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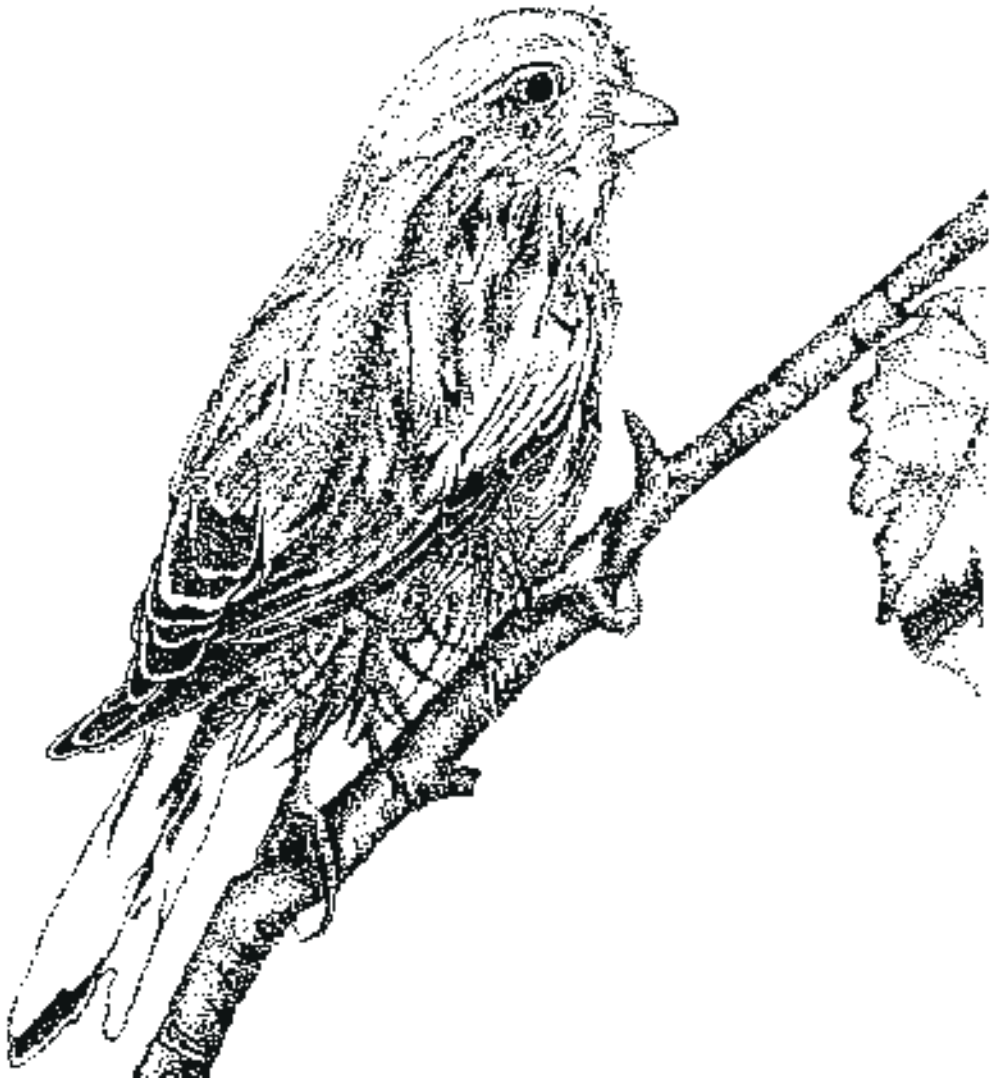

This month's front cover artwork:

Artist: *Dong Vo*

10th grade

Northbrook High School, SBISD, Houston

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made March 22, 1996

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 2001: Wales Hendrix Madden, III, 2700 West 16th Street, Amarillo, Texas 79102. Mr. Madden will be replacing Ann Enriquez of El Paso whose term expired.

To be a member of the **Texas Cancer Council** for a term to expire February 1, 2002: Clare Buie Chaney, Ph.D., 7331 Blairview Drive, Dallas, Texas, 75230. Dr. Chaney will be replacing Dr. Arminda Perez of Dallas whose term expired.

To be a member of the **Executive Committee of the Center for Rural Health Initiatives** for a term to expire August 31, 2001: Timothy Allen Scroggins, M.D., 3883 Royal Street, Salado, Texas 76571. Dr. Scroggins will be replacing Dr. A. Earl Mgebroff of Yoakum whose term expired.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire September 1, 1997: Anne C. Crews, 2808 McKinney Avenue, #852, Dallas, Texas 75204. Mrs. Crews will be filling the unexpired term of Connie Aguilar Sonnen of San Antonio who resigned.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire September 1, 2001: Patricia Aguayo, 11665 Andrienne Drive, El Paso, Texas 79936-6916. Ms. Aguayo will be replacing Celia M. Salmons of San Antonio whose term expired.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire September 1, 2001: Juan M. Parra, M.D., 5318 Gary Cooper, San Antonio, Texas 78240. Dr. Parra will be replacing Dr. Ben G. Raimer of Galveston whose term expired.

To be a member of the **Children's Trust Fund of Texas Council** for a term to expire September 1, 2001: Peggy B. Smith, Ph.D., 3708 Chevy Chase, Houston, Texas 77019. Dr. Smith is being reappointed.

To be chairman of the **Texas Cancer Council** for a term at the pleasure of the Governor: James D. Dannenbaum of Houston. Mr. Dannenbuam is being reappointed as chairman.

To be a member of the **Texas Skill Standards Board** for a term at the pleasure of the Governor: Billie Conley Pickard as presiding officer. This appointment is being made pursuant to House Bill Number 1863, 74th Legislature.

To be members of the **Texas Skill Standards Board** for terms at the pleasure of the Governor:

Business:

Gary Forrest Blagg, Blagg Tire and Service, Inc., 604 South Main Street, Grapevine, Texas 76051.

Billie Conley Pickard, Pickard and Company, Route 1, Box 699, Raymondville, Texas 78580.

Roger E. Elliott, Copy Products, Inc., P.O. Box 934, Sulphur Springs, Texas 75483.

John Hamice James, Tomcat, Inc., 2160 Commerce Drive, Midland, Texas 79703.

Dick Weinhold, Master Response, 1600 Airport Freeway, #506, Bedford, Texas 76022.

Wayne J. Oswald, Dow Chemical Company, 2301 Brazosport Boulevard, Building B-108, Freeport, Texas 77541.

Michael L. Brown, Cognitive Training Associates, Inc., Applied Science Center, 310 West Jefferson Street, Waxahachie, Texas 75165.

Labor:

Denise Laman, 1410 Avenue G, Plano, Texas 75093.

Betty Files, R.N., Hendrick Medical Center, 1242 North 19th Street, Abilene, Texas 79601.

Secondary Education:

Beth Ann Graham, Hallsville ISD, P.O. Box 810, Hallsville, Texas 75650.

Post Secondary Education:

Ramon H. Dovalina, Ph.D., Laredo Community College, West End Washington Street, Laredo, Texas 78040-4395.

These appointments are being made pursuant to House Bill Number 1863, 74th Legislature, Regular Session.

Appointments Made March 25, 1996

To be a member of the **School and Board** for a term to expire August 29, 1997: C. Louis Renaud, 2827 Goddard Place, Midland, Texas 79705. Mr. Renaud will be replacing Richard M. Landsman of San Antonio whose term expired.

To be a member of the **Texas Ethics Commission** for a term to expire November 19, 1999: Jerome W. Johnson, 2802 Harmony, Amarillo, Texas 79106. Mr. Johnson will be replacing James D. Marston of Austin who resigned.

To be a member of the **Texas Ethics Commission** for a term to expire November 19, 1997: The Honorable Louis E. Sturns, 6155 Foxglove Court, Fort Worth, Texas 76112. Judge Sturns will be replacing Fran Coppinger of Pearland who resigned.

To be a member of the **Interagency Council on Early Childhood Intervention Services** for a term to expire February 1, 2001: Bess Althaus Graham, 7912 Jester Boulevard, Austin, Texas 78750. Mrs. Graham will be replacing Karen Douglas of San Antonio whose term expired.

To be a member of the **Interagency Council on Early Childhood Intervention Services** for a term to expire February 1, 1997: Tammy H. Tiner, Ph.D., 200 Pershing Avenue, College Station, Texas 77840. Dr. Tiner is being reappointed.

To be a member of the **Interagency Council on Early Childhood Intervention Services** for a term to expire February 1, 1999: Claudette Wilkinson Bryant, 2761 Burlington Boulevard, Dallas, Texas 75211. Mrs. Bryant is being reappointed.

To be chairman of the **Texas Council on Purchasing from People**

with Disabilities for a term at the pleasure of the Governor: Dr. Robert A. Swerdlow of Beaumont. Dr. Swerdlow is being appointed chairman pursuant to House Bill 2658, 74th Legislature.

To be chairman of the **Texas Commission for the Deaf and Hard of Hearing** for a term at the pleasure of the Governor: Timothy B. Rarus of Austin. Mr. Rarus will be replacing Dr. Milburn L. Coleman, III of Port Aransas who no longer serves on the commission.

Appointments Made March 28, 1996

To be a member of the **Texas Ethics Commission** for a term to expire November 19, 1999: John E. Clark, 11414 Whisper Bluff, San Antonio, Texas 78230. Mr. Clark is being reappointed.

Appointments Made March 29, 1996

To be presiding judge of the **Second Administrative Judicial Region** for a term to expire four years from the date of qualification: The Honorable Olen Underwood, Judge, 284th Judicial District Court, 1 Hilo Lane, Conroe, Texas 77303. Judge Underwood will be replacing Judge Thomas J. Stovall, Jr. of Houston whose term expired.

To be judge of the **352nd Judicial District Court, Tarrant County,** until the next General Election and until her successor shall be duly elected and qualified: The Honorable Bonnie Sudderth, 2300 Mistletoe Drive, Fort Worth, Texas 76110-1149. Judge Sudderth will be replacing Judge Bruce Auld of Fort Worth who is deceased.

To be a member of the **Texas State Board of Chiropractic Examiners** for a term to expire February 1, 2001: Dora Innes Valverde, 409 Rio Grande Drive, Mission, Texas 78572. Ms. Valverde will be replacing John H. Wright of Houston who resigned.

To be chairman of the **Texas Animal Health Commission** for a term at the pleasure of the Governor: R. A. (Rob) Brown, Jr. of Throckmorton. Mr. Brown will be replacing Dr. Charles R. Sherron of Beaumont as chairman. Dr. Sherron will remain on the commission.

Appointments Made April 2, 1996

To be a member of the **Texas Peace Officers' Memorial Advisory Committee** for a term to expire February 1, 1997: Richard L. Czech, Chief of Police, City of Midland, 601-N Loraine Street, Midland, Texas 79701. Chief Czech will be replacing Johnetta Ellison of Austin whose term expired.

To be a member of the **Texas Peace Officers' Memorial Advisory Committee** for a term to expire February 1, 1997: Thomas R. Windham, Chief of Police, City of Fort Worth, 350 West Belknap Street, Fort Worth, Texas 76102. Chief Windham will be replacing Celestino Oliveira of Brownsville whose term expired.

To be a member of the **Texas Peace Officers' Memorial Advisory Committee** for a term to expire February 1, 1997: Jennifer Dominguez, 13535 Chappel View, San Antonio, Texas 78249. Mrs. Dominguez will be replacing Ellen M. Mitchell of Amarillo who resigned.

To be a member of the **Texas Peace Officers' Memorial Advisory Committee** for a term to expire February 1, 1997: Tommy Brock Thomas, Sr., Chief Deputy, Harris County Sheriff's Department, 1301 Franklin, Houston, Texas 77002. Chief Deputy Thomas will be replacing Margaret L. Carathers of Mesquite whose term expired.

