for each patient is submitted to the central registry. Additional expenditures for a 1-800 number would require an increase in the fees. The department has plans to install a fax line which will be acceptable as a substitute for the written report. It is important that patient changes be reported on a timely basis to prevent multiple enrollments. The department has amended §229.150(e)(1) to read "...by telephone on the day the action occurs and written documentation must be submitted within a 24-hour period (or the next state working day immediately following weekends or holidays.)"

Concerning §229.150(e)(2)(A), a commenter suggested that additional NTP information be required for the central registry. The department agrees and has amended the subparagraph to read "name, address, and telephone number of the NTP, and approved narcotic drug permit number."

Concerning §229.150(e)(2)(D)(i), a commenter objected to the photograph identification requirement. The department disagrees since the department believes the identification requirements are adequately addressed.

Concerning §229.150(e)(2)(D)(ii), a commenter stated that with this type of numerical coding, the potential for two patients with the same identification code in their program is great. The department agrees that duplication is possible and has amended subclause (I) to include "Gray (5), and Other (6)", and has added to clause (iii), "If the NTP has more than one patient with the same identification code, the subscript (A), (B), (C), etc. must be assigned. (For example 201095311A, 201095311B, etc.)"

Several commenters objected that the proposed rules were not received by them until a very short time before the public hearings. Requests were made that the comment period be extended for responses to the proposed rules. The department disagrees since the department allowed adequate time and notification by publishing the proposed rules in the *Texas Register* on May 29, 1990, and conducting public hearings on June 12 and June 13, 1990. The comment period remained open through June 28, 1990.

Several commenters requested that a committee be formed with representatives from narcotic drug treatment/rehabilitation programs and the department to develop proposed rules, a fee schedule, and a plan to prevent simultaneous multiple enrollment of persons in NTPs. A commenter stated that House Bill 2706 requires the department to establish a committee to comply with the mandate by working with NTPs to establish workable alternative solutions to multiple program enrollment prevention. The department disagrees because there has been ongoing dialogue with NTPs both prior to and since the passage of House Bill 2706. Narcotic drug treatment rules have been submitted to the board of health on two previous occasions and there has been substantial dialogue with the NTPs regarding fees and a means to prevent simultaneous multiple enrollment. Multiple enrollment prevention has been addressed with the development of a central registry and utilization of special numerical codes rather than individual names. This will provide maximum patient confidentiality, will help identify and prevent the simultaneous multiple enrollment of patients, and assist in the prevention of methadone diversion.

A number of other minor changes have been made to assure consistent terminology, to clarify meaning without substantial change, and to improve grammar and style.

The following groups or associations made comments regarding the proposed sections: Aeschbach & Associates, Austin; Austin-Travis County Mental Health- Mental Retardation Center, Austin; Best Recovery Health Care, Inc., Houston; Chemical Dependence Associates of Houston, Houston; D. Gonzalez & Associates #2, Forth Worth; D. Gonzalez & Associates #3, Garland; Fulbright & Jaworski, Austin; G.P.A., Inc., Dallas; G.P.A., Inc. #5, Longview; Houston Substance Abuse Clinic, Houston; Lubbock Regional Mental Health Mental Retardation Center, Lubbock; Maintenance Clinic, Inc., Houston; Narcotic Withdrawal Center, Houston; National Association of Social Workers/Texas, Austin; Port Arthur Drug Abuse Program, Port Arthur; State Representative Libby Linebarger; Texas Clinic, Houston; Texas Department of Health, Austin; Texas Department of Mental Health and Mental Retardation, Laredo; Toxicology Associates, Inc., Houston; Tropical Texas Center for Mental Health and Mental Retardation, Edinburg; West Texas Counseling & Rehabilitation Program, Midland; West Texas Counseling & Rehabilitation Program, Odessa; West Texas Counseling & Rehabilitation Program, San Angelo; and nu-

merous individuals. None of these groups or associations opposed adoption of the rules in their entirety. However, some of the commenters had questions, recommendations, and concerns regarding parts of the rules.

The Center for Health Care Services, of San Antonio, had two commenters; one opposed the adoption of the rules in their entirety, and the other offered recommendations and concerns regarding parts of the rules.

Tarrant County Medical Education Research Foundation, of Fort Worth and Corpus Christi Drug Abuse Council, Inc., of Corpus Christi had one commenter each who opposed adoption of the rules in their entirety.

• 25 TAC §§229.141-229.149

The repeals are adopted under the Code, Chapter 466, which provides the Texas Board of Health with the authority to adopt rules deemed necessary to insure the proper use of narcotic drugs in the treatment of drug-dependent persons and to adopt fees for the issuance of permits, inspection, implementation, and enforcement of the Code; and the Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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 August 13, 1990.

TRD-9008117 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: September 3, 1990

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For further information, please call: (512) 458-7248

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Minimum Standards for Approved Narcotic Drug Treatment Programs

• 25 TAC §§229.141-229.152

The new sections are adopted under Health and Safety Code (Code), Chapter 466, which provides the Texas Board of Health with the authority to adopt rules deemed necessary to insure the proper use of narcotic drugs in the treatment of drug-dependent persons and to adopt fees for the issuance of permits, inspection, implementation and enforcement of the Code; and the Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Approved narcotic drug–A drug approved by the United States Food and Drug Administration for maintenance and/or detoxification of a person physiologically addicted to opiate class of drugs.

Approved narcotic drug permit–A permit issued by the Texas Department of Health to an applicant to operate a narcotic treatment program (NTP) which provides an approved narcotic drug for maintenance and/or detoxification and rehabilitative services to opioid addicted individuals.

Approved to treat–The maximum number of patients the applicant or permit holder has determined the NTP will treat at any point in time under the approved permit.

Board's formal hearing procedures–The hearing procedures of the Texas Department of Health in §§1.21-1.34 of this title (relating to Formal Hearing Procedures) for conducting hearings on denial of application, suspension, or revocation of permit.

Central registry–A process in which an NTP shall share patient identifying information about individuals who are applying for or undergoing detoxification or maintenance treatment on an approved narcotic drug to a central record system at the Texas Department of Health, Division of Food and Drugs, Austin.

Department–The Texas Department of Health.

Fee certificate–A document issued annually by the department after payment by the narcotic treatment program of the required fee based on the number of patients approved to treat.

Hospital–A health care facility licensed by the department as a general hospital or a special hospital under Health and Safety Code, Chapter 241; or a health care facility licensed by the Texas Department of Mental Health and Mental Retardation as a private mental hospital under Texas Civil Statutes, Article 5547-88–5547-100; or a hospital directly operated under the authority of other statutes of the state.

Medical director–A physician, licensed to practice medicine in the jurisdiction in which the program is located, who assumes responsibility for the administration of all medical services performed by the NTP, including insuring that the program is in compliance with all federal, state and local laws and regulations regarding the medical treatment of narcotic addiction with a narcotic drug.

Medication unit–A facility established as part of, but geographically dispersed (i.e., separate) from a narcotic treatment program from which licensed private practitioners and community pharmacists are permitted to administer and dispense a narcotic drug, and are authorized to collect samples for drug testing or analysis for narcotic drugs.

Narcotic drug–A drug as defined in Texas Controlled Substances Act, Health and Safety Code, §481.002 (29)(A), (B), and (C).

Narcotic treatment program (NTP)–An organization which has been issued an approved narcotic drug permit by the department and the permit has not been suspended, revoked, or surrendered to the department.

Permit holder–An individual, incorporated entity, or government entity who has provided assets to establish a NTP and who accepts the responsibility for management, contractual arrangements, fiscal matters, availability of health and rehabilitative services, and compliance with federal, state, and local laws in the operation of a NTP.

Person–A corporation, organization, government or governmental subdivision, agency, business trust, partnership, association, or any other legal entity.

Program director–An individual who provides overall administrative management to the NTP under guidelines established by the permit holder and the medical director.

Program physician–A licensed physician who will provide medical treatment and counsel to the patients of a NTP under the supervision of the medical director.

Standing orders–Written instructions prepared by a licensed physician pursuant to the rules of the Texas State Board of Medical Examiners relating to standing delegation orders, as described in 22 TAC §§193. 1-193.6.

§229.144. State of Texas Laws and Rules and Federal Regulations.

(a) A permit holder shall assure that the narcotic treatment program (NTP) is in compliance with all State of Texas laws and rules regulating chemical dependency treatment facilities including, but not limited to, the following laws: Health and Safety Code, Chapter 464; the Medical Practice Act, Texas Civil Statutes, Article 4495b; the Nurse Practice Act, Texas Civil Statutes, Article 4513-4528; the Vocational Nurse Act, Texas Civil Statutes, Article 4528c; the Pharmacy Act, Texas Civil Statutes, Article 4542a-1; and the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

(b) The permit holder shall assure that the NTP is in compliance with the Code of Federal Regulations, Title 21, Part 291, entitled "Drugs Used for Treatment of Narcotic Addicts."

(c) The NTP sponsor must report to the department any patient death which is considered to be methadone related. The report shall be submitted in writing within two weeks of the death. A detailed account of any adverse reaction to methadone will be maintained in the patient treatment record.

§229.145. Application, Fees, Permits.

(a) *Application.*

(1) A complete narcotic drug treatment application provided by the department and a copy of federal form FDA 2632 filed with the Food and Drug Administration (FDA), and a copy of federal form DEA 363 filed with the Drug Enforcement Administration (DEA) must be submitted to the department to apply for an approved narcotic drug permit to operate a narcotic treatment program (NTP).

(2) A complete application filed in accordance with this subsection for a NTP will be reviewed and evaluated by the department, in accordance with §229.281 of this title (relating to Processing Permit Application Relating to Food and Drug Operation). An application shall not be considered complete until an application for a NTP has been submitted to the DEA and to the FDA. If the application is denied, the applicant shall have an opportunity for a hearing pursuant to §229.147 of this title (relating to Denial of Application; Suspension or Revocation of Narcotic Drug Permit).

(3) A person acquiring a NTP currently operating under department approval must submit a new application in accordance with this subsection and an initial fee as required in subsection (b)(1) of this section. An approved new narcotic drug permit will be issued, upon approval, to a new owner or new location and the permit issued to the previous owner or location shall be revoked without hearing and surrendered to the Department by certified or registered mail within 24 hours following receipt of the new approved narcotic drug permit.

(b) Fees and fee assessments.

(1) A nonrefundable initial fee of $700 must be submitted along with the complete application for the purpose of evaluation, inspection, and processing of the request to operate a NTP in accordance with subsection (a) of this section. An application will not be considered unless the application is accompanied by the initial fee. A nonrefundable initial fee of $100 shall be submitted for each medication unit requested in the initial application.

(2) Upon issuance of the permit, the permit holder shall submit a fee of $20 for each patient which the NTP is approved to treat no later than 30 days after the permit is issued. A fee certificate will be issued for a 12- month period from date of issuance of the permit.

(3) A nonrefundable annual renewal fee of $20 for each patient which the NTP is approved to treat shall be submitted by the permit holder to the department by filing a renewal form provided by the department prior to the expiration of the current fee certificate. A fee certificate will be issued for a 12-month period from date of issuance of the permit.

(A) A fee of $20 per patient shall be submitted in the event the permit holder requests approval to increase the number of patients approved to treat during the current fee-paid year. In the calculation of the fee, temporary transfer patients shall not be considered as approved to treat patients by the program providing temporary treatment.

(B) An increase in the number of patients must be justified by demonstrating that the facility and staff are adequate to treat the increased number of patients.

(4) A nonrefundable annual renewal fee of $100 shall be paid for each medication unit the permit holder may operate.

(c) Permit.

(1) All NTPs, persons, or organizations are required by the Health and Safety Code, Chapter 466, to obtain an approved narcotic drug permit in order to provide treatment to patients with a primary diagnosis of an opiate addiction.

(2) An approved narcotic drug permit shall be issued by the department subsequent to federal and state approval of an application as required in subsection (a) of this section, and payment of a fee as required in subsection (b)(1) of this section which will provide authorization to operate a NTP.

(3) Failure to pay the appropriate fee as required in subsection (b) of this section is grounds for suspension, revocation, or denial of a permit as provided in §229.147 of this title (relating to Denial of Application; Suspension or Revocation of a Narcotic Drug Permit).

(4) A permit issued by the department for the operation of a NTP applies both to the permit holder and to the place where the program is to be operated. A permit issued by the department is not transferable from one facility to another facility and must be surrendered to the department if the person holding the permit sells or otherwise conveys the facility to another person. If the permit holder sells or otherwise conveys the facility to another person or changes the location of the facility, a new application must be submitted as required in subsection (a) of this section and the fees must be paid as required in subsection (b) of this section.

(5) A permit holder requesting to move a NTP to another location must submit a new application for a new permit as required in subsection (a) of this section, and pay the initial fee in accordance with subsection (b)(1) of this section.

(6) An approved narcotic drug permit issued by the department shall remain in effect until suspended or revoked by the department or surrendered by the permit holder.

(7) The approved narcotic drug permit and the current certificate must be posted in a conspicuous location within the premises of the NTP.

§229.146. Failure to Comply.

(a) A permit holder who has failed to comply with the Health and Safety Code (Code) and the sections in this chapter shall be given notice of failure to comply and allowed a period of 30 days to comply. Failure to provide the department with a plan of correction or failure to accomplish the plan of correction by the designated completion date shall be cause, in accordance with §1.21-1.34 of this title (relating to Formal Hearing Procedures), for the department to seek revocation of the permit and/or the assessment of an administrative penalty, criminal penalty, and/or civil penalties as provided in the Code.

(b) The department may take action under the Code, Chapter 466, §3.01 (emergency orders), as amended by House Bill 2706, 71st Legislature, 1989, when a violation of the code or other state law is so severe as to affect the public health or the health and safety of the narcotic treatment programs (NTP's) patients and staff and an immediate and acceptable plan of correction cannot be obtained. If an emergency order is issued to suspend or revoke the permit of a NTP, the department may require other NTPs to accept patients to insure that treatment services for the patients are maintained.

(c) The department will access administrative or civil penalties in accordance with the provisions in §229.261 of this title (relating to Assessment of Administrative or Civil Penalties).

§229.148. Compliance by Existing Narcotic Treatment Programs.

(a) On the effective date of the sections in this chapter, each narcotic treatment program (NTP) with an existing narcotic drug permit shall be subject to the sections in this chapter. A NTP which may be in noncompliance on the effective date of the sections in this chapter will be allowed 90 days to achieve compliance if the NTP is in compliance with Code of Federal Regulations, Title 21, Part 291.

(b) Each existing permit holder shall be required to submit a report of current status form provided by the department. This report form shall be completed and returned with the fee as required in §229.145(b)(1) of this title (relating to Application, Fees, Permits) to the department within 30 days of receipt of the report form. After evaluation and approval of the information on the report of current status form, a new approved narcotic drug permit will be issued. The existing permit must be surrendered to the department by

certified or registered mail within 24 hours following receipt of the new approved narcotic drug permit.

(c) Upon issuance of the new permit, the permit holder shall submit the fee as required in §229.145 (b)(2) of this title (relating to Application, Fees, Permits) for each patient which the NTP is approved to treat no later than 30 days after the permit is issued. A fee certificate will be issued for a 12-month period from date of issuance of the permit.

(d) Each existing permit holder shall submit the fee as required in §229.145(b)(3) of this title (relating to Application, Fees, Permits) for each patient by filing a renewal form provided by the department prior to the expiration date of the current fee certificate. The calculation for the fee shall be based on an average daily patient census for the previous six months as a minimum. The permit holder may elect to be approved to treat a larger number of patients than originally approved to treat. A fee certificate will be issued for a 12-month period from the date of issuance of the permit.

(e) A patient who has entered treatment in a NTP prior to the effective date of the sections in this chapter and who is currently enrolled and in good standing with the program standards must consent to abide by the sections in this chapter within 30 days after notification from the NTP program director. The NTP program director shall notify all patients enrolled in the NTP within 10 days from the effective date to comply with the sections in this chapter. A patient who refuses to comply with the sections in this chapter after notification shall be terminated by the NTP.

(f) Each NTP shall submit to the department for the central registry a list of all maintenance and detoxification patients enrolled, no later than six months after the effective date of the sections in this chapter. Each patient will be identified as required in §229.150(e)(2) of this title (relating to Central Registry).

§229.149. Inspections and Monitoring. In order to determine compliance with the sections in this chapter and related statutes, the department may enter and inspect the location of an applicant or a permit holder at any reasonable time without prior notification. The monitoring may include inspection of relevant records and/or interviews with patients and narcotic treatment program (NTP) personnel to determine compliance with the rules and statutes governing the operation of a NTP. Inspection and monitoring are subject to the provisions of Code of Federal Regulations, Title 42, Part 2.

§229.150. Central Registry.

(a) The permit holder shall participate in the central registry for the purpose of sharing patient identifying information as requested by the department to prevent multiple enrollment of patients in narcotic treatment programs (NTPs).

(b) A narcotic drug shall not be provided to a patient who is known to be currently enrolled in another NTP except when the patient is a temporary transfer patient.

(c) The patient shall always report to the same NTP unless prior approval is requested by the parent NTP's program physician or program director for the patient to receive treatment as a temporary transfer patient at another NTP.

(d) A central registry shall be established by the department which shall maintain a record of patient's identification and the NTP to which each patient is enrolled. Information shall be maintained in accordance with confidentiality requirements in the Code of Federal Regulations, Title 42, Part 2, and Title 21, Part 291.505, paragraph (g).

(e) Each NTP shall report to the central registry specific information.

(1) Each person admitted as a new patient, readmitted to the same clinic, admitted from another NTP as a permanent transfer patient, transferred to another narcotic maintenance or detoxification program, temporarily transferred to another program, or discharged (terminated) from maintenance or detoxification treatment shall be identified and reported to the central registry located at the Texas Department of Health, Division of Food and Drugs, by telephone on the day the action occurs and written documentation must be submitted within a 24-hour period (or the next state working day immediately following weekends or holidays).

(2) Each NTP's verbal and written report to the central registry shall identify and provide the following information for each patient:

(A) name, address, and telephone number of the NTP, and approved narcotic drug permit number;

(B) date action was taken (MO-DA-YR);

(C) action taken identified as:

(i) new patient (NP);

(ii) transfer in-patient (TIP);

(iii) transfer out-patient (TOP);

(iv) terminated patient (TP);

(v) re-admitted patient (RP); or

(vi) temporary transfer patient (TTP); and

(D) patient identification as follows.

(i) The patient must be identified with a valid document incorporating a photograph such as a valid drivers license or state issued identification card and/or other identification records such as a social security card and appropriate medical records.

(ii) An identification number shall be constructed using the following code numbers for the patient:

(I) color of eyes: Brown (1), Blue (2), Green (3), Hazel (4), Gray (5), Other (6);

(II) date of birth stated in number digits with two digits for the month, day, and year (example: January 9, 1953–010953);

(III) gender: male (1), female (2); and

(IV) race: White (1), Black (2), Hispanic (3), Asian (4), American Indian (5), Other (6).

(iii) An example of a patient identification number in accordance with clause (ii) of this subparagraph for a patient with blue eyes, date of birth–January 9, 1953, male, and white is 201095311. If the NTP has more than one patient with the same identification code, the subscript (A), (B), and (C), etc. must be assigned (for example 201095311A, 201095311B, etc.).

§229.151. Approved Hospital Narcotic Drug Detoxification Treatment.

(a) Application.

(1) The hospital administrator must submit a complete hospital narcotic drug detoxification treatment application provided by the department, a copy of federal form FDA 2636 filed with the Food and Drug Administration (FDA), and a copy of federal form DEA 363 filed with the Drug Enforcement Agency (DEA), to apply for an approved narcotic drug permit for in-patient narcotic drug detoxification.

(2) The hospital administrator shall submit to the FDA and the department the name of the individual (e.g., pharmacist) responsible for receiving and securing supplies of narcotic drugs for the treatment of narcotic addicts. The individuals responsible for supplies of narcotic drugs must be authorized to do so by federal or state law.

(3) The hospital administrator shall submit to the FDA and the department

a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(4) The hospital pharmacist shall submit to the FDA and the department the quantity of narcotic drugs anticipated to be used per year for narcotic addiction detoxification treatment.

(5) A member of the hospital medical staff shall be named by the administrator or chief of medical staff as the responsible physician for the narcotic drug detoxification treatment.

(6) A hospital pharmacy registered by the Texas State Board of Pharmacy must be registered as a narcotic treatment program (NTP) for detoxification by the DEA.

(7) A complete application filed in accordance with subsection (a) of this section for a NTP will be reviewed and evaluated by the department in accordance with §229.281 of this title (Processing Permit Applications Related to Food and Drug Operations). Denial of application shall be in accordance with §229.147 of this title (relating to Denial of Application; Suspension or Revocation of a Narcotic Drug Permit).

(b) Fees.

(1) A nonrefundable initial fee of $200 must be submitted with the application for an inspection, evaluation, and processing of the application. An application will not be considered unless the application is accompanied by the initial fee.

(2) The nonrefundable annual renewal fee of $200 shall be submitted by the permit holder to the department by filing a renewal form provided by the department prior to the expiration of the current fee certificate. A fee certificate will be issued for a 12-month period from date of issuance of the permit. The department will not issue a permit if the current permit has been suspended, revoked, or surrendered by the permit holder.

(c) Permit.

(1) A hospital providing treatment to patients with a primary diagnosis of opiate addiction must apply for and be issued an approved narcotic drug permit by the department which shall remain in effect until suspended or revoked by the department or surrendered by the permit holder.

(2) An approved narcotic drug permit authorizing the hospital to operate a narcotic drug detoxification treatment program shall be issued subsequent to federal and state approval of the application as required in subsection (a) of this section, and payment of the fee as required in subsection (b) of this section.

(3) Failure to pay the fee as required in subsection (b) of this section is grounds for denial of the application, suspension, or revocation of the permit as provided in §229.147 of this title (relating to Denial of Application; Suspension or Revocation of a Narcotic Drug Permit).

(4) A hospital must be licensed as a chemical treatment facility under Health and Safety Code, Chapter 464, or have received an exemption from licensure standards from the Texas Commission on Alcohol and Drug Abuse.

(5) A permit issued by the department for the operation of an approved narcotic drug detoxification treatment program in a hospital applies both to the hospital owner and to the place where the hospital is to be located. A permit issued by the department is not transferable from one facility to another facility and must be surrendered to the department if the person holding the permit sells or otherwise conveys the facility to another person.

(6) If the permit holder sells or otherwise conveys the facility to another person or changes the location of the facility, a new application must be submitted as required in subsection (a) of this section and fees must be paid as required in subsection (b) of this section. When an approved narcotic drug permit is issued to a new permit holder or new location, the permit issued to the previous permit holder and/or location shall be revoked without hearing and must be surrendered to the department by certified or registered mail within 24 hours following receipt of the new approved narcotic drug permit.

(7) The approved narcotic drug permit and the current fee certificate must be posted in a conspicuous location within the premises of the NTP.

(d) Compliance by existing hospital NTPs.

(1) On the effective date of the sections in this chapter, each hospital with an existing narcotic drug permit shall be subject to the sections in this chapter. A NTP which may be in noncompliance on the effective date of the sections will be allowed 90 days to achieve compliance if the NTP is in compliance with Code of Federal Regulations, Title 21, Part 291, except as otherwise provided in this subsection.

(2) Each existing permit holder shall be required to submit a report of current status form provided by the department. The report form shall be completed and returned with the fee as required in subsection (b)(1) of this section, to the department within 30 days of receipt of the report form. After evaluation and approval of the information on the report of current status form, a new approved narcotic drug permit will be issued to the permit holder and the existing permit must be surrendered to the department by certified or registered mail within 24 hours following receipt of the new approved narcotic drug permit.

(3) Each existing NTP shall submit the annual renewal fee as required in subsection (b)(2) of this section.

(4) Section 229.148 (e) and (f) of this title (relating to Compliance by Existing Narcotic Treatment Programs) shall not apply to hospitals.

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 August 13, 1990.

TRD-9008118 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: September 3, 1990

Proposal publication date: May 29, 1990

For further information, please call: (512) 458-7248

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Chapter 325. Solid Waste Management

Subchapter A. General Information

The Texas Department of Health adopts amendments to §325.5, §325.136, and new §§325.1001-325.1004, concerning solid waste management. Section 325.136 and §325.1004 are adopted with changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2238). Section 325.5, and new §§325.1001-325.1003 are adopted without changes and will not be republished.

The amendments and new sections implement the policy established by the Texas Board of Health in 25 TAC §§1.131-1.137, concerning definition, treatment and disposition of special waste from health care related facilities by establishing regulations for persons who generate medical waste. The regulations provide the legal framework necessary to protect the public and the environment from individuals who mishandle medical waste.

The regulations specify the duties and responsibilities of generators of medical wastes; and authorize continued landfill disposal of medical waste for those generators located more than 75 miles from permitted, operating medical waste treatment facilities for 18 months beyond the effective date of these regulations, provided the landfill requests authorization to accept the waste and follows the special handling procedures specified. This is a temporary measure to allow the permitting of additional processing facilities. The regulations also provide a framework for the department or local authorities to seek corrective action and penalties of generators who mismanage certain types of medical waste, and specify the requirements for waste identification, segregation, and the requirements for on-site treatment or for off-site shipment of untreated waste.

The department received written comments from twelve groups during the 70 day period allowed for public comment. Some of the comments indicate a lack of understanding of the intent of the regulations (25 TAC §§1.131-1.137) adopted by the Texas Board of Health in March 1989. Those rules were a policy statement by the Board concerning medical waste which directed various program units within the department to implement the policy by submitting recommendations to the Board for consideration by April 4, 1990. The department is not, however, the only agency involved with medical waste management. After the proposal and adoption of the department's regulations (25 TAC §§1.131-1.137) for definition, treatment and disposition of special waste from health care related facilities, other agencies proposed rules or developed regulatory activities which would have an effect on medical waste management practices. Although the department could have chosen to ignore the regulations and enforcement activities of other agencies, the department felt that its regulations should recognize the differences and provide a clear set of requirements in the area of solid waste management. The department believes that a rational approach to solid waste management regulation should not place the regulated community in a position of uncertainty about its obligations in managing medical waste.

These amendments and new sections as proposed in the April 20, 1990, issue of the Texas Register were intended to specify the requirements for generators of medical waste which would recognize the impact of activities of other agencies–both federal and state; protect the public health and the environment by consideration of the factors necessary for disease transmission; and not increase unnecessarily the costs of health care delivery. There is no epidemiological evidence that medical waste (from hospitals) has caused disease or that hospital medical waste is any more infectious than regular household waste. An investigation by the department, as part of the study conducted by the federal Agency for Toxic Substances and Disease Registry (ATSDR) because of the requirements of the federal Medical Waste Tracking Act of 1988, did not indicate problems from medical waste disposal. The injuries reported were a result of occupational incidents during health care delivery, with more than 70% of the injuries involving mishandling of sharps.

Much of the public concern over medical waste is due to fear of infection with the human immunodeficiency virus (HIV) which may lead to development of the Acquired Immune Deficiency Syndrome (AIDS). Lack of public understanding about the requirements and pathways for transmission of the virus has created concerns and pressure which cloud the development of regulations based on sound scientific and medical evaluation of the actual risk. Coupled with public misconception of the actual risk associated with medical waste, the publicity associated with highly publicized incidents on the beaches of the Northeastern United States and the Great Lakes has lead to a demand for regulation of medical waste, despite the fact that only a very small portion of the waste on the beaches was actually medical waste and that most of this waste was identified as waste from individual households and/or illegal use of drugs. There have been two incidents in Houston during 1990 in which sharps were incorrectly discarded.

The department is also concerned with the increasing costs for health care, and the availability of health care in rural areas of the state. The department has sought to develop a set of regulations for medical waste based on analysis of the actual disease transmission risk factors, the possibility of physical injury to refuse workers, and certain aesthetic factors associated with some types of medical waste. The department has sought to limit the cost effect of regulation so as not to add to the growing costs associated with health care delivery unless there is a scientific or medical reason to adopt procedures and requirements which will undoubtedly increase the costs.

Concerning §325.5, one commenter expressed appreciation for the new definitions.

Concerning §325.136, comments were received concerning the time period for the continued landfill disposal of untreated special waste from health care related facilities. Two commenters requested, in effect, an immediate ban on landfill disposal of untreated special medical waste. The other commenters suggested a reduction from 18 months to either six or 12 months. The department is concerned about the location and capacity of disposal facilities in Texas. The existing operational facilities are located in southeast Texas, east Texas and north central Texas. There are facilities in Stroud, Oklahoma; in Carlos, Louisiana; and in New Mexico near El Paso. There are regions in Texas which are located in excess of two hours driving time from all of these facilities. This would require transportation of untreated medical waste along public roadways for a considerable distance with the risk of traffic accidents. The public is increasingly concerned about the transportation of hazardous and dangerous chemicals through cities, towns, and rural areas. Although the risk of disease transmission in an accident involving medical waste is extremely minute, the public perception of the risk is very different. The department staff has heard reports that suggest the cost estimates cited in the April 20, 1990, issue of the Texas Register do not include surcharges for travel time or distance. In some cases, these charges are more than the actual charge for the waste itself. In addition, if the Texas Air Control Board adopts the regulations as proposed for hospital incinerators April 24, 1990, *Texas Register*, (15 TexReg 2327) , many hospitals which now incinerate all or part of their waste on-site may have to cease this activity, due to their financial inability to retrofit their incinerators to meet proposed standards. Since hospitals are the largest source of the medical waste, this could strain existing treatment or disposal capacity. Since the cause of the production of the waste is not subject to effective control by any agency, the department feels that alternative disposal options must be left open for some generators until additional capacity is available. In an unregulated marketplace, if the demand for services exceeds the available supply of services, the result is usually an increased cost for the services. The department is very concerned about the decreasing availability of health care, especially hospital services, in rural Texas, particularly southern, southwestern, and west Texas. Some of these areas are economically depressed and an increase in costs associated with health care due to substantial increases in waste handling and disposal costs because of federal or state regulations could exacerbate the financial status of small hospitals in these areas. The department is also very much aware of the substantial time required to obtain a permit for a solid waste landfill or incinerator, due to the substantial public opposition to any of these facilities. These considerations, coupled with the existing evidence that viruses do not survive in a landfill environment and the complete lack of evidence that medical waste has caused a disease problem, compel the department to retain the 18 month period as proposed. The department acknowledges the risk of physical injury in trash collection and disposal operations and intends to require appropriate handling of certain types of medical waste.

Concerning §325.1004(b), one commenter expressed the opinion that the language was confusing. This subsection specifically requires the generator to segregate the wastes identified as a special waste from routine trash and establishes the department's position on how medical wastes not regulated by the department, but subject to handling requirements by other agencies are to be handled. The apparent requirement by some federal programs that any item contaminated with even a single drop of blood must be handled as "infectious waste" ignores, in the department's opinion, the factors necessary for disease transmission. It is within the federal agency's authority to make the regulations for handling the waste within a non-governmental facility. Interpretations of this type, however lawful, will substantially increase the amount of medical waste and the associated costs. Since the environmental risk is negligible, if not nonexistent in this example, the department found it necessary to provide guidance on the disposal requirements for "other regulated medical waste". The subsection is adopted as proposed.

This subsection also specifies that items of other regulated medical waste must be handled as a special waste if commingled with any special waste. There are requirements for wording in regulations which sometimes make reading the regulations difficult for the uninitiated; however, the regulation is necessary and the regulation is adopted as proposed. It should be noted that there is a specific purpose for each subsection in §325.1004. Subsection (a) specifies the entities subject to the regulations; subsection (b) specifies the responsibility for segregation of the medical waste; subsection (c) specifies the requirements for on-site treatment techniques, record keeping and establishment of treatment efficacy; subsection (d) specifies the requirements for disposal of treated waste; subsection (e) specifies the requirements for disposal of unused sharps; subsection (f) defines the term on-site ; subsection (g) establishes the requirements for disposal of other regulated medical waste which is not commingled with special wastes; subsection (h) specifies the packaging requirements for off-site shipment

of untreated waste; and subsection (i) authorizes the Commissioner of Health to waive the requirements of the §325.1004 in emergency situations.

Concerning §325.1004(c)(1), two commenters opposed encapsulation as a treatment method. One commenter also opposed chemical disinfection as a treatment method because the methods would not insure the destruction of all microorganisms or spores. A third commenter requested approval of disinfection using moist heat, or language to allow other methods approved by the department. Suggested changes are not being made at this time because this paragraph restates the approved methods previously adopted by the Board of Health. The arguments cited were considered during the drafting and adoption of the regulations for definition, treatment and disposition of special waste from health care related facilities in 25 TAC §§1.131-1.137. The new method of treatment will be added to a list of methods which have been submitted to the department for consideration at a later date.

Concerning §325.1004(c)(4) and (5), two commenters proposed addition of the transporter name to the requirements listed. A third commenter proposed a four-part shipping manifest system. These comments are not applicable to these paragraphs because their intent is to provide a record of waste treatment. A fourth commenter opposed the paragraphs as too burdensome for a large decentralized institution. This commenter suggested the use of a log book with a separate procedures file. This suggestion is what the department had in mind when the paragraphs were written. The paragraphs are adopted as proposed.

Concerning §325.1004(d)(1), two nearly identical comments stated that treated waste should not be commingled with regular waste. A third commenter requested a waiver of the marking requirements for waste which is unrecognizable after or is destroyed during treatment. A fourth commenter apparently confused the intent of §325.1004(b) and §325.1004(d)(1). Subsection (d) establishes the requirement for disposal of special medical waste after treatment. Treating the waste will destroy the pathogenic organisms of concern. Once the pathogens are destroyed, there is no scientific or medical or public health reason to require special handling except for sharps because of the potential for physical injury and for recognizable body parts because of aesthetic reasons. The relabeling requirement in paragraph (d)(1) was included because of public perception problems when fully treated waste was discarded in routine trash, but the waste bags were labeled or color coded as "biohazard" waste. Requirements of other agencies for labeling waste during generation will lead to confusion unless the waste (or its container) is clearly identified as having been treated. The paragraph is adopted as proposed.

Concerning §325.1004(d)(4)(A), five comments were received concerning the handling of sharps after treatment. Two commenters insisted that broken glass and pipets should not be placed in regular trash even after treatment. A third felt the department was overly concerned about broken glass which has been treated when household waste often contains glass which has not been decontaminated. The department does not find a scientific reason for requiring segregation from regular trash of decontaminated glassware--broken or intact. The requirement for placement in puncture resistant packaging is included as a protective measure for refuse collection personnel. It would be prudent for any glassware, especially broken glassware, to be placed in or packaged to reduce the risk of exposure of injury to refuse collection personnel. Even better would be the recycling of the glass items after cleaning or decontamination. Unfortunately there is a lack of recycling centers in all areas of the state at the present time. The subparagraph is adopted as proposed.

Concerning §325.1004(d)(4)(B) and (C), a number of objections were made to the disposal of encapsulated sharps with routine trash. The concern is based on the potential for injury to vehicle or equipment maintenance personnel if the sharps container ruptured during collection or disposal because of compaction. Another commenter felt that the special handling requirements for treated sharps was unnecessary. The commenter stated that "sterilized sharps in a rigid container posed less of an infection risk than broken glass, nails, wire, jagged cans, etc. which are handled with abandon by the waste industry". The commenter also indicated no knowledge of sharps containers being broken or opened by compaction. The department is aware of incidents in which needles have been caught in crevices on waste handling equipment. Because of their small size they are often unnoticed until an injury occurs. Unlike glass items which will break during mechanical handling and compaction of cans which will bend or collapse under pressure, needles will remain a potential source of physical injury because of their inconspicuous nature. The risk of health complications from an injury from rusty nails, jagged cans or rusty wire is probably greater than from a clean medical needle; however, the public perception is that the risk of infection from a needle stick is greater. The department has seen photographs of sharps containers which have ruptured during trash compaction, allowing the needles to be dispersed in the trash. Therefore, needles in sharps containers which have not been encapsulated are required to be handled separately from routine trash. With special handling of containerized, unencapsulated sharps, the risk to refuse personnel should be minimal. If, however, a material is added to the sharps container and allowed to harden, then the sharps are encased in a solid matrix. The solid matrix should add some strength to the container, but even if the container is broken, the individual items will still be retained in a solid matrix. This matrix will be more visible than individual needles, even if the matrix is broken into pieces. The subparagaph is adopted as proposed.

Concerning §325.1004(f), one commenter expressed concern over the definition of "on-site" because of the implications for transport and packaging of waste shipped off-site. The situation described by the commenter-multiple entities operating in a contiguous environment-is not unique but is not widespread. The department acknowledges the situation and the potential questions raised by this situation. This concern will be addressed in the transporter rules to be proposed later. The deapartment also noted the word "on" was unnecessary, and it has been removed in the final language.