Issued in Austin, Texas, on April 4, 1996.

TRD-9604725 George W. Bush
Governor of Texas

♦ ♦ ♦

ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Requests

ORQ-10 (ID #39512). Requested by the Honorable Kenny Marchant State Representative, District 99, 1452 Halsey Way, Suite 102, Carrollton, Texas 75007, whether Chapter 552 of the Government Code applies to requests for public information that are made through a computerized bulletin board system established by a governmental body and related a questions.

ORQ-11 (ID# 36056, ID# 36216). Requested by Ms. M. Kaye Dewalt, School Attorney, Houston Independent School District, Hattie Mae White Administration Building, 3830 Richmond Avenue, Houston, Texas 77027-5838. Mr. Carl Mullen, Acting Executive Director, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, regarding the construction of §552.024 and §552.117 of the Government Code, as amended by House Bill 1718, Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 1035, §5, §9, 1995 Texas Session Law Service 5127, 5130, 5132, which govern the availability of a public officer, public employee's or peace officer's home address, home telephone number, and social security number, and the availability of information that reveals that public officer, public employee, or peace officer has family members.

Parties interested in submitting a brief to the Attorney General concerning an ORQ are asked to please submit the brief no later than the 14th day from the date of publication in the Texas Register.

TRD-95004582

♦ ♦ ♦

EMERGENCY RULES

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

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (commission or TNRCC) adopts on an emergency basis an amendment to §330.602, concerning municipal solid waste disposal fees for landfills and new §330.804, concerning The Use of Tire Shreds in Landfills. Emergency adoption of the new section and amendment is necessary to prevent imminent peril to the public health, safety or welfare. The commission has received numerous reports from state, city and county health officials that whole tires are piling up at generator locations. The concerns associated with this problem include fire, the creation of breeding grounds for mosquitoes, snakes and rodents, and human health problems, as well as traffic safety due to tires piling up alongside roadways. Whole tire piles are easily ignited and extremely difficult to control. An uncontrolled burning tire pile releases toxic chemicals into the air and may also result in contamination to groundwater.

The dangerous conditions involving the overabundance of whole tire piles is connected in large part to the fact that many waste tire processors are close to or over authorized tire shred storage capacity. This situation intensified significantly after January 1, 1996, when the end-use market requirement became a condition of reimbursement for processors. In spite of significant efforts to promote the development of end-use markets for whole tires and tire shreds, only 37% of the scrap tires generated in Texas are being forwarded to end use markets. Due to the lack of sufficient end-use markets to meet the volume of tires generated, tire shreds have piled up at storage sites. While significant regulatory requirements designed to protect human health, safety and the environment are imposed on tire shred storage sites, eliminating the piles through recycling is the best mechanism to protect public health and the environment. Storage facility health and safety requirements, although significant safeguards while a facility is operating within its authorized limits, are not designed to afford any protection once a facility exceeds it authorized capacity. The utilization of tire shreds in landfills will enable the continued collection of tires, because storage space will be made available with the movement of the existing shred piles. This will in turn reduce whole tire piles and the hazards these piles represent.

Under the amended section, owners and operators of municipal solid waste landfills who utilize tire shreds in their landfill design could receive a reduction in the fee they pay for waste disposal. This is a one-time, 50% (62. 5 cents per ton) reduction in the fee corresponding to the number of tire-shred tons used in the landfill design. Therefore, a landfill using 15 tons of tire shreds in an approved component of landfill design would receive a 50% reduction in its Municipal Solid Waste Disposal Fee for 15 tons of municipal waste in the quarterly billing period following use of the tire shreds. High transportation costs have made the use of tire shreds cost prohibitive for many landfill owners and operators. This fee reduction is designed to mitigate the cost differential between tire shreds and other more commonly used material. Utilizing tire shreds as part of the landfill design is an approved method for recycling tires. There are currently several landfills throughout the state which utilize tire shreds. With the reduction in the disposal fee, it is anticipated that 1.1 to 2 million tons of tire shreds will be utilized and thus recycled in landfill drainage layers, protective covers or final covers. This reduction in the Municipal Solid Waste Disposal Fee will serve as an incentive to encourage the recycling of tire shreds stored in waste tire storage facilities throughout the state. In authorizing the fee reduction for the use of tire shreds in landfill design, the agency is in no manner approving or advocating the use of any particular method or process for the use of tire shreds.

While this rule would not result in a direct use of money from the disposal fee fund since it would be in the form of a reduction on the amount that would otherwise be paid by a landfill into the fund, the authorized uses set forth in §361.014 are consistent with what the solid waste disposal fee reduction rule would promote.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to provide, on an emergency basis pending adoption on a permanent basis, procedures that will allow the commission to prevent imminent peril to the public health, safety, and welfare by establishing an incentive for the beneficial use of shredded tires in landfills. Due to the lack of sufficient end-use markets to meet the volume of tire shreds produced, tire shreds have piled up at storage sites, raising the threat of fires, creation of breeding grounds for mosquitos, snakes and rodents, and human health problems, as well as traffic safety due to tires piling up alongside roadways. When tire storage sites are filled to capacity, tire processors cannot legally accept additional tires for shredding and, therefore, cannot collect waste tires from generators. The rules will substantially advance this specific purpose by allowing landfill operators to use tire shreds in their landfills as part of the leachate collection system drainage layer, protective cover, or final cover as a means of reducing the amount of tire shreds in storage which prevent tire processors from shredding additional tires. Since transportation of the tire shreds to a landfill location is expensive, the commission will provide an incentive by reducing the amount of solid waste disposal fees paid to the commission by 50% for the equivalent tonnage of tire shreds used at the landfill. Promulgation and enforcement of these rules will not affect private real property because the rules pertain only to a new incentive to increase the level of activities with regard to the collection, shredding, and beneficial use of waste tires, all of which are currently authorized.

Subchapter P. Fees and Reporting

- **30 TAC §330.602**

The amendment is adopted under the authority of §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code, and §361.484, Health & Safety Code, which gives the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health & Safety Code, relating to the Waste Tire Recycling Program. The rules implement the Health & Safety Code, §§361.013, 361.476 and 361.477.

The rules implement the Health & Safety Code, §§361.013, 361.476 and 361.477.

§330.602. Fees.

(a) Landfilling. Each operator of a facility in Texas that

disposes of municipal solid waste by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the commission for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used. It is recommended that waste amounts be measured and reported in short tons (2, 000 pounds); however, reporting by cubic yards is acceptable.

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

(8) Fee Reduction. The fee may be reduced in accordance with Subchapter R, §330.804 of this title (relating to The Use of Tire Shreds in Landfills).

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

Issued in Austin, Texas, on March 20, 1996.

TRD-9603903 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: March 20, 1996

Expiration date: July 18, 1996

For further information, please call: (512) 239-1970

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Subchapter R. Management of Whole Used or Scrap Tires

- **30 TAC §330.804**

The new section is adopted under the authority of §361.484, Health and Safety Code, which gives the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health and Safety Code, relating to the Waste Tire Recycling Program, and §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health and Safety Code.

The rules implement the Health and Safety Code, §§361.013, 361.476 and 361.477.

§330.804. The Use of Tire Shreds in Landfills. To provide an incentive for the use of tire shreds in landfills, but still protect the viability of the municipal solid waste fund, the following procedures are established:

(1) General. Owners and operators of municipal solid waste landfills who, after January 1, 1996, received commission or executive director approval to utilize tire shreds in their landfills as part of the drainage layer, protective cover or final cover, may request a one-time 50% reduction in their solid waste disposal fee of $1.25 per ton, for every ton of tire shreds utilized. In addition, municipal solid waste landfill owners and operators who begin construction of a landfill in which the use of tire shreds for any of the above-listed uses had been previously authorized but delivery of said tire shreds occurred after January 1, 1996, may request a one-time 50% reduction in their solid waste disposal fee of $1.25 per ton, for every ton of tire shreds utilized.

(2) Maintenance of the municipal solid waste fund. In order to ensure the continued viability of the Municipal Solid Waste Fund, the executive director may, on a prospective basis, suspend the reduction in solid waste disposal fees, or reduce the percentage of the reduction.

(3) Fee reduction application. To receive the reduction in the fee, owners and operators shall apply to the executive director utilizing the forms provided by the executive director. Applications shall be reviewed in the order in which they are submitted.

(4) Special requirements. The executive director may impose reasonable requirements on landfill owners or operators who apply to the Texas Natural Resource Conservation Commission for a reduction under this section, as necessary, to carry out the objectives of the section.

Issued in Austin, Texas, on March 20, 1996.

TRD-9603904 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: March 20, 1996

Expiration date: July 18, 1996

For further information, please call: (512) 239-1970

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PROPOSED RULES

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 action is 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 action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 24. Texas Agricultural Finance Authority: Farm and Ranch Finance Program

- **4 TAC §§24.3, 24.6, 24.8-24.12, 24.16**

The Board of Directors of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture (the department) proposes amendments to §§24.3, 24.6, 24.8-24.12 and 24.16, concerning the Farm and Ranch Finance Program.

The proposed amendments to §§24.3, 24.6, 24.10, and 24.16 delete references to the Veterans Land Board, referring instead to the Authority. The proposed amendment to §24.6 deletes a reference to the Farm and Ranch Administrative Expense Fund. These amendments are required in order to comply with statutory changes enacted by the 74th Legislature, Senate Bill 1260. The statutory changes became effective January 1, 1996 due to the passage of the constitutional amendment proposed by the 74th Legislature, Senate Joint Resolution No. 51. The proposed amendments to §§24.9, 24.10, and 24.16 delete references to the "board of directors" of the Authority, as that phrase is surplusage in light of the definition of "Authority" in §24.3. The proposed amendment to §24.16 also changes a reference to "deputy assistant commissioner of agriculture" to "deputy commissioner of agriculture", to reflect the correct title. The proposed amendment to §24.3 deletes the definition of gross income, reflecting an earlier statutory and rule change in which a requirement was deleted, but the corresponding definition was not. The proposed amendment to §24.12 is a clerical change of case. The proposed amendment to §24.3 also adds a definition for primary occupation, and the proposed amendment to §24.8 alters the requirement that agricultural production be the applicant's primary occupation, replacing it with the requirement that agricultural production be a primary occupation (as defined in the proposed amendment to §24.3). These amendments are proposed in order to allow applicants to maintain other means of support while establishing their farm or ranch operation. The proposed amendment to §24.9(a) states that the applicant must use the application forms provided by the Authority, as opposed to the acceptance of lender-generated forms. The proposed amendment to §24.9(d) requires that the staff make a recommendation of approval or denial for each application. The proposed amendment to §24.10(b) provides that financial statements submitted to the Authority shall conform to generally accepted accounting principles. These amendments are proposed in order to increase the efficiency of the review process and take advantage of staff expertise. The proposed amendment to §24.11 advises of the existence of the Authority's Credit Policy and Procedures documents, and states that copies may be obtained by contacting the department. This amendment is proposed in order to give notice to the public of the existence and availability of the additional criteria and guidelines contained in the Credit Policy and Procedures document.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Kennedy also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the provision of financial assistance to borrowers to purchase farm or ranch land, greater participation in the farm and ranch program, compliance with statutory changes enacted by the 74th Legislature, and greater efficiency in the operation of the program. There will be no effect on small or large 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 Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under the authority of the Texas Agriculture Code (the Code), §59.022, which provides that the Authority may adopt rules governing various aspects of the program; the Code, §59.023, which states that the Authority has the power to adopt rules and procedures as necessary to carry out Chapter 59; and Texas Government Code, §2001.004, which requires that the Authority adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Agriculture Code, Chapter 59, is affected by the proposed amendments.