Concerning §325.1004(h), commenters expressed concern about the requirement for generators who transport their own waste. Two commenters noted that the transporter registration requirements had not been proposed. The department was already aware of this. The question of generator transportation of waste will be addressed in the regulations for transporters which are in preparation. A request was made to add language to specifically allow local government units to conduct on-site inspection of generators. The department believes this is already covered by the language in the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. The language in paragraph (4) has been changed in response to a suggestion that the phrase "destruction of receipts" should be added.

Concerning §325.1004(i)(1), several commenters stated that 1.5 mil bags had proved unsatisfactory. Two commenters recommended the use of two 1.5 mil bags or one three mil bag. Another recommended the use of the ASTM standard only. Another commenter suggested that the bags must be red, the seams or seals must have the same strength as the bag, and that the inks used on the bags must not contain heavy metals. This commenter also noted that the proposed ASTM standard D1709-75 had been replaced by D1709-85. The commenter also pointed out the need for a specific dart weight in the procedure. One commenter asked if the use of a plastic bag as the primary container is mandatory. The department appreciates the information concerning the revised ASTM standard D1709 and the requirement has been changed to cite the latest standard, specify the 165 gram dart, and to remove the bag thickness alternative. The color specification has been used in previous regulations and was found to cause problems. In addition, a specific color requirement could cause problems with compliance with the requirements of other agencies. The concern over seal or seam strength is noted. The department interprets the rule as requiring the bag in its entirety to meet the standard. The ink requirement would be unenforceable from a practical point of view and will not be incorporated.

Concerning §325.1004(i)(2), three commenters stated that the proposed 175 pound test strength standard is unsatisfactory. The recommendation for a 200 pound test strength is incorporated. The department notes that the requirement is that the outside container must meet or exceed the standard specified. The material of construction is not specified.

Concerning §325.1004(i)(3), comments received indicate confusion on the intent of the paragraph. Medical wastes which are liquids may come in many forms and in many types of containers. The department believes that the addition of absorbent material to the container is the simplest method to handle potential leakage. The concern expressed that every container will need absorbent will be valid only if generators use poor judgment in packaging their waste. A comment request-

ing a regulation prohibiting transporters from accepting leaking or damaged containers seems unnecessary, but the idea will be considered in the transporter regulations. The paragraph is adopted as proposed.

Concerning §§325.1004(i)(4)-(7), a number of comments were received. An objection was made to the requirement for a warning in Spanish because of the expense in obtaining or printing special labels. The Spanish language requirement is justifiable because of the ethnic composition of the state's work force. The use of the universal biohazard symbol was supported with a recommendation that the minimum diameter should be specified as five inches. Concerns have been expressed that the biohazard symbol should be reserved for specific etiologic agents as identified by the Centers for Disease Control and the Department of Transportation in 42 Code of Federal Regulations 72 and 49 Code of Federal Regulations §§173.386-173.388, respectively. Some commenters requested the lettering height requirement of 0.5 inch and specify a 3 x 3 inch label space. This was suggested because it would facilitate the use of bar coded labels. Although the department has no objection to the use of bar coded label systems, bar coded labels require special equipment to interpret the bar codes and the department is not certain that the equipment is standardized. The 3 x 3 inch labels submitted with the comments are too small to read except at very close range. This would make field investigations very difficult. The requirements are adopted as proposed. A concern was expressed about requiring a date of shipment on the container because the accumulation of waste containers in storage trailers on site would make the exact date uncertain. The intent is to allow identification of shipments. This can be accomplished by the use of a shipment identification number for each shipment from a generator. The language has been changed. The use of preprinted containers or labels is recognized in §325.1004(i)(7). In response to a comment, the department has added language to make the transporter responsible for affixing the label. One request was received to either remove the language "designed for sharps" from §325.1004(i) (9) or add language specifying the structural requirements for a sharps container. The department declines either option. There are requirements for sharps containers in use by a federal agency. The imposition of any additional requirements could lead to regulatory conflicts for the regulated community. Removing the language as requested would allow the use of inappropriate containers for the transport of sharps. A request to change "may" to "must" in the language concerning the placement of a sharps container in the bag and then in the outer container is not accepted. There are methods for handling sharps containers which would be prohibited without justification by the change.

Written comments concerning the regulations were received from Moore Industrial Disposal, Inc.; Medical Waste Systems of Browning Ferris Industries; Micrôy—Waste Corp.; National Solid Waste Management Association-Texas Chapter; Waste Management of North America, Inc.; DeRoyal Industries, Inc.; Himolene, Inc. ; Parkland Memorial Hospital; The University of Texas System-Environmental Safety Office; San Antonio Metropolitan Health District; Harris County Pollution Control Department; and the Methodist Medical Center. None of the commenters were against the regulations in their entirety, however they expressed concerns, had questions, and offered suggestions as noted in the previous comments.

• 25 TAC §325.5

The amendment is adopted under the Health and Safety Code, §361.011 and §361.024, which establishes the department's jurisdiction for municipal solid waste management and the Board of Health's authority to adopt rules to manage municipal solid waste; 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9008119 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

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

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Subchapter Y. Medical Waste Management

• 25 TAC §§325.1001-325.1004

The new sections are adopted under the Health and Safety Code, §361.011 and §361.024, which establishes the department's jurisdiction for municipal solid waste management and the Board of Health's authority to adopt rules to manage municipal solid waste; 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.

§325.1004. Generators of Medical Waste.

(a) The requirements of this section are applicable to any entity which generates special wastes from health care related facilities including, but not limited to, the entities identified in §1.135 of this title (relating to Application), but are not applicable to the entities identified in §1.134(a) of this title (relating to Exemptions).

(b) All entities subject to this section shall identify and segregate special wastes from health care related facilities, as defined in §325.5 of this title (relating to Definition of Terms and Abbreviations), from ordinary rubbish and garbage produced within or by the entity. Other regulated medical waste, as defined in §325.5 of this title (relating to Definition of Terms and Abbreviations), may be combined with special wastes from health care related facilities or may be identified and segregated as a separate waste stream. Where special wastes from health care related facilities and other regulated medical wastes are mixed, the mixed waste shall be considered to be special waste from health care related facilities.

(c) Requirements for special wastes from health care related facilities, if treated on site, shall be as follows.

(1) Special waste from health care related facilities shall be treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition). The approved treatment methods as defined in §1.132 of this title (relating to Definitions) are:

(A) chemical disinfection;

(B) incineration;

(C) encapsulation (only for sharps in containers);

(D) steam sterilization; and

(E) thermal inactivation.

(2) An entity which treats waste generated on site shall comply with the provisions of §1.136(c) of this title (relating to Approved Methods of Treatment and Disposition).

(3) An entity which generates 50 pounds or less per calendar month of special wastes from health care related facilities on site and which treats all or part of the wastes on site shall maintain a written record which, at a minimum, contains the following information:

(A) the date of treatment;

(B) the amount of waste treated;

(C) the method/conditions of treatment; and

(D) the name (printed) and initials of the person(s) performing treatment.

(4) An entity which generates more than 50 pounds per calendar month of special wastes from health care related facilities and which treats all or part of the wastes on site shall maintain a written record which, at a minimum, contains the following information for each batch of waste treated:

(A) the date of treatment;

(B) the amount of waste treated;

(C) the method/conditions of treatment;

(D) the name (printed) and initials of the person(s) performing treatment; and

(E) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment.

(d) Requirements for disposal of special wastes from health care related facilities which have been treated on site in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) are as follows.

(1) Microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding which have been treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) may be discarded with routine municipal solid waste provided any markings which identify the waste as a special waste from health care related facilities are covered with a label which identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label which states that the contents of the disposable container have been treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition).

(2) Carcasses and body parts of animals designated as a special waste from health care related facilities which have been treated in accordance with the provisions of §1. 136(a) of this title (relating to Approved Methods of Treatment and Disposition) may, after treatment, be disposed of in a permitted landfill in accordance with the provisions of §325.136(b)(2) of this title (relating to Disposal of Special Waste). The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than these sections.

(3) Recognizable human body parts, tissues, fetuses, organs and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of §1.136(a)(4) of this title (relating to Approved Methods of Treatment and Disposition).

(4) Sharps which have been treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) shall be disposed of as follows.

(A) Broken glassware and pipets may be placed in puncture-resistant packaging and discarded with routine municipal solid waste.

(B) Hypodermic needles, syringes with attached needles, scalpel blades, and/or razors shall be placed in containers designed for sharps. If the container's contents have not been encapsulated, then the container shall be segregated from the regular municipal solid waste collection system and shall be collected and transported without compaction for disposal in a permitted municipal solid waste landfill.

(C) Sharps placed in containers designed for sharps may be encapsulated by addition of an agent to the container which will solidify and encase the contents of the container with a solid matrix. The agent must completely fill the container. The container and solidified contents must withstand an applied pressure of 40 pounds per square inch without disintegration. The container shall be identified as containing sharps which have been encapsulated in accordance with this subparagraph and may be discarded with routine municipal solid waste.

(e) Unused hypodermic needles, syringes with attached needles and scalpel blades shall be disposed of as treated sharps as specified in subsection (d)(4)(B) or (C).

(f) For the purposes of this section, on site shall mean a facility consisting of:

(1) any contiguous structures, or portion thereof, which are operated by one entity;

(2) any structures located on contiguous properties which are operated by one entity; and

(3) any combination of structures operating as a single entity under a license issued by the department.

(g) Other regulated medical waste which has not been mixed or commingled with special wastes from health care related facilities may be discarded with routine municipal solid waste provided a label has been affixed to the container which states that the waste within the container is not a special waste from health care related facilities.

(h) Requirements for shipment of untreated special wastes from health care related facilities off site are as follows.

(1) Untreated special wastes from health care related facilities which are to be shipped off site for treatment or disposal must be identified and packaged in accordance with the provisions of subsection (i) of this section.

(2) Shipments of untreated special wastes from health care related facilities shall be released only to a transporter who is registered with the department to transport special wastes from health care related facilities as required elsewhere in this Chapter. Release of untreated waste to unregistered transporters shall be a violation of this paragraph. This requirement shall not be effective until 60 days after the effective date of rules requiring registration of transporters of special wastes from health care related facilities.

(3) The generator shall obtain from the transporter a signed receipt for each shipment of regulated medical waste using a form provided by, or approved by, the bureau.

(4) The generator shall maintain a file of receipts for shipments of special waste from health care related facilities for a period of three years following the date of shipment. This time period may be extended by the bureau for investigative purposes or in case of enforcement action. Failure to maintain the file of receipts in an orderly fashion, destruction of receipts prior to the end of the specified time or destruction of receipts prior to the expiration of an extended retention time shall be a violation of this paragraph.

(5) The file of receipts for shipments of special wastes from health care related facilities shall be available for inspection by department personnel during normal business hours without prior notice. Refusal to allow department personnel to inspect such file during normal hours shall be a violation of this paragraph.

(6) For the purpose of this subsection, the United States Postal Service is a registered transporter. A receipt for registered mail shipment shall satisfy the requirements of paragraph (3) of this subsection.

(i) Requirements for identification and packaging of special wastes from health care related facilities are as follows.

(1) Special wastes from health care related facilities, other than sharps, shall be placed in a plastic bag which meets the requirements of ASTM Standard Number D 1709-85 using a 165 gram dart. If empty containers which held free liquids are placed into the bag, one cup of absorbent material for each six cubic feet, or fraction thereof, of bag volume must be placed in the bottom of the bag.

(2) The bag containing special wastes from health care related facilities shall be placed in a rigid container which is

constructed of a material which meets or exceeds the strength of 200 pound, C-Flute board.

(3) If the waste contains free liquids in containers, the plastic bag and/or the rigid container shall contain absorbent material sufficient to absorb 15% of the volume of free liquids placed in the bag.

(4) The outer container shall be conspicuously marked with a warning legend which must appear in English and in Spanish, along with the international symbol for biohazardous material. The warning must appear on the sides of the container, twice in English and twice in Spanish. The wording of the warning legend shall be as follows:

CAUTION,
contains medical waste
which may be biohazardous

and

CAUCION,
contiene desechos medicos
que pueden ser biopeligroso.

(5) The generator shall affix to each container a label which contains the name and address of the generator and either the date of shipment or an identification number for the shipment.

(6) The transporter shall affix to each container a label which contains the name, address, telephone number, and state registration number of the transporter. This information may be printed on the container.

(7) The printing on labels required in paragraphs (5) and (6) of this subsection shall be done in indelible ink with letters at least 0.5 inch in height. A single label may be used to satisfy the requirements of paragraphs (5) and (6) of this subsection. If a single label is used, the transporter shall insure the label is affixed to or printed on the container.

(8) The requirements of paragraphs (5) and (6) of this subsection shall not apply to shipments where the United States Postal Service is the transporter.

(9) Sharps must be placed in a marked, puncture-resistant rigid container designed for sharps. This container may be placed in the plastic bag described in paragraph (1) of this subsection. The bag must then be placed in a rigid container as described in paragraph (2) of this subsection.

(j) The department may waive any or all of the requirements in this section when, in the judgment of the Commissioner of Health or his/her designee, a situation exists which requires a waiver of such requirements in order to protect the public health and safety from the effects of a natural or man-made disaster.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Commissioner
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Subchapter F. Operational Standards for Solid Waste Land Disposal Sites.

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

• 25 TAC §325.136

The amendment is adopted under the Health and Safety Code, §361.011 & §361.024, which establishes the department's jurisdiction for municipal solid waste management and the Board of Health's authority to adopt rules to manage municipal solid waste; 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.

§325.136. Disposal of Special Wastes.

(a) (No change.)

(b) Receipt of the following special wastes do not require further written authorization from the bureau for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) Special wastes from health care related facilities which have not been treated in accordance with the procedures specified in §1.136 of this title (relating to Approved Methods of Treatment and Disposition) shall not be accepted at a Type I solid waste landfill unless approved by the bureau in writing. Approval to accept untreated waste will be granted only for waste from generators located more than 75 miles from a commercial, permitted, operational medical waste treatment facility. The approval shall be valid only for eighteen months after the effective date of this paragraph. Special wastes from health care related facilities shall be received only if the wastes have been identified and packaged in accordance with §325.1004 (i) of this title (relating to Generators of Medical Waste). The waste shall not be commingled with routine solid waste, but shall be segregated for special collection and/or transportation without compaction. The wastes shall be covered with three feet of other solid waste or two feet of soil immediately upon receipt.

(2)-(8) (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.

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.289

The Comptroller of Public Accounts adopts an amendment to §3.289, without changes to the proposed text as published in the June 19, 1990, issue of the *Texas Register* (15 TexReg 3564).

The amendment exempted receipts for admission to an amusement from the sales tax imposed under §3.298, concerning amusement services, when those receipts are taxed under the Texas Alcoholic Beverage Commission Code, §202.02. The amendment is retroactive.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 13, 1990.

TRD-9008170 Bob Bullock
Comptroller of Public Accounts

Effective date: September 4, 1990

Proposal publication date: June 19, 1990

For further information, please call: (512) 463-4004

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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

The Texas Department of Human Services (DHS) adopts the repeal of and new §16.1510. New §16.1510 is adopted with changes to the proposed text as published in the May 1, 1990, issue of the *Texas Register*(15 TexReg 2506). The repeal of §16.1510 is adopted without changes and will not be republished.

The purpose for the repeal and new section is to comply with the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) which expands definitions, adds liquidated damages for patient-related deficiencies, provides more clearly defined administrative citations, and adds a reconsideration process to the appeals procedure.

The repeal and new section will function by improving health and safety conditions for nursing facility residents.

During the 30-day comment period, DHS received comments from the Texas Health Care Association (THCA), Texas Department of Health (TDH), American Association of Retired Persons (AARP), Ridgecrest Retirement and Health Care, and several individuals. DHS, at the request of THCA, held a public hearing on June 20, 1990. Hearing officers received written and verbal comments from THCA, Texas Association of Homes for the Aging (TAHA), and AARP. A summary of the Comments and the department's Responses follows.

Comment–One commenter expressed the opinion that the proposed rules represent the minimum action needed to ensure adequate care for Medicaid clients in nursing homes. The commenter also expressed a concern that the liquidated damages be applied on the basis of certified beds rather than occupied beds.

Response–The rules proposed in the *Texas Register* reflect the assessment of liquidated damages to certified Medicaid beds.

Comment–Several commenters expressed a concern with the use of the *Texas Register* as a means of providing public notice when a nursing facility has been terminated and/or reinstated to the Title XIX Medicaid Program.

Response–DHS staff discussed this issue with the health care financing administration (HCFA), and legal counsel. Based on their advice, the department has determined that public notice will be made available through at least one newspaper located in the area of the nursing facility. The proposed rules have been revised to reflect this change.

Comment–Several commenters expressed a concern with DHS assessing a liquidated damage when a facility's contract has been terminated.

Response–DHS is in agreement that it lacks authority to assess a liquidated damage to a noncontracted entity. Therefore, the DHS has changed the rule to read, " The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner. If a contract is terminated prior to the end of the 15 days, the liquidated damage will cease the same date as contract termination."

Comment–Several commenters expressed a concern with the continuation of the current administrative penalties imposed by the TDH.

Response–TDH has indicated that they would consider removing their penalties for Medicaid beds after the department has adopted rules on the remedies. It is the exclusive responsibility of the TDH to determine the remedies they will apply to nonparticipating facilities.

Comment–Several commenters expressed a concern that the department is applying a system that is broad and unspecific and that will result in unfair and inequitable fines and penalties. The commenters are of the opinion that scope and severity should be addressed in greater detail in the rules.

Response–This topic has been a great concern to the department as well as the nursing home industry. After further consideration, the department has expanded the definitions of scope and severity.

Comment–One commenter requested a change in references to "decertification" to "termination of certification."

Response–DHS has made this change.

Comment–One commenter expressed a concern that the department may have overstepped its legal authority in the proposal by implementing a system of fines prior to the effective date of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

Response–The department anticipates the implementation date of the remedies rules to be October 1, 1990. This is the same effective date of OBRA '87.

Comment–One commenter considered the term "liquidated damages" to be inappropriate terminology.

Response–Liquidated damages is the term that the department's legal counsel has determined should be used.

Comment–One commenter observed that OBRA '87 says that a fine would be assessed "for each day the facility is or was out of compliance" and that the law does not allow for a fine to be assessed for those days a facility is back in compliance. There is a question concerning the 15-day minimum fine.