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

[Board–the Veteran's Land Board]

[Gross income–The total income as identified and accumulated from the income tax returns filed by the applicant for the preceding three years with such accumulation to include income generated from wages earned, both on and off farm or ranch, the sale of farm or ranch production or accumulated inventories, or any other income generated by the applicant and identified on the tax return filed with the Internal Revenue Service.]

Primary occupation–Income-generating activity, in this case, agricultural production, the cash flow from which is adequate to provide at least 50% of the total amount necessary for agricultural debt service plus projected living expenses.

§24.6. Farm and Ranch Finance Program Fund. The Fund shall be established in the state treasury and may consist of bond proceeds, appropriations or transfers made to the Fund, moneys received from the operation of the Program, interest paid on money in the Fund, and any other moneys received from other sources for the Fund. The [Board or the] Authority may provide for the establishment and maintenance of separate accounts within the Fund [including the Farm and Ranch Administrative Expense Fund].

§24.8. Applicant Requirements. An applicant may submit an application to the Authority if the applicant meets the following requirements:

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

(5) applicant intends to purchase the farm or ranch land for use by the applicant and family for agricultural production as **a** [the applicant's] primary occupation;

(6)-(9) (No change.)

§24.9. Filing Requirements and Consideration of Application.

(a) Application forms. An applicant seeking a loan from the Authority **must** [may] use the application forms provided by [either] the Authority [or the local participating lender]. Applications must include the information necessary to identify eligibility for the program.

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

(d) Authority [board] review. Staff will submit a credit memorandum to the Authority **which shall include a recommendation for approval or denial** [Board of Directors] for each application received by the program. The Authority [Board of Directors] will approve or deny each application by a majority vote of a quorum of members. The Authority [Board of Directors] may conditionally approve the application by imposing additional requirements.

(e)-(g) (No change.)

(h) Reporting to the Authority [board]. Staff shall report to the Authority [Board of Directors] at each [board] meeting **of the board** the status of loans and current financial commitments of the Authority under the program.

§24.10. Contents of the Application.

(a) Required information. Applicants must complete an application as required by the lender assisting in origination of the loan. The application must contain adequate information to determine eligibility and creditworthiness. Such information must include but is not limited to:

(1)-(6) (No change.)

(7) disclosure of any and all business affiliations of the applicant with members of the [Board or] Authority [Board of Directors], employees of the department and the staff which could present a conflict of interest; and

(8) (No change.)

(b) Financial statement. Financial statements must be provided **in a** [on the form and/or in the same] format **substantially similar to generally accepted accounting principles** [included in the application package]. They should be typed or written in ink, dated (no more than three months old), and signed by the applicant and spouse, if applicable. Printed forms of other lending institutions will be accepted. A financial statement will be required from each person/entity who will become personally liable on the loan.

(c)-(f) (No change.)

§24.11. Criteria for Approval of a Loan.

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

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Finance and Agribusiness Development Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 475-1619.

§24.12. General Terms and Conditions of Authority's Financial Commitment.

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

(d) The terms of the loan will be negotiated by the applicant, lender, and the **Authority** [authority] on a case-by-case basis.

(e)-(k) (No change.)

§24.16. Administration of Financing.

(a) Except as otherwise provided by state law, by these rules or by resolution of the [Veterans Land Board or Board of the] Authority, the staff, with the approval of the commissioner of agriculture, the deputy [assistant] commissioner of agriculture or the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs, shall have the authority to act on behalf of the Authority, without specific Authority [Board] approval, in regard to collection, settlement and enforcement of each and every financing approved by the Authority under this program. Such authority shall include, without limitation, the actions required to be taken by the Authority under any loan agreement, any participation agreement and any other agreement entered into by the Authority concerning a loan approved by the Authority under this program.

(b) (No change.)

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

Issued in Austin, Texas, on April 3, 1996.

TRD-9604634 Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: May 13, 1996

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

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Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §§28.8, 28.10, 28.11

The Board of Directors of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture (the department) proposes amendments to §§28.8, 28.10, and 28.11, concerning the Loan Guaranty Program.

The proposed amendment to §28.8 requires that the staff make a recommendation of approval or denial for each application submitted to the board. This amendment is proposed in order to increase the efficiency of the review process and take advantage of the expertise of staff. The proposed amendment to §28.10 increases the maximum loan guaranty amount from $1 million to $2 million, and the maximum aggregate loan guaranty amount from $2 million to $5 million. This amendment is required in order to comply with statutory changes enacted by the 74th Legislature, Senate Bill 372. The statutory changes became effective January 1, 1996 due to the passage of the constitutional amendment proposed by the 74th Legislature, Senate Joint Resolution No. 51. The proposed amendment to §28.11 advises of the existence of the Authority's Credit Policy and Procedures documents, and states that a copy may be obtained by contacting the department. This amendment is proposed in order to give notice to the public of the existence and availability of the additional criteria and guidelines contained in the Credit Policy and Procedures document.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five- year period the sections are in effect there will be no fiscal implications for

state or local government as a result of enforcing or administering the sections.

Mr. Kennedy 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 compliance with statutory changes enacted by the 74th Legislature, and greater efficiency of the loan guaranty application review process. There will be no effect on small or large businesses other than to increase the maximum loan guaranty amounts. 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 Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code, §58.022, which provides the Authority with the authority to adopt rules and procedures as necessary for the administration of its programs; §58.023, which provides the Authority with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the Loan Guaranty Program; and, Texas Government Code, §2001.004, which requires that the Authority adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Agriculture Code, Chapter 58, is affected by the proposed amendments.

§28.8. Filing Requirements and Consideration of Applications.

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

(d) Board review. Staff will submit a report on each qualified application to the board **, which shall include a recommendation for approval or denial**. The board may, in its discretion, recommend the imposition of conditions and requirements in connection with approval of a qualified application. Approval of a qualified application will be by a majority of a quorum of the board.

(e)-(i) (No change.)

§28.10. General Terms and Conditions of the Authority's Financial Commitment.

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

(c) Maximum amount of loan guaranty. The Authority shall not provide a loan guaranty to an applicant, including its affiliates, that at any one time exceeds **$2** [$1] million except that by a two-thirds vote of the board the total aggregate loan guaranty may exceed **$2** [$1] million but may not exceed **$5** [$2] million. The assistance in the form of a loan guaranty shall not exceed 90% of the total loan. Furthermore, the Authority may make, guaranty, insure, coinsure, or reinsure a loan up to the limits described above for a single eligible business which already has an active loan if the action is approved by a two-thirds vote of the members present.

(d)-(i) (No change.)

§28.11. Criteria for Approval of a Loan Guaranty

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

(d) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan guaranty review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Finance and Agribusiness Development Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 475-1619.

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

Issued in Austin, Texas, on April 3, 1996.

TRD-9604635 Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: May 13, 1996

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

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Chapter 30. Young Farmer Loan Guarantee Program

Subchapter A. General Procedures

• 4 TAC §§30.6, 30.7, 30.12

The Board of Directors of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture (the department) proposes amendments to §§30.6, 30.7, 30.12, concerning the Young Farmer Loan Guarantee Program.

The proposed amendment to §30.6(d) requires that the staff make a recommendation of approval or denial for each application submitted to the board. This amendment is proposed in order to increase the efficiency of the review process and take advantage of the expertise of staff. The proposed amendment to §30.6 also provides for approval of a loan guarantee by the vote of a majority of a quorum of the board, as opposed to a majority of those present and voting. This amendment is proposed in order to reflect current law and practice. The proposed amendment to §30.7(1)(B) requires that the applicant submit his or her current valid driver's license number, as opposed to a copy of the actual license. The proposed amendment to §30.7(1)(C) requires that the applicant's resume identify the agricultural experience of the applicant. The proposed amendment to §30.7(1)(H) adds the lender to the list of those that may request additional information in the application. The proposed amendment to §30.7(1)(I) adds a requirement that financial statements be submitted with the application. The proposed amendment to §30. 7(2) changes the requirements regarding the contents of the business plan to be submitted. These amendments are proposed in order to clarify and improve the nature of the information required to be submitted, and to thereby increase the effectiveness of the loan application review process. The proposed amendment to §30.12 advises of the existence of the Authority's Credit Policy and Procedures documents, and states that copies may be obtained by contacting the department. This amendment is proposed in order to give notice to the public of the existence and availability of the additional criteria and guidelines contained in the Credit Policy and Procedures document.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five- year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Kennedy also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased efficiency and effectiveness of the loan application review process and greater utilization of staff expertise. There will be no effect on small or large 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 Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code (the Code), §253.007(e), which provides the Board of Directors of the Texas Agricultural Finance Authority with the same authority in administering the Young Farmer Loan Guarantee Program as it has in administering programs established by the board under Chapter 58 of the Code; §58.023 of the Code, which provides the board with the authority to adopt rules to establish criteria for eligibility of applicants and criteria for lenders; §58.022 of the Code, which provides the board

with the authority to adopt rules and procedures for administration of the loan guarantee program; and Texas Government Code, §2001.004, which requires that the Authority adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Agriculture Code, Chapter 253, is affected by the proposed amendments.

§30.6. Filing Requirements and Consideration of Applications.

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

(d) Board review. The staff shall submit a credit memorandum to the board **which shall include a recommendation for approval or denial** for each qualified application received by the program. The board will approve or deny the qualified application by **a** majority vote of **a quorum of the board** [those members present and voting], based upon the information presented in accordance with the Act and this chapter, the credit memorandum, and the factors set forth in §253.004 of the Act, as implemented by this chapter. The board may impose additional terms and conditions as part of its approval.

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

§30.7. Contents of the Application. Required information. The applicant must present information necessary to determine if the applicant is an eligible applicant and is qualified to receive a loan guarantee under the program. Such information will include, at least, the following:

(1) an application form, provided by the Authority, which shall include the following information and attachments.

(A) (No change.)

(B) [a copy of] the applicant's [birth certificate or] **current valid** driver's license **number**;

(C) the applicant's resume **which identifies the agricultural experience of the applicant**;

(D)-(G) (No change.)

(H) any other information which the applicant **, the lender,** or the Authority [decides] **decide** may be useful in the determination of the applicant's eligibility and/or creditworthiness; **and,**

(I) financial statements, provided in a format substantially similar to generally accepted accounting principles. They should be typed or written in ink, dated (no more than three months old), and signed by the applicant and spouse, if applicable. Printed forms of other lending institutions will be accepted. A financial statement will be required from each person/entity who will become personally liable on the loan.

(2) a five year plan for the applicant's proposed farm or ranch operation, covering the five-year period from the date of the application **. The plan must provide a comprehensive overview of the proposed operation including pro forma income statements, balance sheets and cash flow statements for the first five years of operation and must provide sufficient cash flow for the requested financing and all other indebtedness of the applicant. The assumptions on which the plan is based must be provided, including the interest rate used** [describing the goals of the project, the means to accomplish the goals, and the method of managing and financing the project, and including a contingency plan, a proposed draw schedule for the financing, a proposed repayment schedule for the financing, a pro-forma balance sheet which incorporates the financing, pro-forma cash flow statements, income statements, and balance sheets for at least five years, and a statement of the interest rate used in the pro forma statements. All pro formas are to be submitted in accordance with generally accepted accounting principles].

(3)-(5) (No change.)

§30.12. Criteria for Approval of a Loan Guarantee.

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

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan guarantee review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Finance and Agribusiness Development Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 475-1619.

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

Issued in Austin, Texas, on April 3, 1996.

TRD-9604636 Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: May 13, 1996

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

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TITLE 16. ECONOMIC REGULATION

Part IX. Texas Lottery Commission

Chapter 402. Bingo Regulations and Tax

• 16 TAC §402.571

The Texas Lottery Commission proposes new §402.571, relating to system service providers. The rule implements statutory changes and establishes standards for persons wanting to be licensed as a system service provider and provide automated bingo services to licensed authorized organizations as set out in the Bingo Enabling Act, §2 and §13e.

Richard Sookiasian, Budget Analyst, has determined that for the first five year period the section is in effect there will be fiscal implications on state government as a result of enforcing or administering the section.

1996–$637; 1997–$1,800; 1998–$1,850; 1999–$1,910; 2000–$2035.

Mr. Sookiasian also has determined that for each of the first five years the section as proposed will be in effect the public benefits anticipated as a result of enforcing the section as proposed will be that persons may obtain a system service provider license as authorized by the Bingo Enabling Act, §13e and, as such, organizations will be able to obtain automated bingo services. There will be no effect on small business. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposed section may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The new section is proposed under authority of Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the Bingo Enabling Act.

Texas Civil Statues, Article 179d, §13e is affected by this section.

402.557. System Service Provider.

(a) For purposes of this section, a system service provider is a person who provides an integrated electronic system for automated bingo services for the use by a licensed authorized organization. Such system will monitor and control all functions related to the registering, and accounting for bingo sales, prizes, inventory, prize fees, taxes, report generation, and other authorized services, as may be requested by the licensed authorized organization.

(b) An applicant for a license must file with the commission a verified written application on a form prescribed by the commission which must include:

(1) The name and address of the applicant;

(2) If a noncorporate entity, the name and address of each owner;

(3) If a corporation, the name and home address of each officer and director and each person owning 10% or more of any class of stock in the corporation;

(4) Information regarding whether the applicant or any person who is required to be named in the application has been convicted of a felony, criminal fraud, gambling, or gambling related offense, or a crime of moral turpitude;

(5) Information regarding whether the applicant or any person required to be named in the application is an owner, officer, director, shareholder, agency or employee of a commercial lessor licensed under this Act; and

(6) Any other information the commission requests.

(c) A person is not eligible for a system service provider license if:

(1) The person has been convicted of a felony, criminal fraud, a gambling offense, a gambling related offense, or a crime of moral turpitude and it has been less than 10 years since the termination of the sentence, parole, or probation related to the offense; or

(2) The person is an owner, officer, director, or employee of a holder of a commercial lessor licensed under this Act.

(d) The fee for a system service provider license is $1,000 plus any cost incurred to conduct the criminal background checks.

(e) A system service provider shall not hold another license issued by the commission.

(f) A license for a system service provider shall be revoked if within the license period any disqualifications under this rule or the Texas Bingo Enabling Act occur.

(g) A system service provider is subject to the same licensing provisions for manufacturers and distributors as stated in the Texas Bingo Enabling Act, §13a(a) and §13b(b).

(h) The commission at any time may inspect the system service provider's services and premises. The system service provider shall provide any information requested by the commission in a timely manner.

(i) No automated bingo services or system may be sold, leased, or otherwise furnished to a licensed authorized organization unless and until an automated bingo service or system identical to the service or system intended to be sold, leased, or otherwise furnished has been presented to the commission by the system service provider, at the system service providers expense, and has been approved by the commission for use within the state.

(j) If approved by the commission, such approval extends only to the specific hardware, software and related equipment inspected and tested. Any changes made in or to the hardware, software and related equipment must be presented to the commission for approval prior to selling or supplying such equipment or service to a licensed authorized organization.

(k) Once an automated bingo service or system has been approved, the commission may keep the automated bingo service or system for further testing and evaluation for as long as the commission deems necessary.

(l) Persons providing computerized bookkeeping or accounting services to licensed authorized organizations are exempt from the licensing requirements of this rule if only:

(1) Generalized, commercially available computer hardware is utilized;

(2) Generalized, commercially available software is utilized; and,

(3) Any automated equipment utilized is not for the purpose of monitoring, networking, integrating, or controlling the operation of any automated equipment utilized by the licensed authorized organization.

(m) Each licensed system service provider shall file a quarterly report on a form prescribed by the Commission, reflecting the information contained in this rule. At the discretion of the commission, the quarterly report may be filed via electronic means.

(n) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following each calendar quarter.

(o) The report shall contain the name and eleven digit taxpayer identification number of each licensed authorized organization receiving automated bingo services from the system service provider and the amount paid by the organization for said services. In the event the system service provider ceases to provide automated bingo services or systems to a licensed authorized organization, the date of such termination shall be noted on the report.

(p) The system service provider shall retain a copy of the quarterly report for at least four years after the date on which the return is filed. The reports shall be maintained at the system service provider's principle business location as specified on the license application.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604563 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 323-3791

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 7. State Postsecondary Review Program

Subchapter A. General Provisions

- **19 TAC §§7.1-7.5**

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

The Texas Higher Education Coordinating Board proposes the repeal of §§7.1-7.5, concerning State Postsecondary Review Program (SPRE) (Definitions). The rules are being repealed for the reason that such rules were promulgated to implement the State Postsecondary Review Program in Texas. Since passage of the rules, all funding for the program has been cut by the U.S. Congress, and the program has been terminated. Accordingly, there is no longer any need for the rules. The rules established the guidelines under which the State Postsecondary Review Entity would review institutions of higher education in the state. The rules guided the activities of the State Postsecondary Review Entity in its review of institutions of higher education. They also established the standards developed in consultation with affected schools.

Dr. Bill Sanford, Assistant Commissioner for Universities has determined that there will be no fiscal implications as a result of the repeal of the rules. There will be no effect on local government and there will be no effect on small business.

Dr. Sanford, also has determined that for each year of the first five years the rules were in effect the public benefit anticipated as a result of enforcing the rules was that the rules eliminated fraud and abuse in Title IV, HEA programs, reduced loss resulting from high defaults in student loan program, and increased overall quality of education in the state. The possible economic cost to individuals who were required to comply with the rules was contingent on the degree of non-compliance with the standards.

Comments on the repeal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788,. Austin, Texas 78711.

The repeals are proposed under 42 United States Code, §1099 a-1 and Texas Education Code, Chapter 61, §61.927, which provide the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Postsecondary Review Program (Definitions).

42 United State Code, §1099 a-1 and Education Code, Chapter 61, §61.927 are also affected by these rules. There is also authority from federal regulations at 34 Code of Federal Regulations Part 667.

§7.1. Definitions.

§7.2. Scope and Purpose.

§7.3. Institutions Subject to the State Postsecondary Review Program.

§7.4. Complaint Procedures.

§7.5. Institution Obligations.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604395 James McWhorter
Assistant Commission for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-6160

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Subchapter B. Institutional Reviews

- **19 TAC §§7.21-7.25**

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

The Texas Higher Education Coordinating Board proposes the repeal of §§7.21-7.25, concerning State Postsecondary Review Program (SPRE) (Institutional Reviews). The rules are being repealed for the reason that such rules were promulgated to implement the State Postsecondary Review Program in Texas. Since passage of the rules, all funding for the program has been cut by the U.S. Congress, and the program has been terminated. Accordingly, there is no longer any need for the rules. The rules established the guidelines under which the State Postsecondary Review Entity would review institutions of higher education in the state. The rules guided the activities of the State Postsecondary Review Entity in its review of institutions of higher education. They also established the standards developed in consultation with affected schools.

Dr. Bill Sanford, Assistant Commissioner for Universities has determined that there will be no fiscal implications as a result of the repeal of the rules. There will be no effect on local government and there will be no effect on small business.

Dr. Sanford also has determined that for each year of the first five years the rules were in effect the public benefit anticipated as a result of enforcing the rules was that the rules eliminated fraud and abuse in Title IV, HEA programs, reduced loss resulting from high defaults in student loan program, and increased overall quality of education in the state. The possible economic cost to individuals who were required to comply with the rules was contingent on the degree of non-compliance with the standards.

Comments on the repeals may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under 42 United States Code, §1099 a-1 and Texas Education Code, Chapter 61, §61.927, which provide the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Postsecondary Review Program (Definitions).

42 United States Code, §1099 a-1 and Education Code, Chapter 61, §61. 927 are also affected by these rules. There is also authority from federal regulations at 34 Code of Federal Regulations, Part 667.

§7.21. Reviews Based on Secretary Referral.

§7.22. Reviews Initiated by the Board.

§7.23. Challenge to Selection for Review by the Board.

§7.24. Priorities for Reviews.

§7.25. Notice to Accrediting Agency.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604396 James McWhorter
Assistant Commission for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-6160

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Subchapter C. State Review Standards and Procedures

- **19 TAC §§7.41-7.43**

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

The Texas Higher Education Coordinating Board proposes the repeal of §§7.41-7.43, concerning State Postsecondary Review Program (SPRE) (State Review Standards and Procedures) The rules are being repealed for the reason that such rules were promulgated to implement

the State Postsecondary Review Program in Texas. Since passage of the rules, all funding for the program has been cut by the U.S. Congress, and the program has been terminated. Accordingly, there is no longer any need for the rules. The rules established the guidelines under which the State Postsecondary Review Entity would review institutions of higher education in the state. The rules guided the activities of the State Postsecondary Review Entity in its review of institutions of higher education. They also established the standards developed in consultation with affected schools.

Dr. Bill Sanford, Assistant Commissioner for Universities has determined that there will be no fiscal implications as a result of the repeal of the rules. There will be no effect on local government and there will be no effect on small business.

Dr. Sanford also has determined that for each year of the first five years the rules were in effect the public benefit anticipated as a result of enforcing the rules was that the rules eliminated fraud and abuse in Title IV, HEA programs, reduced loss resulting from high defaults in student loan program, and increased overall quality of education in the state. The possible economic cost to individuals who were required to comply with the rules was contingent on the degree of non-compliance with the standards.

Comments on the repeals may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under 42 United States Code, §1099 a-1 and Texas Education Code, Chapter 61, §61.927, which provide the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Postsecondary Review Program (Definitions).

42 United States Code, §1099 a-1 and Education Code, Chapter 61, §61. 927 are also affected by these rules. There is also authority from federal regulations at 34 Code of Federal Regulations, Part 667.

§7.41. Review Personnel.

§7.42. State Review Standards

§7.43. Procedures for Standards Reviews.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604397 James McWhorter
Assistant Commission for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-6160

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Subchapter D. Peer Review Standards and Procedures

- **19 TAC §§7.61-7.63**

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

The Texas Higher Education Coordinating Board proposes the repeal of §§7.61-7.63, concerning State Postsecondary Review Program (SPRE) (Peer Review Standards and Procedures). The rules are being repealed for the reason that such rules were promulgated to implement the State Postsecondary Review Program in Texas. Since passage of the rules, all funding for the program has been cut by the U.S. Congress, and the program has been terminated. Accordingly, there is no longer any need for the rules. The rules established the guidelines under which the State Postsecondary Review Entity would review institutions of higher education in the state. The rules guided the activities of the State Postsecondary Review Entity in its review of institutions of higher education. They also established the standards developed in consultation with affected schools.

Dr. Bill Sanford, Assistant Commissioner for Universities has determined that there will be no fiscal implications as a result of the repeal of the rules. There will be no effect on local government and there will be no effect on small business.

Dr. Sanford also has determined that for each year of the first five years the rules were in effect the public benefit anticipated as a result of enforcing the rules was that the rules eliminated fraud and abuse in Title IV, HEA programs, reduced loss resulting from high defaults in student loan program, and increased overall quality of education in the state. The possible economic cost to individuals who were required to comply with the rules was contingent on the degree of non-compliance with the standards.

Comments on the repeals may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under 42 United States Code, §1099 a-1 and Texas Education Code, Chapter 61, §61.927, which provide the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Postsecondary Review Program (Definitions).

42 United States Code, §1099 a-1 and Education Code, Chapter 61, §61. 927 are also affected by these rules. There is also authority from federal regulations at 34 Code of Federal Regulations, Part 667.