Response–Liquidated damages are assessed for situations when a patient is in immediate and serious threat, or when there is a threat to health and safety of a patient. The law does not prevent the department from imposing more stringent damages when these situations occur. The department is of the opinion that when a facility allows this to occur, the damages should be sufficient to motivate the nursing facility to correct the damage and make every effort to ensure that the problem(s) are less likely to occur again. The 15-day minimum is not being changed.

Comment–One commenter stated that due process rights are not included in the system to give the facility the right to appeal fines with which it disagrees. Also, the commenter stated that the appeal process referred to in the proposal is for contract appeals only and is not sufficient for a penalty system.

Response–As stated in the rule, termination of certification hearings are held by TDH. TDH has procedures for conducting these hearings. In addition, as stated in the rules, DHS offers a facility an opportunity to request an informal reconsideration and/or an appeals hearing with respect to contract issues. A nursing facility, as are any DHS contracted provider of services, has a right to appeal through the department's appeals process, any negative action taken by this agency. How those appeals are performed is addressed in other department rules. Therefore, the content of the rules is not being changed.

Comment–One commenter stated that the fine should be a single fine based on the overall condition of the facility rather than a separate fine for each deficiency. There needs to be a clear introductory statement that a facility can receive only one fine for the overall condition of the facility on the day of the survey.

Response–The liquidated damages will be based on the overall assessment of the deficiencies found by the LTCU reviewer.

Comment–One commenter believes the proposed system specifies that a remedy would be imposed if the deficiencies "pose" a threat. This should be revised so that it is related to the outcome of the deficiencies.

Response–The definition of immediate and serious threat is the same as defined in HCFA guidance to TDH. The department is using the same HCFA definition for purposes of clarity.

Comment–One commenter believes that with the system that is proposed, the facilities with unoccupied beds will be unfairly assessed a fine for empty beds. The final rules should be based on occupied contracted beds on the day of the exit.

Response–The nature of the circumstances that lead to liquidated damages is considered so severe, that the department feels the damages should be applied to all Medicaid certified beds. The intent is to have the deficiencies corrected and prevented from occurring in the future.

Comment–One commenter wants the definition of threat to health and safety needs to be expanded to explain the meaning of significant. Add to the end of this definition "Adverse effect shall not include remote or minimal risk or effect on the patient."

Response–The department has added the following sentence to the defini- tion of threat to health and safety. "For purposes of this part, significant is defined as an occurrence that was probably caused by something other than mere chance."

Comment–One commenter believes the terminology "pose an immediate..." is not in accordance with the OBRA law. The wording of the law is based on outcome and not on potential harm. OBRA states: "finds that the facility's deficiencies immediately jeopardize the health or safety of its residents." This language suggests that a fine be based on the outcome, not potential outcome of the survey. This should be reworded using OBRA language.

Response–The first part of the sentence that the commenter is quoting from the law reads, "If a state finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a nursing facility no longer meets a requirement of subsections (b),(c), or (d), and further....". The department is of the opinion that the law does connect the liquidated damages to the survey. The rule language remains as proposed.

Comment–One commenter suggests a change in the statement "pose an immediate and serious threat to residents' health and safety" to "immediately jeopardize the health and safety."

Response–Immediate and serious threat is the terminology used by TDH. For consistency, this is not being changed.

Comment–One commenter stated that a remedy should not be assessed for an unoccupied bed. A fine on top of no income being received for an empty bed could be devastating for a provider, not to mention being unfair since the deficiency could not have occurred relative to an unoccupied bed. Also, a date should specify when the fine would begin. The commenter recommends "on the day of the exit."

Response–The liquidated damages will be assessed on certified Medicaid beds. The rules currently state that the damages are assessed beginning with the date of the on-site visit exit conference by TDH/LTCU.

Comment–One commenter observed that use of the word "deficiency" in the singular could be interpreted that a $5.00 fine could be assessed for each deficiency that fits in this category. The intent should be that one fine be assessed for the overall condition of the facility on the day of the survey.

Response–The intent is that liquidated damages be based on the overall assessment of the deficiencies found by TDH/LTCU reviewer. Deficiency is defined as the quality or state of being deficient: Inadequacy. Based on this interpretation, the rules are not being changed.

Comment–One commenter objects to the 15-day minimum that is included in this proposal and is concerned that this would discourage a facility from quickly fixing a problem. Also, the commenter questions the inclusion of a minimum number of days since OBRA specifies a fine for "each day the facility is or was out of compliance." Authority is not given to fine a facility for additional days after correction.

Response–See the response to the comment regarding 15-day minimum.

Comment–One commenter objects to a fine being assessed when a facility has been decertified, on the grounds that this is a double penalty on the facility. If a facility is decertified, this is a much higher penalty and should be the only one assessed.

Response–See the response to the comment regarding liquidated damages to a noncontracted entity.

Comment–One commenter suggests that facilities should be given 20 days to pay the fine. The TDH administrative penalties allows 20 days for payment.

Response–The department agrees and has changed the rule to reflect the requested 20 days.

Comment–One commenter believes that subsection (b)(1)(F) needs to be clarified to state that the department will continue payments to the facility for back claims for services prior to the effective date of the determination.

Response–The same referenced section of the rules addresses the circumstances in which the department will continue payments. No change is being made to the proposed rules.

Comment–One commenter believes that subsection (b)(2) should be rewritten to conform with wording in OBRA which states deficiencies "do not immediately jeopardize the health or safety of its residents." The terms "pose immediate and serious threat" are too subjective and not based on outcome.

Response–See the response to comment above regarding immediate and serious threat.

Comment–One commenter believes that in subsection (b)(2)(A) there should not be a fine assessed with this first level. Instead an alternate "remedy" should be utilized.

Response–Federal Transmittal Number 43 states that the criteria for all remedies are to provide for incrementally more severe fines. This proposed rules are not being changed.

Comment–One commenter suggests that in subsection (b)(2)(B) an alternate remedy should be an option instead of a fine in this level. Also, the $5.00 fine is regarded as too high for this level of deficiency.

Response–Federal Transmittal Number 43 states that the criteria for all remedies are to provide for incrementally more severe fines. Sanctions task force meetings with advocacy and industry representatives led to discussions of various fine amounts. The advocacy representatives thought the fine should be $10. The industry representatives suggested the fine should be $1.00. The department determined that a $5.00 fine was the most appropriate and reasonable based on the average level of clients in a facility.

Comment–One commenter suggests a change to subsection (b)(2)(C) to reflect an occurrence of deficiencies three times within 12 months.

Response–To maintain consistency with the TDH, the number of months will continue to be 18.

Comment–One commenter recommends deletion of exclusions in subsection (h) on the grounds that they are inappropriate and not part of OBRA. If a facility's contract is cancelled, the facility should automatically be allowed to enter the program when the deficiencies are corrected without an individual reinstatement determination unrelated to the deficiency correction.

Response–Part of the charge of the sanctions task force was to, "review the TDHS's fraud and abuse rules to determine appropriate procedures for refusal to contract with nursing homes which have an established pattern of noncompliance." The department is of the opinion that subsection (h) follows this charge and should be retained.

Comment–One commenter believes the survey team should not be involved in making the decision on an appeal. The regional program administrator should be responsible for the review.

Response–Appeals concerning the certification status of a facility are the sole responsibility of TDH. This department has no authority over the TDH procedures. No change is made to the proposed language.

Comment–One commenter recommends that the money collected from the fines be used to establish an incentive program as authorized in OBRA to improve the quality of patient care.

Response–The sanctions task force agreed that while Federal Transmittal Number 43 states that the Medicaid state agency may establish a reward for nursing facilities that provide the highest quality care, the task force saw the remedies as the first priority. Federal Transmittal Number 43 further states that all collected funds are to be used for the protection of the health and property of recipients of nursing facilities that are found to be deficient. The use of these funds is limited to the cost of relocating recipients to other facilities, for maintenance or operation of a facility pending correction of deficiencies or closure, and for reimbursement of recipients for lost personal funds. The department has included this information in the rules.

Comment–One commenter is concerned that the department is proposing to adopt a system that fines nursing homes for noncompliance when at the same time the department is considerably behind in vendor payments for services and contemplating nonpayment for two months of service. Facilities need vendor payments in order to afford the expectations outlined in the standards.

Response–The department is adopting the remedies system because it is a requirement

of Federal law. The other matters addressed in the previous comment are not related to this rule, and will not be addressed at this time.

The following comments were received at the public hearing June 20, 1990.

Comment–The commenter requested that the implementation date be changed to October 1, 1990.

Response–The department is planning to implement the new remedies policy effective October 1, 1990.

Comment–The commenter requested that the department reinstate the sanctions task force.

Response–It is the opinion of the department that the task force accomplished the charge assigned by the board of the DHS; therefore, it is not the intention of the department to reinstate the task force at this time.

Comment–The commenter indicated that since the Minimum Data Set will not be implemented before October 1991, the remedies should be delayed.

Response–The minimum data set is not tied to the remedies, and is not being considered in the implementation of the remedies.

Comment–The commenter asked that the department review the section of the rules related to vendor hold.

Response–The department is revising this section for the purpose of clarity.

Comment–The commenter indicated that before implementing a monetary penalty, the department must make sure that nursing homes have adequate reimbursement to meet the standards that are required.

Response–The department is implementing the remedies because of federal law. Rate setting issues are not part of this rule and are not being addressed at this time.

Comment–The commenter expressed a concern about vendor hold still being a part of the penalties.

Response–The rules apply vendor hold for administrative type deficiencies, (i.e., not submitting a cost report on time, client trust fund, audit exceptions) not patient care. Vendor hold for administrative deficiencies will remain in effect.

Comment–The commenter requested that the department consider using the latest draft proposed regulations for surveying nursing facilities. This draft also addresses remedies to be imposed on facilities that fail to comply with the federal participation requirements.

Response–When department staff contacted HCFA in Baltimore, department staff were informed that the draft should not have been issued and that the department was not to follow it. The HCFA staff stated that the draft was in complete rewrite, and proposed rules would not be published before the end of summer. The draft presented to department staff goes into extensive detail related to responsibilities of TDH. Until such time, the department is required by HCFA to address the specific responsibilities of the TDH survey team, DHS has no authority to write rules directing the TDH in the performance of surveys. DHS, as the state Medicaid agency, is allowed under federal law to establish alternative remedies, and submit those alternatives to HCFA for approval.

DHS is adopting subsections (b)(1)(C)(i), (2)(D), and (e)(2)(C) with a change to correct a reference to a rule in another chapter of the Texas Administrative Code.

• 40 TAC §16.1510

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 14, 1990.

TRD-9008179 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: October 1, 1990

Proposal publication date: May 1, 1990

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

• 40 TAC §16.1510

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

§16.1510. Remedies for Violations of Title XIX Nursing Facility Provider Agreements.

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

(1) Appointment of temporary management–May be state personnel or private individuals with education and the requisite experience in nursing home administration and be licensed by the Texas Board of Licensure for Nursing Homes Administrators.

(2) Deficiency–A finding (or findings) of sufficient severity and/or scope that addresses cited requirements, identifies the facility's responsibility, and requires corrective action.

(3) Finding–A determination by the Texas Department of Health Long Term Care Unit (TDH/LTCU) surveyor that a problem is preventable, is known or unknown to the facility, is not being corrected by proper action, or cannot be justified.

(4) Immediate and serious threat–A high probability that serious harm or injury to patients could occur at any time, or already has occurred and may well occur again if patients are not protected effectively from the harm, or the threat is not removed. Any situation in which a facility's noncompliance with one or more conditions or standards for participation poses an immediate and serious threat to recipients' health and safety, making immediate corrective action necessary.

(5) New Medicaid admission–The admission of a recipient who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include the following:

(A) individuals who lived in the facility before the effective date of denial of payment for new admissions, even if the individuals become eligible for Medicaid after that date; and

(B) individuals who, after a temporary absence from the facility for a therapeutic visit as described in §16.3806 of this title (relating to Visit Away from the Facility), are readmitted to beds reserved for them.

(6) Scope–The frequency, incidence, or extent of the occurrence of a finding in the facility which may involve as few as one resident. The entire or a large percentage of the resident population does not have to be involved. The scope may encompass an isolated occurrence, an occasional occurrence, a pattern of occurrence, or widespread occurrence.

(7) Severity–The level of seriousness of a finding considering the actual or potential resident harm that did or could occur in that setting in that facility. The severity of a finding may range from no resident harm, a potential for harm, actual harm with a negative outcome to the resident, to actual life threatening harm or resident death.

(8) Threat to health and safety–A situation or condition which represents a significant, unfavorable risk or danger to the health and/or safety of patients. For purposes of this section, significant is defined as an occurrence that was probably caused by something other than mere chance.

(b) The Texas Department of Human Services (DHS) takes the following action(s) when a Title XIX provider agreement facility fails to meet the requirements specified in these standards, as cited in writing by the State Survey Agency, Texas Department of Health (TDH).

(1) When state survey agency notifies DHS in writing that cited deficiencies, based on severity and scope, pose an immediate and serious threat to recipients' health and safety and that the state survey agency is terminating or proposing to terminate the facility's certification as a result.

(A) DHS does not offer a compliance period. All termination procedures are completed by the state survey agency within 23 calendar days of the exit conference.

(B) If a facility makes a creditable allegation that the threat or deficiency has been corrected, an onsite verification by the state survey agency prior to termination will be made, if possible, and the procedure may be reconsidered.

(C) DHS imposes liquidated damages of $5.00 per day, per certified Medicaid bed, for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU. The liquidated damages will cease the same date on which the facility is decertified or the day the state survey agency determines the deficiency has been corrected. If the state survey agency is able to make a determination of the date upon which the facility actually corrected the deficiency, based upon written documentation, the liquidated damages period will be considered to have ceased on the day preceding the date of correction. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner. If a contract is terminated prior to the end of the 15 days, the liquidated damages will cease the same date as contract termination.

(i) A facility may request an informal reconsideration and/or an appeals hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility contracts are held as specified in §79.1605(a) of this title (relating to Request for a Hearing).

(ii) Termination of certification hearings are held by the state survey agency. If a facility requests an appeals hearing, no monetary liquidated damages are assessed until the outcome of the hearing.

(iii) Payment of assessed liquidated damages is due in full within 20 days of receipt of a certified letter from DHS of the amount of the liquidated damages that are assessed based on the outcome of the hearing. Interest on the assessed liquidated damages is calculated at the rate of interest in effect during the interest period for judgements of the courts of Texas as provided in Texas Civil Statutes, Article 5069-1.05, §2, and begins on the date of the written request by the facility for an appeals hearing and ends on the date the liquidated damages are paid.

(iv) No liquidated damages or interest are charged the facility if the appeals hearing results in the administrative law judge or judicial proceeding overturning the initial decision.

(v) DHS applies all funds collected as a result of liquidated damages to the protection of the health and property of recipients of nursing facilities that DHS or health care financing administration (HCFA) finds deficient. Funds may be used for the cost of relocating recipients to other facilities, for maintenance or operation of a facility pending correction of deficiencies or closure, and for reimbursement of recipients for lost personal funds.

(D) The state survey agency, at the state survey agency's discretion, may remove the immediate and serious threat to health and safety by appointment of a temporary manager, as described in subsection (a)(4) of this section.

(E) DHS denies payment for all new Medicaid admissions. DHS gives notice to the nursing facility and the public that their facility is no longer in compliance with the standards. Public notice of noncompliance will be published in an area newspaper. Once the nursing facility is again in compliance, DHS will publish notice in an area newspaper.

(F) DHS cancels the facility's provider agreement if the state survey agency terminates the facility's certification. DHS makes no payment for services provided by the facility after the effective date of the termination of a facility's certification. In certain instances, DHS may continue payments for no more than 30 days from the date DHS cancels or fails to renew the provider agreement. DHS may continue payments if the state survey agency notifies DHS in writing that:

(i) reasonable efforts to transfer the recipients to another facility or to alternate care are being made; and

(ii) additional time is needed to effect an orderly transfer of the recipients.

(G) These rules are not intended to restrict DHS from imposing as necessary appropriate remedies for program violations listed in §79.2105 of this title (relating to Grounds for Fraud Referral and Administrative Sanctions).

(2) When the state survey agency notifies DHS in writing that cited deficiencies, based on severity and scope, do not pose an immediate and serious threat but are health and/or safety hazards that threaten health and/or safety, DHS takes the following actions.

(A) The first time the state survey agency notifies DHS of cited deficiencies, based on severity and scope, DHS imposes liquidated damages of $2.50 per day, per certified Medicaid bed, for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU, and ending with the date the facility is notified by the state survey agency that all deficiencies are corrected. If the state survey agency is able to make a determination of the date upon which the facility actually corrected the deficiency, based upon written documentation, the liquidated damages period will be considered to have ceased on the date preceeding the date of correction. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner. If a contract is terminated prior to the end of the 15 days, the liquidated damage will cease the same date as contract termination. DHS also imposes, or authorizes the imposition by the state survey agency of, any or all of the following additional actions when recommended by the state survey agency in writing:

(i) denial of payment for all new Medicaid admissions. DHS gives notice to the nursing facility and the public that the facility is no longer in compliance with the standard;

(ii) public notice of noncompliance published in an area newspaper. Once the nursing facility is again in compliance, DHS will publish a notice in an area newspaper;

(iii) appointment of a temporary manager, as described in subsection (a)(4) of this section, to remove health and/or safety hazards.

(B) The second time the state survey agency notifies DHS of cited deficiencies, based on severity and scope, within 18 months of the first notification, DHS will impose liquidated damages of $5.00 per day, per certified Medicaid bed for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU and ending with the date the facility is notified by the state survey agency that all deficiencies are corrected. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner. If a contract is terminated prior to the end of the 15 days, the liquidated damages will cease the same date as contract termination. DHS also imposes or authorizes the imposition by the state survey agency of any or all of the following actions when recommended by the state survey agency in writing:

(i) denial of payment for all new Medicaid admissions. DHS gives notice to the nursing facility and the public that the facility is no longer in compliance with the standard;

(ii) public notice of noncompliance published in an area newspaper. Once the nursing facility is again in compliance, the DHS will publish a notice in an area newspaper;

(iii) appointment of a temporary manager, as described in subsection (a)(4) of this section, to remove health and/or safety hazards.

(C) The third time the state survey agency notifies DHS of cited deficiencies, based on scope and severity, within 18 months of the first notification, DHS will terminate the provider agreement.