§7.61. Review Personnel.

§7.62. Peer Review Standards.

§7.63. Procedures for Peer Reviews.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604398 James McWhorter
Assistant Commission for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-6160

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Subchapter E. Initial and Final Reports

- **19 TAC §§7.81-7.83**

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

The Texas Higher Education Coordinating Board proposes the repeal of §§7.81-7.83, concerning State Postsecondary Review Program (SPRE) (Initial and Final Reports). The rules are being repealed for the reason that such rules were promulgated to implement the State Postsecondary Review Program in Texas. Since passage of the rules, all funding for the program has been cut by the U.S. Congress, and the program has been terminated. Accordingly, there is no longer any need for the rules. The rules established the guidelines under which the State Postsecondary Review Entity would review institutions of higher education in the state. The rules guided the activities of the State Postsecondary Review Entity in its review of institutions of higher education. They also established the standards developed in consultation with affected schools.

Dr. Bill Sanford, Assistant Commissioner for Universities has determined that there will be no fiscal implications as a result of the repeal of the rules. There will be no effect on local government and there will be no effect on small business.

Dr. Sanford also has determined that for each year of the first five years the rules were in effect the public benefit anticipated as a result of enforcing the rules was that the rules eliminated fraud and abuse in Title IV, HEA programs, reduced loss resulting from high defaults in student loan program, and increased overall quality of education in the

state. The possible economic cost to individuals who were required to comply with the rules was contingent on the degree of non-compliance with the standards.

Comments on the repeals may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under 42 United States Code, §1099 a-1 and Texas Education Code, Chapter 61, §61.927, which provide the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Postsecondary Review Program (Definitions).

42 United States Code, §1099 a-1 and Education Code, Chapter 61, §61. 927 are also affected by these rules. There is also authority from federal regulations at 34 Code of Federal Regulations, Part 667.

§7.81. Initial Report.

§7.82. Challenges to an Initial Report.

§7.83. Final Report.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604399 James McWhorter
Assistant Commission for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-6160

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Subchapter F. Administrative Review

• 19 TAC §§7.121-7.140, 7.142

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

The Texas Higher Education Coordinating Board proposes the repeal of §§7.121-7.140, and 7.142, concerning State Postsecondary Review Program (SPRE) (Administrative Review). The rules are being repealed for the reason that such rules were promulgated to implement the State Postsecondary Review Program in Texas. Since passage of the rules, all funding for the program has been cut by the U.S. Congress, and the program has been terminated. Accordingly, there is no longer any need for the rules. The rules established the guidelines under which the State Postsecondary Review Entity would review institutions of higher education in the state. The rules guided the activities of the State Postsecondary Review Entity in its review of institutions of higher education. They also established the standards developed in consultation with affected schools.

Dr. Bill Sanford, Assistant Commissioner for Universities has determined that there will be no fiscal implications as a result of the repeal of the rules. There will be no effect on local government and there will be no effect on small business.

Dr. Sanford also has determined that for each year of the first five years the rules were in effect the public benefit anticipated as a result of enforcing the rules was that the rules eliminated fraud and abuse in Title IV, HEA programs, reduced loss resulting from high defaults in student loan program, and increased overall quality of education in the state. The possible economic cost to individuals who were required to comply with the rules was contingent on the degree of non-compliance with the standards.

Comments on the repeals may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under 42 United States Code, §1099 a-1 and Texas Education Code, Chapter 61, §61.927, which provide the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Postsecondary Review Program (Definitions).

42 United States Code, §1099 a-1 and Education Code, Chapter 61, §61. 927 are also affected by these rules. There is also authority from federal regulations at 34 Code of Federal Regulations, Part 667.

§7.121. State Office of Administrative Hearings (SOAH).

§7.122. Challenge to Initiation of Termination Proceedings.

§7.123. Notice.

§7.124. Scope and Purpose of SOAH Hearings.

§7.125. Administrative Law Judge (ALJ).

§7.126. Appearance.

§7.127. Answers to Notice of Hearing and Initiation of Termination Proceedings.

§7.128. Classification of Pleadings.

§7.129. Form and Content of Documents.

§7.130. Filing of Documents.

§7.131. Service of Pleadings.

§7.132. Prehearing Conference.

§7.133. Dismissal or Withdrawal of an Appeal.

§7.134. Rules of Evidence.

§7.135. Procedure at a Hearing.

§7.136. ALJ's Report.

§7.137. Exceptions and Replies.

§7.138. Committee to Consider ALJ Report .

§7.139. Procedure before the Board.

§7.140. Procedure after a Decision Becomes Final.

§7.142. Final Determination Sent to U. S. Department of Education.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604400 James McWhorter
Assistant Commission for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-6160

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TITLE 22. EXAMINING BOARDS
Part XII. Board of Vocational Nurse Examiners
Chapter 231. Administration
General Provisions
• 22 TAC §231.1

The Board of Vocational Nurse Examiners proposes an amendment to §231.1, relative to the definition of Direct Supervision. The rule is amended to promote client safety by providing an unequivocal definition of the supervision needed by a vocational nurse with a temporary permit.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk has also determined that for each of the first five years the rule is in effect, the public benefit anticipated will be client safety. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted to Marjorie A. Bronk, R. N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe Street, Suite 3-400, Austin, Texas 78701 (512) 305-8100.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(h) , which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§231.1 Definitions. The following words and terms, when used throughout this manual, shall have the following meanings, unless the context clearly indicates otherwise.

Direct Supervision–**Requires** the vocational nurse holding a temporary permit **to** [shall] work under the direction of a licensed vocational nurse, registered **professional** nurse, or a licensed physician who is physically present **on the same unit and is readily available to provide immediate consultation and assistance** [in the facility].

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604660 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 305-8100

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Chapter 240. Peer Review and Reporting
• 22 TAC §240.13

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

The Board of Vocational Nurse Examiners proposes to repeal §240.13, relative to Vocational Nurse Peer Review. The rule is being repealed in order to adopt a new §240.13 which will be entitled Minimum Procedural Standards During Peer Review.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the repeal is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the repeal.

Mrs. Bronk has also determined that for the first five years the repeal is in effect, the public benefit anticipated will be the adoption of a new rule which will outline the standards for LVNs during peer review. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe Street, Suite 3-400, Austin, Texas 78701 (512) 305-8100.

The repeal is proposed under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§240.13. Vocational Nurse Peer Review.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604662 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 305-8100

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The Board of Vocational Nurse Examiners proposes new §240.13, relative to Minimum Procedural Standards During Peer Review.

During the 74th Legislative Session, House Bill 883 was passed which added vocational nurses to the Nursing Practice Act under Article 4525b, Peer Review. The language indicates that whenever peer review involves RNs and LVNs, the per review committee shall include LVNs as members.

Peer review was enacted as a part of the Nursing Practice Ac tin 1987 and institutions implemented peer review for both RNs and LVNs, although LVNs were not specified in the statute. This resulted in a lack of immunity from suite when peer review committees handled LVNs.

The proposed rule will cure the immunity problem so that committees who handle both RNs and LVNs can be free from suit/liability.

Marjorie A. Bronk, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk has also determined that for each of the first five years the rule is in effect, no public benefit is anticipated. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposed new section may be submitted to Marjorie A. Bronk, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe Street, Suite 3-400, Austin, Texas 78701 (512) 305-8100.

The new rule is proposed under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§240.13. Minimum Procedural Standards During Peer Review.

(a) Article 4525b, §1(2) states, "Peer review means the evaluation of nursing services, the qualifications of nurses, the quality of patient care rendered by nurses, the merits of complaints concerning nurses and nursing care, and determinations or recommendations regarding complaints". The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Once a decision is made that a nurse is subject to peer review, the Nursing Practice Act (NPA), Article 4525b,

§1A(5), provides that the nurse is entitled to minimum due process. The purpose of this rule is to define minimum due process, to provide guidance to facilities in developing peer review plans, to assure that nurses have knowledge of the plan, and to provide guidance to the peer review committee in its fact finding process.

(b) The minimum due process is met if:

(1) the nurse is given written notice that his/her practice is being evaluated, that the peer review committee will meet on a specified date not more than 30 calendar days from date of notice, and a copy of the peer review plan, policies and procedures;

(2) the notice includes:

(A) a description of the event(s) to be evaluated in sufficient detail to inform the nurse of the incident, circumstances and conduct (error or omission), and should include date(s), time(s), location(s), and individual(s) involved. (Patient/client shall be identified by initials or number);

(B) name, address, telephone number of contact person to receive nurse's response;

(3) the nurse is provided the opportunity to review, in person or by attorney, at least 15 calendar days prior to appearing before the committee, documents concerning the event under review;

(4) the nurse is provided the opportunity to appear before the committee, make a verbal statement, ask questions and respond to questions of the committee and provide a written statement regarding the event under review;

(5) there is timely resolution of the committee's evaluation no more than 14 calendar days from the committee meeting stated in the notice;

(6) the nurse is given written notice of the findings of the committee when the review has been completed; and

(7) the nurse is given reasonable opportunity to provide written rebuttal to the committee's findings which shall become a permanent part of the findings.

(c) The peer review process is not a hearing or substitute for a legal procedure; therefore, court procedures and rules and the presence of attorneys are not required. although legal representation is not required, should the Peer Review Committee have an attorney as a member or in a representative capacity, the nurse is entitled to legal representation and parity of participation by counsel. "Parity of participation by counsel" means that the nurse's attorney is able to participate in the peer review process to the same extent and level as the facility's attorney; e.g., if the facility's attorney can question witnesses, the nurse's attorney must have the same right.

(d) Peer review plans shall contain written procedures to maintain confidentiality of information presented to and/or considered by the per review committee which is not subject to disclosure except as provided by Article 4525b, §3 of the Nursing Practice Act. Disclosure/discussion by a nurse with the nurse's attorney is proper because the attorney is bound to the same confidentiality requirements as the nurse.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604663 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 305-8100

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Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as a CPA

Experience Requirements

- **22 TAC §511.121**

The Texas State Board of Public Accountancy proposes an amendment to §511.121, concerning Application for Approval of Work Experience.

The proposed amendment clarifies what is acceptable work experience and how that work experience is to be reported to the board.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be a clearer description of what work experience is required to be eligible for certification by the board and how that experience is to be reported. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§511.121. Application for Approval of Experience.

(a) The board, through a candidate's submission of qualifying supervised work experience, shall insure that the candidate applying for the CPA certificate has demonstrated high standards of professional competence, integrity, independence, and learning.

[(a) Each candidate for certification as a certified public accountant by examination must submit to the executive director an application for approval of experience. The application must be made on a form prescribed by the board and submitted after completion of the examination requirement.]

(b) Acceptable work experience shall be gained in at least one of the following areas:

(1) attest and/or compilation services;

(2) preparation of financial statements and reports;

(3) preparation of tax returns and/or consultation on tax matters;

(4) consultation, design, and/or implementation of computer software when the consultation, design, and/or implementation imply the possession of accounting or auditing skills or expert knowledge in accounting or auditing; or

(5) supervision of activities described in paragraphs (2) and (3) of this subsection.

(c) The board, on a case-by-case basis, may approve other areas of work experience which are recognized as nonroutine accounting work.

(d) A candidate for certification as a certified public accountant shall submit to the executive director an application for approval of work experience. The application shall be made on a form prescribed by the board and submitted after completion of the examination requirement.

(e)[(b)] [All] **Acceptable** work experience **shall** [must] be commensurate with the **provisions of the** Public Accountancy Act of 1991, §12**(a)(4)**.

(f)[(c)] No advance rulings **on the acceptance of work experience** will be given[on experience].

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604651 William Treacy
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 305-5566

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• 22 TAC §511.122

The Texas State Board of Public Accountancy proposes an amendment to §511.122, concerning Acceptable Work Experience.