(D) A facility may request an informal reconsideration and/or an appeals hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility contracts are held as specified in §79.1605(a) of this title (relating to Request for a Hearing). Termination of certification hearings are held by the state survey agency.

(i) If a facility requests an appeals hearing, no monetary liquidated damages are assessed until the outcome of the hearing. Interest on the assessed liquidated damages is calculated at the rate of interest in effect during the interest period for judgements of the courts of Texas as provided in Texas Civil Statutes, Article 5069-1.05, §2, and begins on the date of the written request by the facility for an appeals hearing and ends on the date the liquidated damages are paid.

(ii) No liquidated damages or interest are charged the facility if the appeals hearing results in the administrative law judge or judicial proceeding overturning the initial decision. DHS applies all funds collected as a result of liquidated damages to the protection of the health and property of recipients of nursing facilities that DHS or Health Care Financing Administration (HCFA) finds deficient. Funds may be used for the cost of relocating recipients to other facilities, maintenance or operation of a facility pending correction of deficiencies or closure, and for reimbursement of recipients for lost personal funds.

(E) If the facility appeals an adverse action by DHS and the adverse action is sustained by an administrative law judge or judicial proceeding, the effective date of the provider agreement cancellation is the date specified in the notice of contract cancellation. Unless otherwise provided in this section, DHS makes no payment for services provided by the facility after the effective date of the facility's provider agreement termination. In certain instances, DHS may continue payments for no more than 30 days from the date DHS terminates or fails to renew the provider contract. DHS may continue payments if the state survey agency notifies DHS in writing that:

(i) reasonable efforts to transfer the recipients to another facility or to alternate care are being made; and

(ii) additional time is needed to effect an orderly transfer of the recipients.

(F) If the state survey agency determines, on three consecutive standard surveys, that a nursing facility is providing substandard quality of care, DHS may request the state survey agency to carry out on-site monitoring of the facility, on a regular basis, as needed, until the facility has demonstrated that it is in compliance with the standards for participation and that it will remain in compliance.

(G) These rules are not intended to restrict DHS from imposing as necessary appropriate remedies for program violations listed in §79.2105 of this title (regarding Grounds for Fraud Referral and Administrative Sanctions).

(c) When a facility's provider agreement is cancelled by DHS under the provisions of this section and after a mandatory 30-day period of no vendor payment to the facility, DHS may enter into a probationary provider agreement with the facility, as specified in §16. 1504(a)(4) of this title (relating to Contract Requirements). DHS may enter into this provider agreement after the state survey agency conducts an onsite, follow-up visit and notifies DHS that the deficiencies that caused the cancellation of the contract are no longer in effect.

(d) After the probationary provider agreement period, DHS may enter into a nonprobationary provider agreement as specified in §16.1504(a)(1)-(3), or (5) of this title (relating to Contract Requirements). DHS may enter into this provider agreement only after the state survey agency conducts an on-site, follow-up visit and notifies DHS that the deficiencies that caused the cancellation of the provider agreement are no longer in effect and the facility is otherwise complying with Medicaid policy.

(e) DHS takes the action(s) specified in paragraph (2) of this subsection when a Title XIX provider agreement facility fails to meet the requirements specified in these standards, other applicable agency rules, or contractual provisions cited in writing by DHS or the state survey agency that are not specified in subsection (b) of this section.

(1) Vendor hold is not applicable to subsection (b) of this section. Vendor hold is used for such areas as:

(A) trust fund violations;

(B) delayed cost reports; and

(C) occupancy report.

(2) DHS administrative citations.

(A) DHS may grant the facility a compliance period of no more than 30 days to correct deficiencies cited by DHS. If DHS determines that cited deficiencies are not corrected, but determines that the facility has made substantial progress toward correcting the cited deficiencies, DHS may extend the compliance period for a maximum of 15 days. One compliance extension may be granted.

(B) If deficiencies cited by DHS are not corrected within the compliance period, DHS imposes vendor hold on state Medicaid payments to the facility.

(C) If cited deficiencies are not corrected within 60 days from the date the facility is placed on vendor hold, DHS cancels the facility's provider agreement for breach of contract. A facility may request an informal reconsideration and/or an appeal hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility provider agreements are held as specified in §79.1603(a) of this title (relating to Request for a Hearing). If the facility appeals an adverse action by DHS and the adverse action is sustained by an administrative law judge or judicial proceeding, the effective date of the provider agreement cancellation is the date specified in the notice of provider agreement cancellation. Unless otherwise provided for in this section, DHS makes no payment for services provided by the facility after the effective date of the facility's contract termination. In certain instances, DHS may continue payments for no more than 30 days from the date DHS terminates or fails to renew the provider agreement. DHS may continue payments if the state survey agency notifies DHS in writing or DHS determines that:

(i) reasonable efforts to transfer the recipients to another facility or to alternate care are being made; and

(ii) additional time is needed to effect an orderly transfer of the recipients.

(f) A facility must not charge Title XIX recipient-patients, their families, or

their responsible parties to recoup any vendor payments not received because of the imposition of remedies against the facility. The facility may collect only the applied income established in the recipient's payment plan.

(g) When the health care financing administration (HCFA) notifies DHS that HCFA is denying payment for new admissions to a Medicare-participating skilled nursing facility that also participates in Medicaid, DHS denies Medicaid payments for new admissions for the same period for which Medicare payments are denied, as stipulated in 42 Code of Federal Regulations, Part 489.

(h) At the time a nursing facility seeks admission into the Medicaid program by a request to contract, the Texas Department of Human Services will determine the need for individual reinstatement. The determination is based on:

(1) accessibility of other health care to the recipient population in the immediate and surrounding locale. For purposes of this part, immediate and surrounding locale is defined as within the same city, same county, or adjoining counties; and

(2) previous conduct of the individual provider, corporation, owners, officers, directors, or employees during participation in the Medicare or Medicaid program in Texas or in any other states, and any conduct or action for which a sanction as described in these sections could have been taken.

(i) The following are state survey agency review/appeals procedures.

(1) The state survey agency provides certified nursing facilities the opportunity to request an informal administrative review for the purpose of determining the validity of the findings of the surveyor. The nursing facility submits additional information or a written request for a conference with the regional survey team/program administrator within five workdays after the facility's exit conference. Additional information will not be accepted, nor will a conference be scheduled after the fifth workday. The surveyor/team in conjunction with the regional program administrator:

(A) reviews additional written information and makes an objective decision;

(B) schedules any meetings requested by providers;

(C) notifies providers in writing of survey team/program administrator's decision; and

(D) removes invalid deficiencies; changes certification action if indicated; and adds, changes, or deletes liquidated damages, if indicated.

(2) The Texas Department of Health's (TDH) chief, Bureau of Long-term Care, and division directors will receive the decision of the surveyor/team. If the provider is not in agreement with the findings of the surveyor/team, the provider may request a further review. Based on this request, the TDH chief, Bureau of Long-term Care, and the division directors:

(A) review additional information and/or hold a conference with the provider to determine whether deficiencies and/or punitive action recommendations should be changed;

(B) change or sustain the deficiencies, certification action, or liquidated damage; and

(C) notify the provider, in writing, within 10 workdays of receipt of additional written information or conference, of their decision.

(3) Determinations of certification and decertification may be appealed if the provider is not in agreement with the decisions of the informal administrative review. The state survey agency will notify the providers of their right to a formal appeal under 25 TAC §§145.141-145.147 (relating to Procedures Covering Certification and Termination of Certification of Long-term Care Facilities which Participate in the Title XIX Medical Assistance 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 August 14, 1990.

TRD-9008180

Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

Effective date: October 1, 1990

Proposal publication date: May 1, 1990

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

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register.*

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register.*

Texas Department on Aging

Thursday, August 30, 1990, 1:30 p.m. The Options for Independent Living Advisory Committee of the Texas Department on Aging will meet at 1949 Interstate Highway 35 South, Third Floor, Austin. According to the complete agenda, the committee will approve minutes of previous meetings; review and comment on memorandum of understanding with Texas Department of Human Services; schedule future meeting dates; and discuss new business.

Contact: Linda Heath, 1949 IH-35 South, Austin, Texas 78701, (512) 444-2727.

Filed: August 15, 1990, 4:14 p.m.

TRD-9008245

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Texas Department of Agriculture

Monday, August 20, 1990, 9:30 a.m. The Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture met in an emergency meeting at the Texas Department of Agriculture, Stephen F. Austin Building, Room 924A, 1700 North Congress Avenue, Austin. According to the complete agenda, the authority reviewed the minutes; discussed and acted on inducement resolution for proposed industrial revenue bond issue; and discussed bond issue and acted on proposed structure for TAFA loan program. The emergency status was necessary due to consideration of a bond inducement resolution enabling issuance of industrial revenue bonds and resolution had to be made before August 23, in order to qualify for tax-exempt bonds.

Contact: Brian Muller, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7624.

Filed: August 14, 1990, 4:34 p.m.

TRD-9008188

Tuesday, September 11, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, two blocks West of Morningside Road, San Juan. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by Griffin and Brand of McAllen, Inc., as petitioned by Fred Keese.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

Filed: August 14, 1990, 10:41 a.m.

TRD-9008160

Tuesday, September 11, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, two blocks West of Morningside Road, San Juan. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by Ruiz Produce Company, as petitioned by Doug Keesee.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

Filed: August 14, 1990, 10:41 a.m.

TRD-9008161

Tuesday, September 13, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, two blocks West of Morningside Road, San Juan. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by Ruiz Produce Co., as petitioned by Fred Keese.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

Filed: August 14, 1990, 10:40 a.m.

TRD-9008162

Tuesday, September 18, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by River City Venture as petitioned by Frye Farms.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

Filed: August 14, 1990, 10:40 a.m.

TRD-9008163

Tuesday, September 18, 1990, 1 p.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by International Farmers, Inc., as petitioned by J. S. McManus Produce Co., Inc.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

Filed: August 14, 1990, 10:40 a.m.

TRD-9008164

Tuesday, September 18, 1990, 1 p.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by Jeanette L. Maler d/b/a Farm Land Produce Co. as petitioned by Frank D. Douglas, Jr.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

Filed: August 14, 1990, 10:39 a.m.

TRD-9008166

Tuesday, September 25, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will conduct an administrative hearing to review an alleged violation of Texas Agriculture Code, Section 103.001 et. seq. by Houston

oduce Co., as petitioned by Golden Val-
y Distributors, Inc.

ontact: Bruce Fant, P.O. Box 12847, ustin, Texas 78711, (512) 463-7589.

iled: August 14, 1990, 10:40 a.m.

TRD-9008165

hursday, October 18, 1990, 2 p.m. The exas Department of Agriculture will meet t the Texas Department of Agriculture istrict Office, Expressway 82, Two Blocks Vest of Morningside Road, San Juan. ccording to the complete agenda, the epartment will conduct an administrative earing to review alleged violations of the exas Agriculture Code and/or Texas Administrative Code by Patrick Kornegay l/b/a Sun Valley Dusting.

ontact: Chris Hanger, P.O. Box 12847, Austin, Texas 78711, (512) 463-7703.

iled: August 15, 1990, 2:03 p.m.

TRD-9008231

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exas Council on Alzheimer's Disease and Related Disorders

riday, September 14, 1990, 9 a.m. The exas Council on Alzheimer's Disease and Related Disorders will meet at the Texas epartment of Health, 1100 West 49th Street, Room T-607, Austin. According to he agenda summary, the council will pprove minutes of previous meeting; con- ider alzheimer's centers; alzheimer's aining in nursing homes and adult day are centers; adult day activity and health pecial programs; Texas index level of ef- ort (behavioral needs of cognitively im- aired patients in nursing homes); tilization of unused hospital beds; and eeds of rural hospitals.

ontact: Morris H. Craig, 1100 West 49th treet, Austin, Texas 78756, (512) 58-7534.

iled: August 15, 1990, 4:20 p.m.

TRD-9008249

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attleship Texas Advisory Board

esday, August 21, 1990, 3 p.m. The attleship Texas Advisory Board will hold emergency meeting at the Offices of iddell, Sapp, Zivley, Hill and LaBoon, 600 avis, 3200 Texas Commerce Tower, 32nd oor Conference Room, Houston. ccording to the agenda summary, the ard will review and discuss various items ith respect to the Battleship Texas return remonies. The emergency status was ecessary due to need of immediate iscussion of fundraising matters.

Contact: Robert D. Miller, 3200 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: August 15, 1990, 10:20 a.m.

TRD-9008218

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Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Wednesday, August 29, 1990, 10 a.m. The Budget Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the Texas Industries for the Blind and Handicapped, Inc., First Floor Board Room, 314 Highland Mall Boulevard, Austin. According to the complete agenda, the subcommittee will introduce committee members and guests; overview of FY 1991 budget and proposed program goals for Texas Industries for the Blind and Handicapped; executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(e),(g), and (r), to discuss personnel and pending legal matters; discussion and recommendations regarding FY 1991 budget and proposed program goals for Texas Industries for the Blind and Handicapped; and discussion and recommendations regarding FY 1991 commission rates for Texas Industries for the Blind and Handicapped.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2603.

Filed: August 15, 1990, 1:58 p.m.

TRD-9008175

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Bond Review Board

Friday, August 17, 1990, 10 a.m. The Staff Planning Committee of the Bond Review Board met at the State Capitol, Senate Reception Room, Austin. According to the complete emergency revised agenda, the committee approved minutes; considered proposed issues: application of Secretary of State-lease/purchase of data processing equipment, application of Texas Agricultural Finance Authority-Industrial Development Revenue Bonds, Series 1990; application of Texas Public Finance Authority-refunding bonds; and other business. The emergency revision was necessary due to withdrawal of Texas Water Commission's application, and to allow timely consideration of the application of the Texas Public Finance Authority.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: August 15, 1990, 4:50 p.m.

TRD-9008261

Thursday, August 23, 1990, 10 a.m. The Bond Review Board will meet at the State Capitol, Sergeants' Committee Room, Austin. According to the complete agenda, the board will approve minutes; consider proposed issues: application of Secretary of State-lease/purchase of computer equipment, application of Texas Agricultural Finance Authority-Industrial Development Revenue Bonds, application of Texas Public Finance Authority-refunding bonds; adoption of rules for the public school facilities funding program, and consideration of proposed changes to Bond Review Board rules.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: August 15, 1990, 4:49 p.m.

TRD-9008260

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Texas Department of Commerce

Thursday, August 23, 1990, 1 p.m. The Rural Economic Development Commission of the Texas Department of Commerce will meet at the Lt. Governor's Committee Room, Austin. According to the agenda summary, the commission will hear chairman' remarks; review of commission activities to date; review of task force findings/recommendations; discussion of committee recommendations; and other business.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: August 15, 1990, 8:29 a.m.

TRD-9008194

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Texas State Board of Examiners of Professional Counselors

Saturday, August 25, 1990, 9 a.m. The Texas State Board of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the agenda summary, the board will approve minutes of previous meeting; hear announcements and public comments; consider administrative report; financial report through July 31, 1990; expenditures; results of June 23, 1990, examination; renewals; applications and appeals of individuals; report on complaints, investigations, and pending hearings; press releases on disciplinary and denial actions; newsletter, news columns and other public relations projects; specialty designations (addiction disorders counselors; rehabilitation counselors; art therapist); amendments to board rules; status report on legislation; board workshop on November 16, 1990; elect

chair and vice-chair; and other matters not requiring board action.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:19 p.m.

TRD-9008252

Saturday, August 25, 1990, 10 a.m. The Rules, Supervisors, Specialties and Reciprocity Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the agenda summary, the committee will consider specialty designations (addiction disorders counselors; rehabilitation counselors; art therapists); and amendments to board rules.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:19 p.m.

TRD-9008255

Saturday, August 25, 1990, 1 p.m. The Applications, Ethics, Suspensions and Revocations Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the agenda summary, the committee will consider applications and appeals of individuals.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:19 p.m.

TRD-9008253

Saturday, August 25, 1990, 1 p.m. The Public Relations Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the agenda summary, the committee will consider press releases on disciplinary and denial actions; next newsletter, news columns and other public relations projects.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 14, 1990, 4:19 p.m.

TRD-9008254

Saturday, August 25, 1990, 1 p.m. The Texas Association for Counseling and Development (TACD) Ad Hoc Liaison Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will hear a status report on legislation.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:18 p.m.

TRD-9008256

Saturday, August 25, 1990, 1 p.m. The Complaints Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will consider report on complaints, investigations, and pending hearing(s).

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:18 p.m.

TRD-9008257

Saturday, August 25, 1990, 1 p.m. The Fees and Budget Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will consider financial report through July 31, 1990; and expenditures.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:18 p.m.

TRD-9008258

Saturday, August 25, 1990, 1 p.m. The Testing, Licensing, Continuing Education and Renewals Committee of the Texas State Board of Examiners of Professional Counselors will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will consider reports on results of June 23rd examination; and status of renewals.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: August 15, 1990, 4:18 p.m.

TRD-9008259

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Credit Union Department

Friday, August 24, 1990, 10 a.m. The Credit Union Commission of the Credit Union Department will meet at the Credit Union Department Building, 914 East Anderson Lane, Austin. According to the complete agenda, the commission will invite public input for future consideration; receive minutes of June 25, 1990, meeting, communications reported by the commissioner and report by the Director Qualifications Committee; consider proposed revisions of Rule 91.402 (Records Retention), Rule 95.201 (Board of Directors-TSGCU) and Rule 95.308 (Refunds-TSGCU); Rule 91.503 (Director Qualifications); final revisions of Rule 95.303 (Membership Investment Shares) and Rule 97.114 (Examination Fees); request for outside legal counsel; and legislation; conduct an executive session to discuss credit unions and problem cases, to confer with legal counsel regarding impending hearings and study report by the State Auditor, and Commissioner Evaluation Committee Report.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: August 16, 1990, 9:38 a.m.

TRD-9008270

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Texas State Board of Dental Examiners

Friday, August 24, 1990, 8 a.m. The Texas State Board of Dental Examiners will meet at the UT Health Science Center, Texas Medical Center, 6516 John Freeman Avenue, Houston. According to the agenda summary, the board will approve settlement conference orders; hear request from Dr. Randall Boyettt and Dr. Daniel West for modification of board orders; approval of disbursement of disciplinary fines collected for Peer Assistance Program; approval of Anesthesia Committee; president's report; committee reports; executive director's report; adoption of job description for executive director; adoption of mission statement and committee goals; and executive session to consider personnel matters.

Contact: Crockett Camp, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

Filed: August 15, 1990, 4:16 p.m.