The proposed amendment further defines acceptable work experience.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be a clearer description of what is considered acceptable work experience by the board. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§511.122. Acceptable **Work** Experience.

(a) Work experience shall be under the supervision of an individual holding a current license issued by this board or by another state board of accountancy as defined in §511.124 of this title (relating to Acceptable Supervision).

(b)[(a)] All **work** experience**, to be acceptable, shall be gained in** [must be from] the following categories or **in** any combination of these[and be acceptable to the board].

(1) **Client practice of public accountancy.** [Public practice.] All **work** experience gained in a **CPA** [public accounting] firm **in the client practice of public accountancy** must be of a **non-routine** [nonroutine] accounting nature which continually requires independent thought and judgment on important accounting matters. **Such firm shall be registered and in good standing with the board, or, if the experience is gained in another state or territory, the firm shall be in good standing and in compliance with all laws applicable to CPA firms of that state or territory.**

(2) Commercial enterprise practice of public accounting. All work experience gained in a commercial enterprise engaged in the client practice of public accountancy shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Such commercial enterprise shall be in compliance with Section 501.40 of this title (relating to Registration Requirements).

(3)[(2)] **Industry.** [Private industry.] All **work** experience **gained in industry shall** [must] be **of** a **non-routine** [nonroutine] accounting nature which continually requires independent thought and judgment on important accounting matters. **Professional services performed under this category include any services offered in the course of practicing public accountancy which may not be offered to the public.**

(4)[(3)] Government. All **work** experience **gained in government shall** [must] be **of** a **non-routine** [nonroutine] accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs **(A)-(E)** [(A)-(D)] of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs **(A)-(E)** [(A)-(D)] of this paragraph**.** [:] **Acceptable government work experience includes:**

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

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

(C) **employment as a** special agent accountant with the FBI;

(D) military service, as an accountant or auditor as a 2nd Lieutenant or above**; and** [.]

(E) employment with other governmental entities.

(5)[(4)] **Law firm** [Attorney.] All **work** experience **gained in a law firm shall** [must] be of a **non-routine** [nonroutine] accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a **CPA** [certified public accounting] firm, **shall be under the supervision of a CPA or an attorney,** and shall be in one or more of the following areas:

(A) tax--individual and corporate;

(B) estate planning;

(C) state taxation relating to franchise; **and**

(D) tax controversy.

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

(7)[(6)] Internship. The Board will consider, on a case-by-case basis, experience acquired through the accounting internship program, provided evidence is submitted demonstrating that the experience was comparable to that of a full-time staff accountant. If an accounting internship course is counted toward fulfilling the education requirement, the internship may not be used to fulfill the work experience requirement.

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

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

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604652 William Treacy
Executive Director
Texas State Board of Public Accountancy

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For further information, please call: (512) 305-5566

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• 22 TAC §511.123

The Texas State Board of Public Accountancy proposes an amendment to §511.123, concerning Reporting Work Experience.

The proposed amendment requires the reporting of work experience in years and months.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be to make the reporting of work experience uniform. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§511.123. Reporting Work Experience.

(a) **Work experience must be reported in years and months** [Experience gained in public accounting may be reported in calendar or hourly time. A normal work year is defined as 2,080 hours. Experience not in public accounting]

(b) The board **may** [shall] consider **work** experience earned on a part-time basis, provided[:]

[(1)] at least 20 hours per week are worked. [; or]

[(2) at least three days per week are worked.]

(c) All **work** experience [(not in public accounting)] presented to the board for consideration **shall** [must] be accompanied by the following items:

(1) **the candidate's** detailed job description; **and**

(2) **a** statement from the supervising CPA describing the **non-routine** [nonroutine] work performed **by the candidate** and a description of **the** important accounting matters requiring **the candidate's** independent thought and judgment**.** [from the supervising certified public accountant; and]

[(3) documentation of supervision if this area should be questioned by the board.]

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

Issued in Austin, Texas, on April 1, 1996.

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Executive Director
Texas State Board of Public Accountancy

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For further information, please call: (512) 305-5566

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Chapter 521. Fee Schedule

• 22 TAC §521.2

The Texas State Board of Public Accountancy proposes an amendment to §521.2, concerning Examination Fees.

The proposed amendment changes the examination fee for the Uniform CPA Examination.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be to make sure that the correct fee for the Uniform Certified Public Accountant Examination is in the rules of the board. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§521.2. Examination Fees.

(a) The following fees shall be effective for the **Uniform CPA Examination.** [May 1992 examination, and thereafter.]

(1) (No change.)

(2) The fee for the initial examination conducted pursuant to the Act shall be **$120** [$150]. The fee for any subsequent examination shall be $30 per subject. [For the purposes of this section, accounting practice shall be deemed as two subjects.]

(b) (No change.)

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604654 William Treacy
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 305-5566

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- **22 TAC §521.10**

The Texas State Board of Public Accountancy proposes an amendment to §521.10, concerning out-of-state Proctoring Fee.

The proposed amendment changes the out-of-state proctoring fee to meet the current CPA examination structure.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be to make sure the out of state proctoring fee is correctly reflected in the Board's rules. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§521.10. Out-of-State Proctoring Fee. The fee for proctoring the examination for a candidate applying to another licensing jurisdiction shall be $30 per subject. [For the purpose of this section, accounting practice shall be deemed as two subjects.]

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604655 William Treacy
Executive Director
Texas State Board of Public Accountancy

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For further information, please call: (512) 305-5566

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TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 39. Primary Health Care Services Program
Medically Underserved Community-State Matching Incentive Program

- **25 TAC §§39.61-39.75**

The Texas Department of Health (department) proposes new §§39.61-39.75, concerning administration of the Medically Underserved Community-State Matching Incentive Program. The new sections are proposed under Health and Safety Code, Chapter 46, which directs the department to allocate funds to qualified community groups in medically underserved areas to cover certain costs of establishing physicians' practices.

The sections cover purpose and scope; define terms used in the rules; define eligibility criteria for contributing communities, participating physicians, and state designation as a medically underserved area; describe the procedures for applying for funds, prioritization of need among applicant communities and funding allocation; and provide specifications for related contracts, including requirements for community contribution of funds.

Debra Stabeno, Deputy Commissioner for Health Care Delivery, has determined that for the first five-year period the sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government is an estimated cost of $250,000 each year funding is made available for this program. There will be no fiscal implications to local government. Although local governments can choose to apply for funding through the program, none are required to do so.

Ms. Stabeno also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the sections will be an increased number of primary care physicians practicing in medically underserved areas of the state. Local nonprofit entities found eligible to participate in this program must expend at least $15,000 but not more than $25,000 to cover start-up costs for a physician's practice in order to qualify for state matching funds. There will be no effect on small or large businesses. There will be no costs to individuals who are required to comply with these sections as proposed. Local employment should increase due to the anticipated staffing needs of the physicians whose practices are established through this program.

Comments on the proposal may be submitted to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771. Comments will be accepted for 30 days after the publication of the proposed rules in the *Texas Register.*

The new sections are proposed under Health and Safety Code §46.004, which mandates the Texas Board of Health to adopt rules for the administration of the Medically Underserved Community-State Matching Program; and Health and Safety Code, §12.001(b), which authorizes the Texas Board of Health to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These sections will affect Health and Safety Code, Chapter 46.

§39.61. Introduction.

(a) Purpose. These sections implement the provisions of the Health and Safety Code, Chapter 46, by establishing program rules for the allocation of grant funds to qualified communities through the Medically Underserved Community-State Matching Incentive Program. State grants match funds committed by medically underserved communities to cover start-up costs for primary care physicians' practices.

(b) Funding. These sections describe the criteria and procedures to be used by the Texas Department of Health (department) in determining the communities eligible for funding and the funding allocation method.

(c) Administration. The department shall allocate funds to eligible communities based on the procedures specified in these sections.

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

Board–The Texas Board of Health.

Department–The Texas Department of Health. Full-time practice–At least 40 hours of patient-related medical practice per week.

Medically underserved community–A community meeting any of the following criteria:

(A) a community located in an area of the state designated by the department as a medically underserved area or in an area with a medically underserved population as determined by the department; or

(B) a community located in an area with a designation by the Division of Shortage Designation of the United States Department of Health and Human Services as a medically underserved area or medically underserved population.

Primary care–Physician services in any of the following medical specialties:

(A) family/general practice;

(B) general pediatrics;

(C) general internal medicine; or

(D) general obstetrics/gynecology.

Start-up money–Payments made by a medically underserved community for reasonable costs incurred by a physician to establish a medical office and ancillary facilities for diagnosing and treating patients.

§39.63. Eligibility Criteria for a Contributing Community. To be eligible to participate in this program, a contributing community must:

(1) qualify as a "medically underserved community";

(2) exist in perpetuity as a non-profit entity governed by council members, commissioners, or a board of trustees that:

(A) is responsible to and serves the community in which it is located;

(B) is legally authorized to raise funds and/or accept grants and financial gifts from citizens, scholarship funds, or private foundations;

(C) assures a commitment from the community of at least $15,000 in contributions toward the project;

(D) assures that sponsor contributions will include no federal or state funds; and

(E) assures the availability of a full-time practice opportunity for a participating physician;

(3) apply for state matching funds available through this program; and

(4) contract with a physician who is eligible to participate in the program by providing primary care in the community for at least two years.

§39.64. Physician Eligibility Criteria. To qualify for participation in this program, a physician must:

(1) hold a current, unrestricted license as a physician from the Texas State Board of Medical Examiners;

(2) have successfully completed a primary care residency program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association within seven years of his or her application to this program;

(3) have contracted with an eligible community (that has made a financial commitment of at least the minimum contribution level) to provide primary care (on a full-time basis) in the supporting community for at least two years;

(4) have never defaulted on nor currently owe a refund on any state, federal, or local student financial aid;

(5) have authorized a credit check and background check, the results of which are satisfactory to the sponsoring community; and

(6) have never been convicted of a felony.

§39.65. Eligibility Criteria for State Designation as a Medically Underserved Area or Community.

(a) The department will designate areas or communities as medically underserved based on an assessment of current information for the following need/resource indicators:

(1) health resources, including the population-to-primary care provider ratio;

(2) health status, based on a measure of population groups considered to be potentially at risk of poor health status;

(3) population demographics/potential demand for primary health care services;

(4) socioeconomic status; and

(5) access factors, including transportation time to primary care resources.

(b) The level of medical underservice of an area or community will be determined based on a point system derived from county averages in Texas for each need/resource indicator. Areas or communities with the greatest deviations from the county average, indicating a greater severity of medical underservice, will be assigned the most points.

§39.66. Procedures to Apply for Funds.

(a) Application cycle. The department shall publish an annual notice of availability of funds in the *Texas Register*.

(b) Issuing office. The Request for Application (RFA) shall be issued by the department, and applicants shall request applications from the department's Bureau of Community Oriented Primary Care.

(c) Purpose. The RFA shall provide the applicant with information and forms necessary to apply for financial assistance.

(d) Application submission.

(1) The department must receive the application by the due date specified in the RFA.

(2) Applicants must submit an original and two copies of the application to the department.

(3) The application must be on the forms and in the format prescribed by the department.

(4) The department shall return late or incomplete applications with an explanation. Otherwise, all applications shall be considered for funding.

§39.67. Application Requirements. Applications must be in the format prescribed and contain the following information:

(1) a description of the organization applying for state funds which shall include:

(A) the organization's full name and address;

(B) the name, title, mailing address, physical address, and telephone number of a contact person;

(C) the organization's status as a governmental entity or nonprofit corporation (including a certified copy of the organization's nonprofit charter, if applicable);

(D) the name of the person responsible for the project;

(E) the name of the person authorized to execute contracts on behalf of the organization; and

(F) a proposed schedule of the days and hours the medical practice will operate;

(2) a community needs/resource assessment which shall include:

(A) a community profile;

(B) a demographic profile of the service area;

(C) health resources available in the community;

(D) cultural and socioeconomic status;

(E) a description of health problems;

(F) a description of the service area and service population; and

(G) a medical community profile;

(3) a comprehensive financial plan for the project which shall include:

(A) a listing of funding sources other than the department;

(B) a financial statement signed by an auditor or accounting entity; and

(C) an estimated budget for the first year of the project; and

(4) a budget for funds requested from the department which shall include:

(A) allowable costs, which may include but are not limited to, the following:

(i) land acquisition and facility construction and/or renovation;

(ii) computer hardware and software;

(iii) lab equipment required to provide basic primary health care services;

(iv) an exam table;

(v) routine medical equipment;

(vi) a refrigerator required for drug/vaccine storage;

(vii) supplies required in a primary care physician's office;

(viii) staff salaries and fringe benefits for six months (excluding compensation for the physician); and

(ix) staff and job-related training; and

(B) non-allowable costs, which include but are not limited to, the following:

(i) lease or purchase of motor vehicles;

(ii) consulting fees or the cost of a feasibility study; and

(iii) physician compensation.

§39.68. Evaluation of Application.

(a) The department shall review each complete application to determine program eligibility, to prioritize community need among applicants, and to make recommendations for funding to the Chief, Bureau of Community Oriented Primary Care.

(b) An application which contains false information included to increase the likelihood of receiving funding, shall be denied consideration for the duration of the application period.

(c) An applicant which has filed bankruptcy is not eligible.

(d) The department may negotiate the amount of matching funds to be awarded to any applicant.

(e) The department may limit award amounts based on the availability of funds.

§39.69 Contract Award.

(a) After review of staff recommendations, the chief of the department's Bureau of Community Oriented Primary Care shall announce the projects selected for funding.

(b) Applicants will be notified in writing of the approval or denial of the application.

(c) Any applicant who is denied funds under this program may file a written request for an administrative review of the denial. The request shall be mailed to the department within ten working days of the postmarked date of the department's letter of denial. Upon receipt of the request, staff shall conduct an administrative review, resulting in a final decision. The department will mail a written notice of the decision either upholding or overruling the denial to the applicant.

(d) Contract awards shall not exceed $25,000 unless the department has determined that the application demonstrates exceptional financial need.

§39.70. Methodology for Prioritizing Neediest Communities. The department will prioritize the communities found eligible for participation in the program to assure that the neediest communities are provided grants. The prioritization process will quantify the following indicators of need:

(1) no practicing primary care physicians;

(2) with only one primary care physician and a population of at least 2,000;

(3) no federally or state-funded primary health care clinic;

(4) no practicing physician assistants or nurse practitioners;

(5) the participating physician will be the only physician practicing in one of the primary care specialties;

(6) large minority population, if the participating physician is a member of the same minority group;

(7) designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years;

(8) a population-to-primary care provider ratio in the top 25% of all counties in the state;

(9) poverty rates above the state average; and

(10) median family incomes at least 25% below the state average.

§39.71. Contribution Procedures. The department may provide up to $25,000 in matching funds to the neediest communities as determined under §39.70 of this chapter.

§39.72. Contract. The department will execute a written contract with each community selected concerning use of the state matching funds allocated under this program. The contract shall provide that:

(1) the community has obtained a credit check and information concerning the participating physician's professional background from reputable sources, including the National Practitioner Data Bank or its successor;

(2) the community will retain title to or ownership of any buildings or equipment purchased with state or local matching funds disbursed under this program for seven years;

(3) the community has executed a contract with an eligible physician containing at least the following provisions:

(A) the physician shall engage in full-time clinical practice in the supporting community for at least two years following disbursement of the state funds;

(B) during the two-year service obligation, the physician shall not discriminate among patients seeking care based on their ability to pay or whether payment will be made through Medicaid or Medicare;

(C) the physician shall accept Medicare assignment and shall enroll as a Texas Medicaid provider; and

(D) the physician shall set his or her charges at the prevailing rate for the area and shall utilize a sliding fee scale based on the client's ability to pay;

(4) the community shall make reasonable efforts to locate the physician's practice at a site readily accessible to a majority of area residents;

(5) the community shall make a good faith effort to contract with a physician whose practice specialty is appropriate to serve the primary health care needs of area residents;

(6) the community shall make a good faith effort to replace a participating physician who fails to fulfill his or her two-year practice obligation as quickly as possible.

§39.73. Funding Allocation Procedure. A state warrant for the prescribed disbursement will be released to an appropriate community representative.

§39.74. Breach of Contract.

(a) Binding contract. A contract executed under these sections between the department and the supporting community is a binding contract.

(b) A supporting community shall notify the department in writing within two weeks of any change in its status or that of the participating physician;

(c) The department may find that the supporting community has breached the contract if the supporting community fails to:

(1) provide the full amount of funding specified in the contract; or

(2) fulfill any other conditions specified in the contract.

(d) If the department finds that the supporting community has breached the contract, the department may require the following:

(1) forfeiture of all claim to funds and/or property acquired through use of the state matching funds disbursed through this program;

(2) cancellation of the physician's obligation of service in the supporting community;

(3) reimbursement by the supporting community to the department of state matching funds; and

(4) forfeiture of the opportunity to participate in the program in the future.

§39.75. Reporting and Monitoring.

(a) The supporting community shall provide routine progress reports to the department regarding the expenditure of funds related to this program to cover physician practice start-up costs.

(b) The supporting community shall monitor the participating physician's practice during the period of obligated service and shall provide quarterly reports including status reports on the physician's compliance with the requirements specified in §39.72 of this title (relating to Contract) to the department.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604553 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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Chapter 117. End Stage Renal Disease Facilities

The Texas Department of Health (department) proposes the new §§117. 1-117.3, 117.11-117.16, 117.31-117.34, 117.41-117.45, 117.61-117.65, and 117. 81-117.85, concerning the licensing of end stage renal disease (ESRD) facilities. Specifically, the new sections cover purpose, definitions, licensing fees, application and issuance of temporary initial licenses, issuance and renewal of annual licenses, change of ownership, time periods for processing and issuing a license, inspections, optional plan review and inspection, minimal requirements for design and space, equipment, water treatment and reuse, sanitary and hygienic conditions, quality assurance for patient care, indicators of quality of care, provision and coordination of treatment and services, qualifications of staff, and clinical records. Also included are general requirements for dialysis technicians, dialysis technician training curricula and instructors, competency evaluation of dialysis technicians, documentation of dialysis technician competency; and prohibited acts for dialysis technicians. In addition, the sections address corrective action plans, appointment of temporary manager, disciplinary action, administrative penalties and recovery of costs.

The proposed rules implement the Health and Safety Code, Chapter 251, as added by House Bill 1023 effective September 1, 1995. The provisions requiring that ESRD facilities obtain a license in order to operate and that dialysis technicians be trained and evaluated for competency will become effective on September 1, 1996.

The department utilized existing written sources of information in developing the rules, including current and projected Medicare regulations

for ESRD. Further, the department received input from ESRD facilities, ESRD health care professionals, professional associations and organizations, patients, and other individuals regarding the content of the rules. The rules implement statutory provisions requiring the participation of the ESRD Network of Texas Medical Review Board (MRB) to advise the Board of Health (board) on the adoption of minimum standards and rules, and to recommend to the department the use of a corrective action plan for a facility as an alternative to other enforcement action (i.e., administrative penalty or suspension or revocation of license). The concept of the corrective action plan as an enforcement tool is unique to ESRD facility licensing.

Other provisions unique to the proposed rules for ESRD facility licensing are that: (1) the design and space requirements are limited to ensuring safe access by patients and personnel and patient privacy, and apply only to facilities initiating ESRD services on or after September 1, 1996, or to the area affected by design and space modifications or renovations completed after September 1, 1996; (2) the definition of a dialysis technician includes a licensed vocational nurse (LVN) who will be required to undergo the training and competency evaluation required of unlicensed direct patient care staff; however the rules do not conflict with the LVN licensing regulations and allow LVN'S to function in their customary roles in dialysis units; and (3) the department may appoint on a voluntary or involuntary basis a monitor to oversee the implementation of a corrective action plan or a temporary manager to operate a facility under certain conditions as described in the rules. The statute does not authorize the department to include general construction standards for ESRD facilities in the rules.

Exempted from ESRD facility licensing are a hospital which exclusively provides inpatient dialysis, a home and community support services agency with a home dialysis designation, and an office of a physician unless the office is used primarily to provide dialysis treatment.

Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. For the first year, the cost to state government as a result of the enforcing and administering the rules is estimated at $430, 000; for years two through five, the cost is estimated at $400,670 per year. The first year's cost reflects salary and travel costs for three registered nurses to conduct initial surveys and complaint investigations of 222 existing ESRD facilities, and two staff members providing secretary and technical support, and for the activities related to the collection of data submitted through each facility's annual report. Because the data collection requirement is new, the department is unable to determine the specific cost to collect and maintain data contained in facilities' annual reports. The cost for years two through five includes the estimated cost associated with maintaining the survey and support staff, conducting initial surveys for facilities beginning operation after September 1, 1996, complaint investigations for all licensed facilities, and activities for maintaining the information contained in the annual reports submitted by facilities. The estimated revenue for the first year, based upon the $2,000 initial license fee, is $436,000 (this amount does not include the approximately four facilities operated by the State of Texas which are not required to pay a license fee, but are subject to regulation by the department). The estimated revenue from renewal licensing fees, set at a minimum of $1,000 and a maximum of $2,500, is $400,563. This amount is based upon the assumption that approximately 59 facilities will pay $1,000, approximately 76 facilities will pay a sliding scale rate averaging $1,600 per facility, and approximately 87 facilities will pay $2,500. There will be an effect to the approximately four local governments which own or operate an ESRD facility. However, since these rules are new, the department is unable to estimate the cost effect to these entities.

Ms. Underwood also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be increased quality of care for patients receiving ESRD services through the establishment of state standards for water treatment systems to ensure safe water is used for dialysis, specific quality assurance requirements, qualified and competent facility staff and set staffing ratios. The new provisions will support the ESRD facility in aiding ESRD patients to achieve a better quality of life through emphasizing the prevention of negative outcomes, identifying areas where improvement is needed, and providing information to facilities to assist them in providing high quality dialysis care. There will be costs to small and large business associated with the submittal of data for the annual report and for compliance with certain provisions of the rules. However, since the department is unable to determine the extent to which ESRD facilities currently comply with the rules until initial surveys are completed, the department is unable to estimate the cost at this time.

Comments on the proposal may be submitted to Julia R. Beechinor, Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6646. Comments will be accepted for a period of 30 days after publication of the proposal in the *Texas Register.* In addition, a public hearing will be held at 9:00 a.m., Thursday, May 9, 1996 in the Lecture Hall, Room K-100, Main Building, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Subchapter A. General Provisions

- **25 TAC §§117.1-117.3**

The new rules are proposed under the Health and Safety Code, §§251. 003, 251.014, and 251.032 which provides the board with authority to adopt rules to establish minimum standards regarding the issuance, renewal, denial, suspension, and revocation of an ESRD license; protection of the health and safety of an ESRD facility patient, including the qualifications and supervision of the professional staff (including physicians) and other personnel, the equipment used by the facility, the sanitary and hygienic conditions in the facility, quality assurance for patient care, the provision and coordination of treatment and services by the facility, clinical records maintained by the facility, design and space requirements for safe access and ensuring patient privacy, indicators of quality of care, and water treatment and reuse by the facility; the curricula and instructors used to train individuals to act as dialysis technicians; and the determination of the competency of individuals who have been trained as dialysis technicians; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed rules will affect the Health and Safety Code, Chapter 251.