TRD-9008246

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Texas Employment Commission

Tuesday, August 21, 1990, 8:30 a.m. The Texas Employment Commission will meet at the Texas Employment Commission Building, 101 East 15th Street, Room 644, Austin. According to the complete emergency revised agenda, the commission will meet in executive session to consider Cowan Boat Transfer, Inc. versus Texas Employment Commission, et al.; actions, if any, resulting from executive session. The emergency status is necessary due to imminent court setting requiring immediate decision.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 14, 1990, 4:25 p.m.

TRD-9008187

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Texas State Board of Registration for Professional Engineers

Friday, August 24, 1990, 8 a.m. The Ad Hoc Committee of the Texas State Board of Registration for Professional Engineers will meet at the State Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin. According to the complete agenda, the committee will be convened by Chairman Dorchester; roll call will be taken; recognize and welcome visitors; and meet with representatives of the Board of Architectural Examiners to discuss current practices.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: August 15, 1990, 2:05 p.m.

TRD-9008232

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Texas Department of Health

Thursday, August 30, 1990, 9 a.m. The Trauma Technical Advisory Committee, Hospital Designation Subcommittee will meet at the Airport Hilton Hotel, Hyde Park or Palmer Room, Austin. According to the agenda summary, the subcommittee will approve minutes of previous meeting; consider potential trauma service areas; changes to Texas trauma hospital criteria document; qualification requirements for trauma personnel; and guidelines for site visits.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: August 15, 1990, 4:19 p.m.

TRD-9008250

Thursday, August 30, 1990, 1:30 p.m. The Trauma Technical Advisory Committee of the Texas Department of Health will meet at the Austin Airport Hilton, Balcones Meeting Room, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; consider chairman's report; data collection project report; action on service area proposal; legislation needs; subcommittee report; other action not requiring committee action; and set next meeting date.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: August 14, 1990, 4:20 p.m.

TRD-9008248

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Texas Health and Human Services Coordinating Council

Tuesday, August 21, 1990, 8:30 a.m. The Commission on Children, Youth, and Family Services Community Resource Workgroup of the Texas Health and Human Services Coordinating Council held an emergency meeting at the Texas Juvenile Probation Commission, Board Room, 2015 South IH-35, Austin. According to the complete agenda, the commission approved minutes; heard report on local level private sector CRCG participation; biennial reporting requirements discussion; CRCG information packet discussion; CRCG training discussion; update of independently implemented survey; new private sector member discussion; discussion of old business and new business. The emergency status was necessary to finalize the agenda.

Contact: Louis Worley, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 14, 1990, 3:01 p.m.

TRD-9008177

Tuesday, August 21, 1990, 2 p.m. The Commission on Children, Youth, and Family Services Prevention and Intervention Workgroup of the Texas Health and Human Services Coordinating Council held an emergency meeting at the Children's Trust Fund, Building Four, Suite 200, 8140 Mopac Boulevard, Austin. According to the complete agenda, the commission reviewed and adopted model program survey criteria; developed workgroup strategies; discussed old business and new business. The emergency status was necessary to finalize the agenda.

Contact: Louis Worley, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 14, 1990, 3:01 p.m.

TRD-9008178

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University of Houston System

Wednesday, August 22, 1990, 8 a.m. The Board of Regents of the University of Houston System will meet at the Waldorf Astoria Room, Conrad Hilton College Building, University of Houston, Houston. According to the agenda summary, the board will discuss and/or approve the following: minutes, consent docket, appreciation resolution, amendment to bylaw, review of activities, English proficiency requirements, cooperative teacher education program, various new degree programs, memorial resolution, voluntary modification of employment, personnel recommendations, award of contract, granting of additional easement, initiating negotiations for the acquisition of properties, construction change orders, various contracts/agreements, software purchase, use of construction fund, internal audit long-range plans, various internal audit reports, establish "Endowment Plus" endowment, creation of fellowship, various reports and establish "Campaign Priority Fund".

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7440.

Filed: August 16, 1990, 9:56 a.m.

TRD-9008276

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Texas Commission on Human Rights

Friday, August 24, 1990, 9 a.m. The Texas Commission on Human Rights will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Nueces Room, Austin. According to the agenda summary, the commission will discuss and vote on agenda item(s) covered in executive session as necessary or required; welcoming of guests; approval of minutes; administrative reports (Executive Director's report, complaint monitoring report, operations report and finance report); discussion of 1992-1993 biennium budget request; EEO compliance training; discussion of fiscal 1991 EEOC charge resolution contract; discussion of 11991 worksharing agreement with EEOC; personnel matters; evaluation of annual EEO Conference; commissioner issues; and unfinished business.

Contact: William M. Hale, P.O. Box 13493, Capitol Station, Austin, Texas 78711, (512) 837-8534.

Filed: August 15, 1990, 1:59 p.m.

TRD-9008228

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Texas Department of Human Services

Thursday, August 23, 1990, 9 a.m. The Vendor Drug Advisory Subcommittee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, West Tower, Public Hearing Room, Austin. According to the complete agenda, the subcommittee will approve minutes; opening discussion; report on operation budget and appropriation requests; comments from Dr. Kelley; report on H2 antagonists and related drug limitations; report on DUR program; status of rebates and responses; report on prior legislation and proposals by OMB; clozaril update; report on interagency agreements and provider contracts; report on profit committee recommendations; new products application reviews synarel; ergamisol janssen; proposed reimplementation of MAC on extended release theophylline tab; and scheduling of next meeting.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: August 15, 1990, 2:11 p.m.

TRD-9008234

Thursday, August 23, 1990, 10 a.m. The Client Self-Support Services Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, West Tower, Room 103-W, Austin. According to the complete agenda, the council will approve minutes; hear report from office of state relations; food stamp E and T child care rules; AFDC dependent care deduction; excluded earnings of an AFDC child; revised food stamp income limits, deductions, and issuance tables; CSS program updates on child care management services, JOBS/WINGS, and AFDC-UP; FY 1990 advisory committee report; report on the comprehensive service design pilot of San Antonio; deputy commissioner's comments; budget report on FY 1991 operating plan and FY 1992-1993 appropriations request; and other business.

Contact: Cindy Marler, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3662.

Filed: August 15, 1990, 2:11 p.m.

TRD-9008235

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State Board of Insurance

August 23, 1990, 10 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 414, Austin. According to the complete revised agenda, the board will consider suggestions for proposed standards to be formulated for use by insurers, third-party reimbursement sources, chemical dependency centers, and other sources, toward the reasonable control of costs necessary for treatment of dependency.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 15, 1990, 4:50 p.m.

TRD-9008262

August 23, 1990, 10 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 460, Austin. According to the agenda summary, the board will consider motions for rehearing by Montgomery Ward Insurance Company and Forum Insurance Company; extension of emergency effectiveness of amendment to 28 TAC 15.27; proposed action on new 28 TAC 21.901-21.905 and 21.1001-21.1004, and amendment to 28 TAC 15.101; board orders on several different matters as itemized on the complete agenda; motion for dismissal of the appeal of Jack V. Dougherty; personnel matters; litigation; solvency matters; and staff proposal for presentation of seminar.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 15, 1990, 3:48 p.m.

TRD-9008243

Thursday, August 23, 1990, 1:30 p.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 460, Austin. According to the complete agenda, the board will conduct a public hearing to consider the appeal by Henry Paul Guillory of Commissioner's Orders 88-1116 and 88-1223.

Filed: August 14, 1990, 10:26 a.m.

TRD-9008157

Wednesday, September 5, 1990, 9:30 a.m. The State Board of Insurance will meet at the Joe C. Thompson Conference Center, 26th and Red River Streets, Room 1-110, Austin. According to the complete agenda, the board will conduct a public hearing to consider the effect of the provisions of Senate Bill 1 of the Second Called Session of the 71st Legislature of the State of Texas on the calculation of rates and rating for workers' compensation and employeers' liability insurance in this state.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 14, 1990, 10:26 a.m.

TRD-9008158

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Interagency Council on Early Childhood Intervention

Wednesday, August 29, 1990, 1 p.m. The Interagency Council on Early Childhood Intervention will meet at the Texas Department of Health, 1100 West 49th Street, Room M-652, Austin. According to the agenda summary, the council will hear public comments; approve minutes of previous meeting; consider advisory committee report on ECI program; advisory committee appointments; proposed medicaid rules; statute revisions; and staff work plans for fiscal year 1991.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673.

Filed: August 15, 1990, 4:19 p.m.

TRD-9008251

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Legislative Oversight Committee on Workers' Compensation

Friday, August 31, 1990, 10 a.m. The Legislative Oversight Committee on Workers' will meet at the Capitol Building, Senate Chamber, Austin. According to the complete agenda, the committee will approve minutes; hear invited testimony regarding cost savings in Senate Bill 1, The Texas Workers' Compensation Act; invited testimony regarding implementation of parts of Senate Bill 1, The Texas Workers' Compensation Act by the State Board of Insurance; invited testimony from the Texas Workers' Compensation Commission on implementation progress of Senate Bill 1; invited testimony from various state agencies concerned with employee leasing and the effect on Workers' Compensation Insurance coverage; public testimony on employee leasing; and other committee business.

Contact: June L. Karp, 1005B Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 475-4991.

Filed: August 15, 1990, 1:57 p.m.

TRD-9008227

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Texas State Board of Medical Examiners

Thursday, August 16, 1990, 8:30 a.m. The Probationary Panel of the Texas State Board of Medical Examiners met in an emergency meeting at 1101 Camino LaCosta, Austin. According to the complete agenda, the panel interview probationers and made recommendations to the board; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d) , 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484. The emergency status was necessary due to information coming to attention of agency and merited prompt attention.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 14, 1990, 3:49 p.m.

TRD-9008186

Friday-Saturday, August 17-18, 1990, 9:30 a.m. and 8 a.m. respectively. The Texas State Board of Medical Examiners met at 1101 Camino LaCosta, Austin. According to the emergency revised agenda summary, the board added agreed order; discussed probationary panel reports; and rescheduled appearance. The emergency revision was necessary due to information coming to attention of agency and merited prompt board attention.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 14, 1990, 3:49 p.m.

TRD-9008185

Friday-Saturday, August 24-25, 1990, 1:30 p.m. and 8 a.m. respectively. The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the

board will conduct a hearing on possible violation of Medical Practice Act; executive session under authority of Article 6252-17, as related to Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 14, 1990, 3:50 p.m.

TRD-9008184

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Texas Council on Offenders with Mental Impairments

Thursday, August 23, 1990, 9 a.m. The Executive Committee of the Texas Committee on Offenders with Mental Impairments will meet at the Mental Health Association, 8401 Shoal Creek Boulevard, Austin.According to the agenda summary, the committee will meet to approve the minutes; hear committee reports; and discuss old and new business.

Contact: Dee Kifowit, P.O. Box 12546, Austin, Texas 78711, (512) 459-2720.

Filed: August 14, 1990, 10:06 a.m.

TRD-9008155

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On-Site Wastewater Treatment Research Council

Thursday, August 30, 1990, 1:30 p.m. The On-Site Wastewater Treatment Research Council will meet at the Center for Environmental Research, Hornsby Bend Wastewater and Treatment Facility, 2210 South FM 973, Austin. According to the agenda summary, the council will approve minutes of previous meeting; consider results of technical committee review on received requests for proposal; rules; reports from chair, vice-chair and other members; executive secretary report; and public comment.

Contact: Sherman Hart, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7293.

Filed: August 15, 1990, 4:20 p.m.

TRD-9008247

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Texas Parks and Wildlife Department

Tuesday, August 28, 1990, 10 a.m. The Wildlife Division of the Texas Parks and Wildlife Department will meet at the Texas Parks and Wildlife Headquarters, 4200 Smith School Road, Austin. According to the complete agenda, the division will consider easement request from Valero Transmission, L.P. for an easement for a 30-inch natural gas pipeline across approximately 404 rods of the southern portion of the Engeling Wildlife Management Area in Anderson County.

Contact: John Foshee, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4806.

Filed: August 15, 1990, 2:01 p.m.

TRD-9008229

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State Preservation Board

Wednesday, August 15, 1990, 2 p.m. The Permanent Advisory Committee of the State Preservation Board met in an emergency meeting at the Library and Archives Building, 1201 Brazos Street, Room 314, Austin. According to the agenda summary, the committee approved minutes; discussed old or unfinished business: approved TAC rules/amendments; new business: listing of change requests, memorials and monuments, General Land Office Building, and Texas Capitol Project. The emergency status was necessary due to agenda not finalized in time to meet regular filing deadline.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: August 14, 1990, 3:26 p.m.

TRD-9008181

Thursday, August 16, 1990, 2 p.m. The State Preservation Board met in an emergency meeting at the Library and Archives Building, 1201 Brazos Street, Room 314, Austin. According to the agenda summary, the committee approved minutes; discussed old or unfinished business: approved TAC rules/amendments; new business: listing of change requests, memorials and monuments, General Land Office Building, and Texas Capitol Project. The emergency status was necessary due to agenda not finalized in time to meet regular filing deadline.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: August 14, 1990, 3:25 p.m.

TRD-9008182

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Texas State Board of Public Accountancy

Thursday-Friday, August 16-17, 1990, 9 a.m. The Informal Conferences of the Texas State Board of Public Accountancy held an emergency meeting at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the board will hear conferences on complaint numbers 90-01-25L; 89-10-11L; 90-01-13L; 90-03-06L; 90-02-16L; 89-07-02L; 90-01-24L; 83-07-17L; 89-09-13L; 90-02-09L. The emergency status was necessary as this was the only available date for all committee members before the August 30, 1990 board meeting.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

Filed: August 15, 1990, 3:44 p.m.

TRD-9008241

Thursday-Friday, August 16-17, 1990, 9 a.m. The Technical Standards Review Committee of the Texas State Board of Public Accountancy held an emergency meeting at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the committee will review the June and July status report; recommendations regarding specific complaints-licensees; complaint number 89-09-11L; 89-10-23L; 89-10-25L; 89-10-28L; 89-10-26L; 89-10-27L; 90-01-09L; 90-05-01L; 90-05-02L; 90-05-03L; 89-10-22L; 87-10-15L; 90-05-12L; 90-05-06L; 90-05-07L; 90-05-08L; 90-05-09L; discussion items: compilation of financial statements; attachments to financial statements; complaint number 89-09-14L; complaint number 89-09-15L; newspaper article; and complaint number 89-12-15L. The emergency status was necessary as this was the only available date for all committee members before the August 30, 1990 board meeting.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

Filed: August 15, 1990, 3:45 p.m.

TRD-9008240

Thursday, August 23, 1990, 9 a.m. The Behavioral Enforcement Committee of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the committee will review the June and July status report; make recommendations regarding specific complaints-licensees; discussion items; and review of standard agenda items.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

Filed: August 15, 1990, 1:24 p.m.

TRD-9008226

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Public Utility Commission of Texas

Friday, August 24, 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 prehearing conference in Docket Number 9305 to consider application of Central Power and Light Company for a certificate of convenience and necessity for a proposed 345KV

transmission line in Nueces, San Patricio, Bee and Goliad counties.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 15, 1990, 3:11 p.m.

TRD-9008236

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Teacher Retirement System of Texas

Friday, August 10, 1990, 9 a.m. The Board of Trustees of the Teacher Retirement System of Texas met at 1000 Red River, Fifth Floor Board Room, According to the complete emergency revised agenda, the board considered amendment to 1989-1990 FY budget and ratification of amendment to the retirement system's contract with Teacher Retirement System investment counsel to provide for additional services. The emergency status was necessary due to need to ensure payment of investment counsel for additional services on a timely basis.

Contact: Bruce Hineman, 1001 Trinity Street, Austin, Texas 78701, (512) 370-0524.

Filed: August 9, 1990, 10:48 a.m.

TRD-9008024

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Texas National Research Laboratory Commission

Wednesday, August 22, 1990, 9:30 a.m. The Texas National Research Laboratory Commission will meet at the Dallas Love Field Airport Administration Offices, Conference Room A, Dallas. According to the complete agenda, the commission will take a roll call of members; authorize Eminent Domain with respect to the following: Parcel 137, Sammy Lee and Anne E. Phillips, Grid number F-8, Quadrant-N.W.; Parcel 138, Lane E. Chiles, Grid Number F-8, Quadrant N.W.; Parcel 139, Alan Ray and Donna Gay Chiles, Grid #F-8, Quadrant N.W.; Parcel 254, Gary and Brenda Chiles, Grid #F-8, Quadrant N.W.; Parcel 257, Larry V. and Marsha L. Schaefer, Grid #F-8, Quadrant N.W.

Contact: Karen Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-6481.

Filed: August 14, 1990, 4:40 p.m.

TRD-9008189

Wednesday, August 22, 1990, 9:30 a.m. The Texas National Research Laboratory Commission will meet at the Dallas Love Field Airport Administration Offices, Conference Room A, Dallas. According to the complete emergency revised agenda, the commission will take a roll call of members; authorize Eminent Domain with respect to the following: Parcel 137, Sammy Lee and Anne E. Phillips, Grid number F-8, Quadrant N.W.; Parcel 138, Lane E. Chiles, Grid Number F-8, Quadrant N.W.; Parcel 139, Alan Ray and Donna Gay Chiles, Grid #F-8, Quadrant N. W.; Parcel 254, Gary and Brenda Chiles, Grid #F-8, Quadrant N.W.; Parcel 257, Larry V. and Marsha L. Schaefer, Grid #F-8, Quadrant N.W; executive session-real estate valuation and appraisal procedures; reconvene; and hear public comment. The emergency status was necessary due to need for executive session not previously anticipated, but deemed necessary now.

Contact: Karen Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-6481.

Filed: August 16, 1990, 8:13 a.m.

TRD-9008266

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Texas Water Commission

Wednesday, August 15, 1990, 3 p.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the Texas Water Commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission took various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency revision was necessary to prevent an imminent threat to public health and safety.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 14, 1990, 4:57 p.m.

TRD-9008191

Wednesday, September 26, 1990, 10 a.m. The Texas Water Commission will meet at the Loving County District Court Room, Highway 302, Mentone. According to the agenda summary, the commission will consider an application for waste disposal well permit numbers WDW-275 and WDW-276 by Loving County Disposal, Inc. The facility would be constructed approximately two miles east of the City of Mentone, Loving County. Both wells would be located in Section 77 of Block 1 of the W.&N.W. RR. Co. Survey (WDW-275 approximate latitude 31 degrees, 27' 41" west; WDW-276 approximate latitude 31 degrees, 42' 34" north, longitude 103 degrees, 27' 40" west). The purpose of the hearing will be to receive evidence on the conditions, if any, under which the permits may be issued.

Contact: Bill Zukauckas, P.O. Box 139887, Austin, Texas 78711-3087, (512 463-7875.

Filed: August 15, 1990, 4:15 p.m.

TRD-9008239

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Tuesday, October 9, 1990, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the City Council Chambers, 214 8th Street, Somerville. According to the agenda summary, the examiner will consider an application by the City of Somerville for renewal of Permit Number 10371-01 authorizing a discharge of treated domestic wastewater effluent into Thompson Creek; thence to Yegua Creek in Segment Number 1211 of the Brazos River Basin.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

TRD-9008183

Monday, October 15, 1990, 10 a.m. The Office of Hearing Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According to the complete agenda, the examiners will consider applications and conduct a public hearing concerning the city of Abilene, Application Numbers 12-4161A and 12-4165A, to amend certificate of adjudications located on Deadman Creek, Elm Creek, tributary of the Clear Fork Brazos River, tributary of the Brazos River, Brazos River Basin in Jones County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: August 15, 1990, 3:36 p.m.

TRD-9008237

Wednesday, November 7, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will consider an application by Herbert John Ewald, Jr. and Ewald Enterprises, Inc., Application Number 5306, for an 11.121 water use permit to divert and use 200 acre-feet of water from the San Antonio River, San Antonio River Basin for irrigation of 50 acres in Karnes County, located 4.6 miles northwest of Karnes City.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

TRD-9008238

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Regional Meetings

Meetings Filed August 14, 1990

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, August 20, 1990, at 5 p.m. Information may be obtained from Walter Stoneham, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511.

The Brazos Valley Solid Waste Management Agency Board of Trustees met at the City of College Station Law Library, 1101 Texas Avenue, College Station, August 17, 1990, at noon. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3515.

The Central Texas Council of Governments Executive Committee will meet at 302 East Central, Belton, August 23, 1990, at 12:45 p.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1903.

The Education Service Center, Region XIII, Board of Directors met at the Education Service Center, Region XIII, 5701 Springdale Road, Room 205, Austin, August 20, 1990, at 12:45 p.m. Information may be obtained from Dr. Joe Parks, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300.

The Ellis County Tax Appraisal District met in an emergency meeting at 406 Sycamore Street, Waxahachie, August 16, 1990, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, August 21, 1990, at 9 am. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Middle Rio Grande Development Council Private Industry Council met in an emergency revised agenda at 1916 Main Street, Eagle Pass, August 15, 1990, at 1 p.m. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The Panhandle Ground Water Conservation District Number Three Board of Directors met for a public meeting at the Water District Office, 300 South Omohundro Street, White Deer, August 20, 1990, at 7:30 p.m. Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

The South Texas Development Council Board of Directors will meet at the Commissioners Courtroom, Courthouse Annex, Zapata, August 23, 1990, at 11 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 7 78044-2187, (512) 722-3995.

The South Texas Development Council Board of Directors will meet at the Commissioners Courtroom, Courthouse Annex, Zapata, August 23, 1990, at 11 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 7 78044-2187, (512) 722-3995.

TRD-9008153

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Meetings Filed August 15, 1990

The Angelina and Neches River Authority Board of Directors will meet at the Fredonia Hotel, Raquet Room, 200 North Fredonia Street, Nacogdoches, August 21, 1990, at 10 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-2564.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main Street, Suite 201, Room 202, Cleburne, August 24, 1990, at 9 a.m. Information may be obtained from Jackie Gunter, 109 North Main Street, Cleburne, Texas 76031, (817) 645-3987.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway, Abilene, August 30, 1990, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Central Counties Center for Mental Health and Mental Retardation Services Board of Trustees will meet at 304 South 22nd Street, Temple, August 21, 1990, at 7:45 p.m. Information may be obtained from Michael K. Muegge, P.O. Box 518, Temple, Texas 76501, (817) 778-4841.

The Comal Appraisal District Board of Directors met (in a revised agenda) at 430 West Mill Street, New Braunfels, August 20, 1990, at 7:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The DeWitt County Appraisal District Board of Directors will meet at the DeWitt County Appraisal Office, 103 Bailey Street, Cuero, August 21, 1990, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Education Service Center Region XI Board of Directors will meet at the Education Service Center, Region XI, Board Room, 3001 North Freeway, Fort Worth, August 28, 1990, at noon. Information may be obtained from R. P. Campbell, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, August 22, 1990, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Panhandle Ground Water Conservation District Number Three Board of Directors held a public meeting at the Water District Office, 300 South Omohundro Street, White Deer, August 20, 1990, at 8 p.m. Information may be obtained from C. E. Williams, 300 South Omohundro, White Deer, Texas 79097, (806) 883-2501.

The Kendall County Appraisal District Board of Directors will meet at the Kendall County Appraisal Office, 207 East San Antonio Street, Boerne, August 23, 1990, at 7:30 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Region One Education Service Center Board of Directors held an emergency meeting at 1900 West Schunior, Edinburg, August 20, 1990, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611.

TRD-9008190

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Meetings Filed August 16, 1990

The Coryell County Appraisal District Board of Directors will meet at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, August 30, 1990, at 6 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Coryell County Appraisal District Board of Directors will meet at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, August 30, 1990, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Hamilton County Appraisal District will meet at the Hamilton County Appraisal District Boardroom, 119 East Henry, Hamilton, August 24, 1990, at noon. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945/8946.

The Region VIII Education Service Center Board of Directors will meet at the Region VIII Education Service Center, FM 1734, Mt. Pleasant, August 23, 1990, at 7 p.m. Information may be obtained from Scott Ferguson, F.M. 1734, Mt. Pleasant, Texas 75455, (214) 8551.

The Trinity River Authority of Texas Board of Directors will meet at 5300 South Collins, Arlington, August 22, 1990, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington Texas 76004, (817) 467-4343.

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 Applications for Construction Permits

Notice is hereby given by the Texas Air Control Board (TACB) of applications for construction permits received during the period of July 1, 1990 to July 31, 1990.

Information relative to the applications listed following including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

A copy of all material submitted by the applicant is available for public inspection at the central office of the TACB at the address stated previously and at the regional office for the air quality control region within which the proposed facility will be located.

Corote Industries, Inc.; spray metalizing coating plant; Midland, Midland County; 20206; *RVW; July 2, 1990.

Moss Bluff Gas Storage Systems; natural gas storage facility; Moss Bluff, Liberty County; 20205; *RVW; July 2, 1990.

Lehigh Press-Dallas; printing press and incinerator; Dallas, Dallas County; 16995; *AMD; July 2, 1990.

E.I. Dupont De Nemours and Company; low density polyethylene DG UT; Orange, Orange County; 20204; *RVW; July 2, 1990.

Amoco Chemical Company; underground hydrocarbon storage; Freeport, Brazoria County; 535, *AMD; July 2, 1990.

Trinity Industries, Inc.; railcar repair; Vidor, Orange County; 19705; *AMD; July 2, 1990.

Exxon Chemical Americas; advanced polymers (APB) unit; Baytown, Harris County; 20211; *RVW; July 5, 1990.

Fermenta ASC Corporation; dacthal production; Channelview, Harris County; 329A; *AMD; July 5, 1990.

Gulf Railcar, Inc.; steel grit blasting facility; Houston, Harris County; 5596; *AMD; July 6, 1990.

Kirby Forest Industries, Inc.; particle board plant; Silsbee, Hardin County; 1104; *AMD; July 6, 1990.

Ricetec, Inc.; rice mill; Alvin, Brazoria County; 20224; *RVW; July 6, 1990.

Protech Coatings, Inc.; foundry mold coating; Arlington, Tarrant County; 20212; *RVW; July 9, 1990.

Hoechst Celanese Chemical Group, Inc.; pox flare project; Bay City, Matagorda County; 20213; *RVW; July 9, 1990.

Oxy Petrochemicals Inc.; revisions to emission rates; Alvin, Brazoria County; 19558; *AMD; July 9, 1990.

Hoechst Celanese Corporation; acylation sample preparation unit; Corpus Christi, Nueces County; 17262A; *AMD; July 9, 1990.

Phillips 66 Company; add styrene tank; Pasadena, Harris County; 5562; *AMD; July 9, 1990.

Phillips 66 Natural Gas Company; sulfur recovery unit; Goldsmith, Ector County; 20223; *RVW; July 9, 1990.

Dow Chemical; polyethylene plant; Freeport, Brazoria County; 6803; *AMD; July 9, 1990.

American Chrome and Chemicals Inc.; chromium oxide; Corpus Christi, Nueces County; 7736; *AMD; July 9, 1990.

Acid Delinters of Pecos, Inc; acid delinting plant; Pecos, Reeves County; 20230; *RVW; July 9, 1990.

Precise Hard Chrome; chrome plating facility; Waco, McLennan County; 18965; *AMD; July 9, 1990.

Phillips 66 Company; railcar maintenance center; Elkhart, Anderson County; 9345; *AMD; July 10, 1990.

Conoco, Inc.; crude oil treating facility, Forsan, Howard County; 20226; *RVW; July 10, 1990.

Anderson Greenwood and Company; acid cleaning room; Stafford, Fort Bend County; 20227; *RVW; July 10, 1990.

Dow Chemical Company; alklated aromatic amine pilot; Clute, Brazoria County; 20228; *RVW; July 10, 1990.

Susan Crane, Inc.; flexographic printing press; Dallas, Dallas County; 19882; *AMD; July 12, 1990.

Cal Maine Foods, Inc.; feed mill; Waelder, Gonzales County; 20231; *RVW; July 12, 1990.

Northeast Texas Farmers Co-op; dry fertilizer storage and blend; Sulphur Springs, Hopkins County; 20233; *RVW; July 13, 1990.

Exxon Chemical Americas; orca pilot plant; Baytown, Harris County; 20236; *RVW; July 13, 1990.

J.H. Taylor Gas Company; graham station; Newcastle, Young County; 20232; *RVW; July 16, 1990.

Ethyl Corporation; diethyl Aniline Plant Number 2; Pasadena, Harris County; 3962; *AMD; July 17, 1990.

Air Products Manufacturing Corporation; amend for scrubber; Pasadena, Harris County; 2113; *AMD; July 18, 1990.

Exxon Company U.S.A.; T/B#6, FM Barnett, Talco Field; Talco, Titus County; 19594; *AMD; July 18, 1990.

Boeing Aerospace and Electronics-Irving; electronics modules manufacturing plant; Irving, Dallas County; 20238; *RVW; July 18, 1990.

United Gin Company; cotton gin; Lamesa, Dawson County; 6616; *AMD; July 18, 1990.

Ameripol Synpol Company; styrene butadiene rubber factor; Port Neches, Jefferson County; 20242; *RVW; July 19, 1990.

Goodpasture, Inc.; ammonium thiosulfate and bisulfi; Dimmitt, Castro County; 20243; *RVW; July 19, 1990.

Longhorn Imports, Inc.; wicker wood products paint factory; Irving, Dallas County; 20245; *RVW; July 20, 1990.

Crown Central Petroleum Corporation; fluidized catalytic crack unit; Pasadena, Harris County; 20246; *RVW; July 20, 1990.

Oryx Energy Company; Big Wells gas plant expansion; Big Wells, Dimmitt County; 758; *AMD; July 20, 1990.

Amoco Chemical company, gas and oil-fired boiler B-601; Texas City, Galveston County; 20247; *RVW; July 20, 1990.

Phillips 66 Company; star/mtbe Unit; Borger, Hutchinson County; 20249; *RVW; July 20, 1990.

Dow Chemical Company; polyol finishing system; Freeport, Brazoria County; 18258; *AMD; July 23, 1990.

Phillips 66 Company; flare decanter tank vent; Pasadena, Harris County; 5562A; *AMD; July 23, 1990.

Warren Petroleum Company; add chemicals-Warrengas Terminal; Galena Park, Harris County; 5414; *AMD; July 23, 1990.

Martindale Feed Mill; feed mill; Valley View, Cooke County; 3564; *AMD; July 23, 1990.

Martindale Feed Mill; feed mill; Valley View, Cooke County; 6404; *AMD; July 23, 1990.

Baker Hughes Vetco Services, Inc.; Highway 90 Inspection Facility; Houston, Harris County; 20248; *RVW; July 24, 1990.

Phillips 66 Company; add (DAC) tank; Freeport, Brazoria County; 19784; *AMD; July 24, 1990.

Union Carbide Industrial Gases, Inc. Linde Division; oogeneration facility; Texas City, Galveston County; 20250; *RVW; July 24, 1990.

Lubbock Cotton Growers; cotton gin; Lubbock, Lubbock County; 4430; *AMD; July 25, 1990.

Sherwin-Williams Company, the; inert gas generator; Grand Prairie, Tarrant County; 7433; *AMD; July 25, 1990.

Cryovac; plastic bag manufacturing-printing; Iowa Park, Wichita County; R-2380; *AMD; July 25, 1990.

Ranco Inc. of North America, Controls Division; machine bold/screw manufacturing facility; Brownsville, Cameron County; 20252; *RVW; July 26, 1990.

Dallas Semiconductor Corporation; assembly operations; Farmers Branch, Dallas County; 18915; *AMD; July 26, 1990.

Dallas Semiconductor; fabrication operations; Farmers Branch, Dallas County; 17537; *AMD; July 26, 1990.

General Motors Corporation; basecoat, clearcoat paint shop; Arlington, Tarrant County; 19156; *AMD; July 26, 1990.

Chemical Reclamation Services, Inc.; add chemicals; Avalon, Ellis County; 4005; *AMD; July 26, 1990.

Champion Technologies, Inc.; quaternization process unit; Fresno, Fort Bend County; 4005; *AMD; July 26, 1990.

Champion Technologies, Inc.; esterification unit; Fresno, Fort Bend County; 4005; *AMD; July 26, 1990.

K-Bin, Inc.; PVC compounding plant; Freeport, Brazoria County; 682E; *AMD; July 26, 1990.

Dow Chemical, U.S.A.; a plant MDI unit number 2; La Porte, Harris County; 18977; *AMD; July 27, 1990.

South Texas Aggregates, Inc.; rock crusher; Macdona, Bexar County; 20254; *RVW; July 27, 1990.

Pierce Chemicals/Morticians Supply Company; morticians chemical products; Dallas, Dallas County; 17912; *AMD; July 30, 1990.

Union Carbide Chemicals and Plastics Company, Incorporate; chemical repackaging; Round Rock, Williamson County; 20255; *RVW; July 30, 1990.

Koch Refining Company; hydeal unit; Corpus Christi, Nueces County; 9516; *AMD; July 30, 1990.

Dow Chemical Company; vertical casting facility; Freeport, Brazoria County; *RVW; July 30, 1990.

Southern Clay Products; clay processing facility; Troup, Cherokee County; 19408; *AMD; July 30, 1990.

Trinity Industries, Inc.; paint permit for P#60; Houston, Harris County; 20260; *RVW; July 31, 1990.

Advanced Aromatics, Inc.; batch distillation unit; Baytown, Harris County; 2321; *AMD; July 31, 1990.

Advanced Aromatics, Inc.; boiler; Baytown, Harris County; 18237; *AMD; July 31, 1990.

Fiberflex, Inc.; fiberglass pultrusion manufacturing factor; Big Spring, Howard County; 20261; *RVW; July 31, 1990.

Elk Corporation; foam application facility; Ennis, Ellis County; 20262; *RVW; July 31, 1990.

Issued in Austin, Texas, on August 19, 1990.

TRD-9008167 Bill Ehret
Director of Hearing
Texas Air Control Board

Filed: August 14, 1990

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

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Texas Commission on Alcohol and Drug Abuse

Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse will hold public hearings on the revision of licensure standards for chemical dependency treatment facilities. Authority was granted to the Texas Commission on Alcohol and Drug Abuse under the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 464 to license chemical dependency treatment facilities.

Five public hearings have been scheduled at the following times and places: August 14, 1990, 10-1 p.m., Houston-Galveston Council of Governments, 3555 Timmons, Suite 500, Houston; Austin 15, 1990, 2-5 p.m., North Central Texas Council of Governments, 616 Six Flags Drive, Centerpoint II, third Floor, Room 324, Arlington; August 21, 1990, 1-4 p.m., J. H. Reagan Building, 105 West 15th Street, Room 103, Austin; September 25, 1990, 2-5 p.m., Alamo Area Council of Governments, 118 Broadway, Suite 400, San Antonio; September 26, 1990, 1:30-5 p. m., Upper Rio Grande Council of Governments, 123 Pioneer Plaza, Suite 210, The Centre, El Paso.

Written or verbal feedback will be accepted. It is preferable that feedback be received by August 24, 1990, in order that it may be incorporated into the draft to be published in the *Texas Register* as proposed standards during September, 1990.

Additional information may be obtained from the Texas Commission on Alcohol and Drug Abuse, Bob Dickson, Executive Director, 1705 Guadalupe Street, Austin, Texas 78701-1214, (512) 867-8700; contact person: Tamara Boyle.

Issued in Austin, Texas, on August 13, 1990.

TRD-9008150 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: August 14, 1990

For further information, please call: (512) 867-8700

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Texas Department of Banking

Notice of Hearing

The hearing officer of the State Banking Department will conduct a hearing on alleged violations of Texas Civil Statutes, Article 548b, relating to the sale of prepaid funeral services or funeral merchandise, and alleged violations of 7 TAC Chapter 25 relating to prepaid funeral contracts by Dudley M. Hughes Funeral Company, Dallas. The hearing will consider cancellation of permits and seizure of funds of Dudley M. Hughes Funeral Company. The hearing will be held on September 6, 1990, at 9 a.m. in the hearing room of the Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Any interested person wishing to appear must file a written notice of intent to appear including a brief statement of position with the Texas Department of Banking at least 10 days prior to the hearing. All parties appearing at the hearing are requested to provide the department with two copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on August 13, 1990.

TRD-9008148 Ann Graham
General Counsel
Texas Department of Banking

Filed: August 14, 1990

For further information, please call: (512) 479-1200

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State Banking Board

Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on September 18, 1990, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Founders Trust Company, Dennison.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on August 10, 1990.

TRD-9008168 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: August 14, 1990

For further information, please call: (512) 479-1200

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Texas Commission for the Blind

Request for Proposals

Pat D. Westbrook, executive director of the Texas Commission for the Blind, has announced the availability of Title VII, Part A funds to contract for independent living skills training for legally and totally blind individuals.

Funding Areas. Applications will be considered for facilities eligible under 34 Federal Regulations, §361.63 for independent living skills training.

Objectives. The primary objective of the Independent Living Rehabilitation (ILR) Program is to enable legally and totally blind persons without vocational potential to live independently with their families and/or in their communities and to avoid institutionalization. This is achieved via the provision of independent living skills training, adaptive aids, and assistance in obtaining physical restoration. The Commission for the Blind intends to enter into contracts with facilities to provide various independent living skills training programs on a fee for services basis to clients determined eligible by the commission. Total funds available for this purpose will range from $22,000 to $25,000. Examples of training include: leisure skills; meal preparation; peer counseling; and other individual or group training which will benefit blind persons with a wide range of disabilities in terms of independence.

Targeted Population. Individuals served under these contracts are persons who are legally or totally blind and who have met the basic requirements for receiving ILR services which are: there is a presence of a severe physical or mental disability, which for the purposes of this contract is or includes legal or total blindness; there is a presence of a severe limitation in ability to function independently in the family or the community, or to engage in work, or to continue employment; and there is a reasonable expectation that independent living rehabilitation services will significantly assist the individual to improve his/her ability to function independently in the family or community or to engage in or to continue employment.

All clients served under these contracts must be determined to be eligible by the local Texas Commission for the Blind caseworker.

Who is Eligible to Apply. Local public agencies and private non-profit organizations that provide independent living skills training are eligible to apply for contracts. The Federal Regulations, §365.12, states: "Any agency, organization or facility awarded a grant by the state unit must assure that severely handicapped individuals are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services." Contracts will be awarded only in those cities or regions where the commission presently has an ILR caseload. The cities or regions are as follows: Amarillo, Lubbock, Austin, Beaumont, Corpus Christi, Harlingen, Houston, Odessa, Pasadena, San Antonio, Tyler, and Waco.

Application Procedures. Submit to Robert Packard, Director of Special Services, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711 a narrative no longer than five typed pages which describes: Your organization; individuals you now serve; the quality and extent of services to be provided; how proposed services

would augment those presently available; and cost per person per hour for proposed training.

Also include: qualifications of key personnel; a letter from the executive director or chairman of the board of your organization supporting your request and your proposed plan; and you may, as an appendix, supply additional information about your organization and past achievements in serving the disabled in general and the blind in particular.

ALL APPLICATIONS MUST BE POSTMARKED NO LATER THAN SEPTEMBER 21, 1990.

Interested parties are urged to contact the Texas Commission for the Blind with related questions prior to drafting proposals to facilitate the request for proposals process. For additional information contact Robert Packard, Director of Special Services, Texas Commission for the Blind, at (512) 459-2588 or (512) 459-2587 (TDD).

Method of Payment. Facility will be reimbursed monthly via: monthly submission of voucher with detail listing of services provided; TCB review and approval of submitted material.

Nonduplication of Services. Fees for services will not be paid to reimburse services provided by staff currently funded through existing grants.

Review Criteria. The criteria used by reviewers to evaluate proposals are as follows: the proposal addresses the explicit purpose of the RFP and has specific, measurable goals; the applicant provides evidence of their professional and organizational familiarity and expertise with the RFP subject matter and their capacity to achieve the objectives of the contract in a timely manner; the facility states that they are free of architectural and communication barriers; the facility agrees to provide services to clients in locations accessible to clients, including residences if required; the facility's services provide alternatives to institutionalization; the applicant indicates that individuals with severe handicaps are involved in policy and program development decisions.

Issued in Austin, Texas, on August 10, 1990.

TRD-9008169 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: August 14, 1990

For further information, please call: (512) 459-2601

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Texas Department of Commerce

Notice of Amendment to Final Statement

The Texas Department of Commerce (Commerce) announces a proposed amendment to the state of Texas' federal fiscal year 1989 final statement which governs the Texas Community Development Program. The final statement is being amended to allow the executive director of Commerce to allocate up to $2,493,995 million in unused federal community development block grant/Texas capital funds for eligible community development, economic development urgent need, and emergency projects.

Written comments on the protested amendment will be accepted through September 7, 1990. All federal fiscal year 1989 funds must be obligated on that date. Comments should be submitted to Ruth Cedillo, Manager of the Texas Community Development Program, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711.

Issued in Austin, Texas, on August 15, 1990.

TRD-9008204 William D. Taylor
Executive Director
Texas Department of Commerce

Filed: August 15, 1990

For further information, please call: (512) 320-9679

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Texas Department of Criminal Justice

Request for Proposals

Pursuant to authority granted by the Texas Code of Criminal Procedure, Article 42.18, §25 and Texas Civil Statutes, Article 4413 (32c), if applicable, the Texas Department of Criminal Justice Pardons and Paroles Division (Division) , hereby requests all interested public and private vendors to submit a proposal for the location(s) (in the State of Texas), operation, and management of one or more community-based intermediate sanction facilities (ISF) which shall house both men and women. The Division reserves the right to make multiple awards of up to 600 beds to various public and/or private vendors and geographical locations throughout the State of Texas; or award the total number of available beds to one location and one public or private vendor in the State of Texas. The Division's determination regarding how the beds will be awarded will be based on the needs of the Division. Applicants may include in their proposals various options regarding the number of beds and number of locations. The ISFs shall include associated programs for the detention, training, education, rehabilitation, reformation, and other programs for convicted felons under the jurisdiction of the Division pursuant to the Texas Code of Criminal Procedure, Article 42.18, §8(g), 14(a), and 25. All applicants shall provide for facilities and stand alone services which comply with standards established by the Texas Commission On Jail Standards.

A copy of the complete request for proposals (RFP) may be obtained by contacting Charles Speier, Director, Community Services Section, TDCJ Pardons and Paroles Division, P.O. Box 13401, Austin, Texas 78711, (512) 459-2737. Sealed proposals will be received by the Texas Department of Criminal Justice Pardons and Paroles Division, 3410 Far West Boulevard, Suite 300, Austin, Texas 78731, Attn: Jerry Wall, Director of Business Management, until 3 p.m. Monday, October 22, 1990. All proposals received shall remain confidential until a contract is finally negotiated.

A conference will be held to address concerns and answer questions potential applicants may have. The meeting will be held at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin, on Wednesday, September 12, 1990, at 1:30 p.m.

Upon review of all proposals submitted pursuant to the RFP, the Texas Board of Criminal Justice will select the most qualified party or parties, in its sole judgment and discretion with whom to negotiate a final definitive contract.

The Division reserves the right to reject any or all proposals. Proposals must be responsive to all portions of the RFP to be considered. The Division assumes no responsibility for any costs incurred by any entity submitting a response to this request, nor does submission of any proposal bind the Division or the Texas Board of Criminal Justice to select or enter into negotiations with any proposed party.

Issued in Austin, Texas, on August 14, 1990.

TRD-9008146 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed: August 14, 1990

For further information, please call: (512) 459-2737

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Office of the Governor

Budget Execution Proposal

Pursuant to the Texas Government Code, §317.002, and in accordance with Article V, §128, Page V-102 and Article V, §90, Page V-84, Senate Bill 222, 71st Legislature, 1989, Regular Session, I make the following budget execution proposal.

The Texas Department of Criminal Justice has requested approval for expenditure of $1,124,200 from funds appropriated to construct warden residences, at new prison facilities, at the following locations: Abilene, Amarillo, Beaumont, Beeville, Childress, Dayton, Dilley, Gatesville, Hondo, Jester IV, Lamesa, Livingston, Marlin, Pampa, Snyder, Teague, Woodville. Section 90 requires the Legislative Budget Board to approve expenditures exceeding $10,000 for purchasing, remodeling or repairing of personal residences or living quarters. Section 128 requires budget execution whenever Legislative Budget Board approval is required. Accordingly, I am proposing that the Texas Department of Criminal Justice be authorized to expend $1,124,200 from funds appropriated to construct these residences.

Issued in Austin, Texas, on August 15, 1990.

TRD-9008244 William P. Clements, Jr.
Governor

Filed: August 15, 1990

For further information, please call: (512) 463-1788

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Texas Department of Health

Correction of Error

The Texas Department of Health submitted adopted sections which contained errors as submitted for the August 7, 1990, issue of the *Texas Register* (15 TexReg 4489-4504).

In §325.832(g)(N), some language is missing from the second sentence. The second sentence should read as follows: "The applicant shall secure and submit the statement with the application, except as provided in this paragraph."

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Williamson County Health District Facility Regulations

The Williamson County Board of Health, in accordance with Chapter 366 of the Texas Health and Safety Code, will be conducting a public hearing on Thursday, September 13, 1990 at 7:30 p.m. The meeting will be held at the Health District Office, County Courthouse Annex, 211 Commerce Cove, Suite 109, Round Rock.

The purpose will be to discuss and take appropriate action to adopt Private Sewage Facility Regulations for the Williamson County area, and apply to the Texas Department of Health to become the authorized agent to administer the approved regulations. For additional information, contact Jay D. Moore, Williamson County Health Department, at (512) 869-4390.

Issued in Austin, Texas, on August 15, 1990.

TRD-9008196 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 15, 1990

For further information, please call: (512) 869-4390

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State Pension Review Board

Consultant Proposal Request

The State Pension Review Board seeks proposals from qualified actuarial consulting firms to provide actuarial services for the period December 1, 1990, to August 31, 1991, under provisions of Texas Civil Statutes, Article 6252-11c.

Agency Contact. Copies of the proposal request and/or specific details governing the proposal may be obtained by contacting Rita Horwitz, Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Response Date. Proposals must be submitted in writing to Ms. Horwitz no later than 5 p.m. on October 15, 1990. Any proposals received after that date will not be considered.

Selection Criteria. Contract will be awarded to an individual or firm meeting the specific requirements as outlined in the proposal request. Contract is subject to a maximum of $65,000.

Issued in Austin, Texas, on August 10, 1990.

TRD-9008109 Lynda Baker
Administrative Secretary
State Pension Review Board

Filed: August 13, 1990

For further information, please call: (512) 463-1736

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Public Utility Commission of Texas

Notice of Application to Revise a Telephone Service Base Rate Area

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 3, 1990, to revise a telephone service base rate area pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), and 37. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to revise the Richmond-Rosenberg Base Rate Area, Docket Number 9680 before the Public Utility Commission of Texas.

The Application: In Docket Number 9680, Southwestern Bell Telephone Company requests approval of its application to expand a base rate area to include 1,063 additional telephone lines in Fort Bend County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on August 13, 1990.

TRD-9008176 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 14, 1990

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

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Texas Racing Commission

Correction of Error

The Texas Racing Commission submitted proposed sections which contained errors as published in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4525). On page 4525, §301.1, paragraph 1 preamble: (1), "weight out weight" should read "Weighing Out Weight"; (2), In the definition of branding, "chased" should read "cashed"; (3), In the definition of lure, "attacked" should read "attached"; on page 4525, §309.303(a) "alasticity" should read "elasticity"; on page 4526, §309.305(b), last line should read "maintain the starting boxes."; on page 4527, §309.353(b)(1), should read "No Change."; on page 4528, §309.355(f), last sentence, "regarded" should read "regraded"; on page 4528, §309.364, Paragraph 3, preamble, first sentence should read: "Ms. Carter also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing this section will be that pari-mutuel greyhound racing will be of the highest integrity and that patrons will have accurate information on which to base wagers."; on page 4531, §315.31(e), first sentence "judges," should read "judge's"; §315.31(i), last line should read: "public and the order of finish and the "official" sign to be displayed on the toteboard."; §315.31(j), last three lines should read: "racing judges, and the racing judges' decision is final, subject only to appeal to the commission." §315.31(k), the word "official" should be in quotation marks the two times that it appears; on page 4532, §315.37(c), second line, "owners" should read "owner's" and "trainers" should read "trainer's"; on page 4534, §315.102, the paragraph before (m) should be indented as Subsection L, not paragraph (1); on page 4536, §315. 202(a), last line should read, "racing judges' consent."; on page 4536, §315. 209: the phrase "no race" is a term of art and should appear in quotation marks in the following places. (a) next to the last line should read: "judges shall declare "no race" and all money"; (b) next to the last line should read: "judges shall declare "no race" and all money"; (c) next to the last line should read, "declare "no race" and all money wagered on"; (d) should read as follows: "(d) The racing judges shall immediately report a "no race" to the executive secretary or the designee of the executive secretary and include a detailed explanation of the cause. Not later than five days after the date of a "no race", the association may apply to the commission for a make up race to replace the "no race"; on page 4538, §319.391(c)(2) should have an end bracket after the end of the sentence.

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Notice of Public Hearing

Pursuant to Texas Civil Statutes, Article 179e, §18.02, a hearings examiner for the Texas Racing Commission, Greyhound Racing Section, will conduct an administrative hearing on TXRC Cause Number 89-R1-001, the applications for the pari-mutuel greyhound racetrack license in Galveston County. The hearing will be held at 319 North Congress Avenue, Second Floor, Austin, Texas 78701, beginning on Monday, September 17, 1990, at 9 a.m. All interested persons are welcome to attend.

The four applicants that have applied for the license are: Bay Greyhound Racing Associates Limited Partnership; Galveston Bay Greyhound Racing Association, Ltd.; Gulf Greyhound Partners, Ltd,; and Lone Star Greyhound Park, Inc.

The four applicants assert that they are best qualified to receive the only license available for that geographic region under Texas Civil Statutes, Article 179e, §6.04 and 16 Texas Administrative Code (TAC) §305.62.

The proposed racetrack location for Bay Greyhound Racing Associates Limited Partnership is in the City of Galveston. The proposed racetrack locations for the other three applicants are in the City of La Marque.

The hearing will be conducted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 307 of the Texas Racing Commission Rules 16 TAC §307.1 et seq.

Questions regarding this matter should be directed to Lisa Gonzales, Hearings Coordinator, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

Issued in Austin, Texas, on August 13, 1990.

TRD-9008154 Paula Cochran Carter
General Counsel
Texas Racing Commission

Filed: August 14, 1990

For further information, please call: (512) 476-7223

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Texas Rehabilitation Commission

Request For Applications

The Texas Rehabilitation Commission (TRC) announces the availability of state revenue funds for the provision of personal attendant services for persons with severe disabilities who are employed. These funds will be granted to a profit and/or not-for-profit organization, that will arrange for and monitor the provision of these services on a county or multi-county basis. The total amount of funding available is approximately $150,000 and the commission anticipates awarding one grant. Preference will be given to applicants proposing to serve rural areas.

Personal attendant services enable a person with a severe physical disability to live independently by having a personal attendant perform routine tasks of daily living. These routine tasks typically include assistance with transferring, dressing and undressing, meal preparation and clean up, eating, bathing, grooming, toileting, shopping, laundry, light housekeeping, and other household duties. To the greatest extent possible, the consumer will be responsible for selecting, training, supervising, and terminating the attendant's service.

Many persons with severe disabilities are either unable to work or have difficulty maintaining employment because of the costs associated with personal attendant services. This project will provide supplemental funding using a copayment system, in order to make employment an option for an increased number of persons with severe disabilities.

Services will be provided to individuals who are employed. Individuals who are preparing for employment will not be eligible for service until they *actually* become employed.

General Information. Application packets will be available August 21, 1990. Completed proposals must be received by or postmarked and mailed first class to: Sarah D. Bolz, Program Specialist, the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751, no later than 5 p.m. on September 17, 1990.

Funding Period. The funding period will begin on October 17, 1990, and all funds must be expended by August 31, 1991.

Grant Award and Requirements. Determination of funding for the personal attendant services will be based on the accepted applications(s) and may be subject to reduction if budgeting limitations exist. The applicant whose application is accepted for funding, hereinafter referred to as provider, will be notified no later than October 17, 1990. The grant agreement with the selected provider will include, but is not limited to the following: provider workplan; evaluation/monitoring processes to be performed by both parties; provider reporting requirements; payment/reimbursement schedule; compliance with applicable laws and regulations; procedures for maintenance of financial records and program files; auditing procedures; insurance liability/bonding requirements, if applicable; and termination process.

Qualifications of Applicant. Potential providers must ensure that they have the capability, facilities, and all special resources readily available within the selected geographic area to meet and to satisfactorily perform the services identified in their proposal. The TRC will have proprietary rights to all files generated. The potential provider must have submitted: documentation of ability to perform the work specified; documentation of ability to provide acceptable accounting and financial reporting systems; evaluation mechanisms to measure quality of services provided; and assurances that confidentiality of client information is protected.

Application Procedure. More detailed information on the application, the review process, and the appeals process may be obtained from Sarah D. Bolz, Program Specialist, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4117.

Review of Applications. The commission reserves the right to accept or reject any or all applications submitted. The commission is under no legal obligation to execute a resulting grant agreement on the basis of this advertisement. This request does not commit the commission to pay any costs incurred prior to the execution of a grant agreement. Each application will be evaluated according to selection criteria which will be included in the application packet.

Results of Application Review. The application selection results may be obtained by sending a written request and a stamped self-addressed envelope to: Texas Rehabilitation Commission, Programs, 4900 North Lamar Boulevard, Austin, Texas 78751.

Issued in Austin, Texas, on August 15, 1990.

TRD-9008197 Charles W. Schiesser
Assistant Deputy Commissioner
Texas Rehabilitation Commission

Filed: August 15, 1990

For further information, please call: (512) 483-4117

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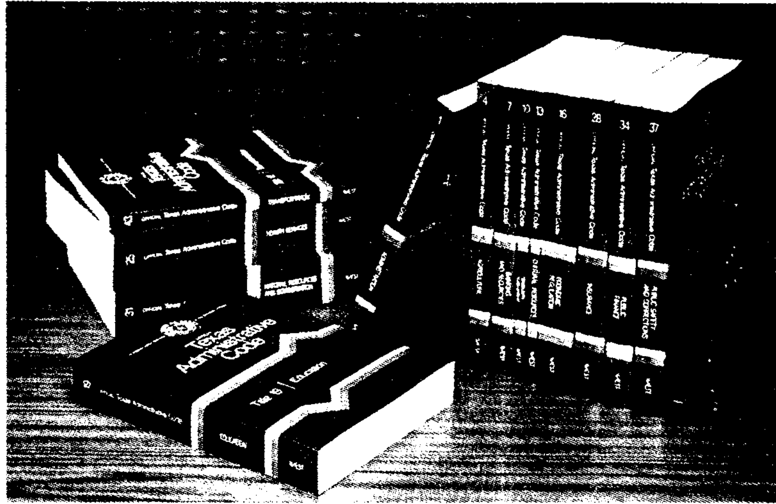

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