§117.1. Purpose.

(a) The purpose of this chapter is to implement the Health and Safety Code, Chapter 251, which requires end stage renal disease facilities to be licensed by the Texas Department of Health.

(b) This chapter provides minimum standards for the design and space requirements; equipment used by the facility; water treatment and reuse; sanitary and hygienic conditions; quality assurance for patient care; indicators of quality care; provision and coordination of treatment and services; qualifications and supervision of the professional staff, including physicians and other personnel; clinical records; curricula and instructors used to train dialysis technicians; and the competency evaluation of dialysis technicians.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local codes and ordinances. This chapter must be followed where it exceeds other codes and ordinances.

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

Applicant–The owner of an end stage renal disease facility which is applying for a license under the statute.

Board–The Texas Board of Health.

Chief technician–The facility-based supervisor of the facility's mechanical, reuse and water treatment systems.

Commissioner–The commissioner of health.

Competency–The demonstrated ability to carry out specified tasks or activities with reasonable skill and safety that adheres to the prevailing standard of practice.

Core staff members–The facility's medical director, supervising nurse, dietitian, social worker, administrator, and chief technician.

Delegation–The transfer to a qualified and properly trained individual of the authority to perform a selected task or activity in a selected situation.

Department–The Texas Department of Health.

Dialysis–A process by which dissolved substances are removed from a patient's body by diffusion and convection from one fluid compartment to another across a semipermeable membrane.

Dialysis technician–An individual who is not a registered nurse or physician and who provides dialysis care under the direct supervision of a registered nurse or physician. If unlicensed, this individual may also be known as a patient care technician.

Dietitian–A person who is currently licensed under the laws of this state to use the title of licensed dietitian and who is eligible to be a registered dietitian and has one year of experience in clinical dietetics.

Director–The director of the Health Facility Licensing Division of the department or his or her designee.

End stage renal disease–That stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.

End stage renal disease facility–A facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease.

Full-time–The time period established by a facility as a full working week, as defined and specified in the facility's policies and procedures.

Interdisciplinary team–A group composed of the patient and the primary physician, the registered nurse, the dietitian and the social worker who are responsible for planning care for the patient.

Inspection–An investigation or survey conducted by a representative of the department to determine if an applicant or licensee is in compliance with this chapter.

Licensed nurse–A registered nurse or licensed vocational nurse.

Licensed vocational nurse (LVN)–A person who is currently licensed under the laws of this state to use the title licensed vocational nurse and who may provide dialysis treatment after meeting the competency requirements specified for dialysis technicians.

Medical director–A physician who:

(A) is board eligible or board certified in nephrology or pediatric nephrology by a professional board; or

(B) during the five-year period prior to September 1, 1996, has served for at least 12 months as director of a dialysis program.

Medical review board–A medical review board that is appointed by a renal disease network organization which includes this state, with the network having a contract with the Health Care Financing Administration of the United States Department of Health and Human Services under 42 United States Code §1395rr.

Owner–One of the following which holds or will hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a limited liability company;

(C) an individual;

(D) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(E) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(F) all co-owners under any other business arrangement.

Patient care plan–A written document prepared by the interdisciplinary team for a patient receiving end stage renal disease services.

Pediatric patient–An individual 18 years of age or younger under the care of a facility.

Person–An individual, corporation, or other legal entity.

Physician–An individual who is licensed to practice medicine under the Medical Practice Act, Texas Civil Statutes, Article 4495b.

Presurvey conference–A conference held with department staff and the applicant or his or her representatives to review licensure standards and survey documents and provide consultation prior to the on-site licensure inspection. The applicant's representatives shall include an individual who will be responsible for the day-to-day supervision of care by the facility.

Product water–The effluent water from the last component of the facility's water treatment system.

Progress note–A dated and signed written notation by a facility staff member summarizing facts about care and a patient's response during a given period of time.

Registered nurse (RN)–A person who is currently licensed under the laws of this state as a registered nurse.

Social worker–A person who is currently licensed as a social worker under the Human Resources Code, Chapter 50, and holds a masters degree from a graduate school of social work accredited by the Council on Social Work Education.

Supervising nurse–An RN with at least 18 months experience as an RN, which includes at least 12 months experience in dialysis obtained within the last 24 months.

Supervision–Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Immediate supervision means the supervisor is actually observing the task or activity as it is performed. Direct supervision means the supervisor is on the premises but not necessarily immediately physically present where the task or activity is being performed. Indirect supervision means the supervisor is not on the premises but is accessible by two-way communication and able to respond to an inquiry when made, and is readily available for consultation.

Statute–The Health and Safety Code, Chapter 251.

Training–The learning of tasks through on-the-job experience or instruction by an individual who has the capacity through education or experience to perform the task or activity to be delegated.

§117.3. Licensing Fees.

(a) The schedule of fees for licensure of a facility is as follows:

(1) initial license fee–$2,000;

(2) renewal license fee–$.25 per treatment, with a minimum renewal fee of $1,000 and a maximum renewal fee of $2,500; and

(3) change of ownership license fee–

(A) $1,000 if the inspection described in §117.11(h) of this title (relating to Application and Issuance of Temporary Initial License) is waived by the Texas Department of Health (department); or

(B) $2,000 if the department conducts the inspection described in §117.11(h) of this title (relating to Application and Issuance of Temporary Initial License).

(b) A facility owned or operated by a state agency is not required to pay a license fee.

(c) The department will not consider an application as officially submitted until the applicant pays the licensing fee. The fee must accompany the application form.

(d) A fee paid to the department is not refundable.

(e) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check, money order, or personal check made out to the Texas Department of Health.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604554 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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Subchapter B. Application and Issuance of License

- **25 TAC §§117.11-117.16**

The new rules are proposed under the Health and Safety Code, §§251.003, 251.014, and 251.032 which provides the board with authority to adopt rules to establish minimum standards regarding the issuance, renewal, denial, suspension, and revocation of an ESRD license; protection of the health and safety of an ESRD facility patient, including the qualifications and supervision of the professional staff (including physicians) and other personnel, the equipment used by the facility, the sanitary and hygienic conditions in the facility, quality assurance for patient care, the provision and coordination of treatment and services by the facility, clinical records maintained by the facility, design and space requirements for safe access and ensuring patient privacy, indicators of quality of care, and water treatment and reuse by the facility; the curricula and instructors used to train individuals to act as dialysis technicians; and the determination of the competency of individuals who have been trained as dialysis technicians; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed rules will affect the Health and Safety Code, Chapter 251.

§117.11. Application and Issuance of Temporary Initial License.

(a) All first-time applications for a license are applications for a temporary initial license. The application for a temporary initial license is also an application for an annual license.

(b) Upon written request, the Texas Department of Health (department) shall furnish a person with an application form for a license.

(c) The applicant shall be at least 18 years of age if the applicant is an individual.

(d) The applicant shall retain a copy of all documentation that is submitted to the department.

(e) The applicant shall submit the following to the department:

(1) an accurate and complete application which contains original signatures;

(2) the initial license fee;

(3) the name of the owner of the facility;

(4) the name(s) and credentials of the medical director or at least one physician on staff at the facility who is qualified to serve as the medical director;

(5) a notarized attestation that each dialysis technician on staff has completed the training and competency evaluation programs described in §117.62 of this title (relating to Training Curricula and Instructors) and §117.63 of this title (relating to Competency Evaluation);

(6) the organizational structure, a list of management and supervisory personnel, and a job description for each administrative and supervisory position;

(7) a written plan for the orderly transfer of care of the applicant's patients and clinical records if the applicant is unable to maintain services under the license; and

(8) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171.

(f) Upon receipt of the application, including the required documentation and the fee, the department shall review the material to determine whether it is complete.

(1) All documents submitted with the original application shall be notarized copies or originals.

(2) The time periods for processing an application shall be in accordance with §117.14 of this title (relating to Time Periods for Processing and Issuing Licenses).

(g) Once the application is complete, a presurvey conference will be held at the office designated by the department. All applicants are required to attend a presurvey conference unless the designated survey office waives the requirement.

(h) The department shall conduct an inspection to determine compliance with the design and space requirements described in §117.31 of this title (relating to Design and Space Requirements) prior to issuance of the temporary initial license, unless the department waives the requirement.

(i) After completion of the presurvey conference and if the facility is in compliance with the design and space requirements, the department will issue a temporary initial license. The temporary initial license expires on the earlier of:

(1) the date the department issues or denies the annual license; or

(2) the date six months after the date the temporary initial license was issued.

(j) For the period beginning September 1, 1996, and ending August 31, 1997, the department may issue a second temporary initial license to an applicant in order to complete the inspections described in subsection (h) of this section and §117.12(a) of this title (relating to Issuance and Renewal of Annual License).

(k) Continuing compliance with this chapter is required during the temporary initial license period in order for an annual license to be issued.

(l) If the department determines that compliance with the requirements of this chapter is not substantiated after the issuance of the temporary initial license, the department may propose to deny

the annual license and shall notify the applicant of a license denial as provided in §117.83 of this title (relating to Disciplinary Action).

(m) If an applicant decides not to continue the application process, the application may be withdrawn. If a license has been issued, the applicant shall return the license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

§117.12. Issuance and Renewal of Annual License.

(a) The Texas Department of Health (department) shall issue an annual license if, after inspection and investigation, it finds the applicant meets the requirements of this chapter.

(b) The first annual license supersedes the temporary initial license and shall expire one year from the date of issuance of the temporary initial license.

(1) For the period from September 1, 1996, to August 31, 1997, the license expiration date shall be based on the date of inspection to determine compliance with this chapter.

(A) If a facility successfully completes the inspection on a day falling on the first through the fifteenth of a month, the first annual license shall expire on the last day of the preceding month of the next year.

(B) If a facility successfully completes the inspection on a day falling on the sixteenth through the last day of a month, the first annual license shall expire on the last day of the month of issuance of the next year.

(2) Beginning September 1, 1997:

(A) if the temporary initial license is issued on the first day of a month, the first annual license expires on the last day of the preceding month of the next year; and

(B) if the temporary initial license is issued on the second or any subsequent day of a month, the first annual license expires on the last day of the month of issuance of the next year.

(c) A license is issued to the applicant to operate a facility at the physical location listed on the license application. A change in the physical location of a facility requires the submission of an application and fee for and issuance of a temporary initial license for the new location.

(d) A license shall not be materially altered.

(e) The license shall be posted in a conspicuous place in the waiting room of the facility.

(f) The department shall send notice of expiration to a facility 60 days before the expiration date of an annual license. If the facility has not received notice of expiration from the department 45 calendar days prior to the expiration date, it is the duty of the facility to notify the department and request a renewal application for a license.

(g) The facility shall submit to the department postmarked no later than 30 calendar days prior to the expiration date of the license:

(1) an accurate and complete application renewal form which contains original signatures;

(2) the renewal license fee;

(3) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(4) a copy of an approved fire safety inspection report from the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year prior to the application date; and

(5) verification that the facility submitted the annual report required by §117.42 of this title (relating to Indicators of Quality Care).

(h) The department shall issue a renewed annual license to a facility which continues to meet the minimum standards for a license. At the discretion of the department, an on-site inspection may be conducted for renewal of a license.

(i) If a facility fails to make timely and sufficient application for renewal of a license, prior to the expiration date of the license, the facility must cease operation upon expiration of the facility's license. In order to resume operations, the facility must apply for a new temporary initial license in accordance with §117.11 of this title (relating to Application and Issuance of Temporary Initial License).

(j) A facility shall notify the department in writing 30 days prior to the occurrence of any of the following:

(1) construction, renovation or modification of the facility's physical plant; or

(2) cessation of the operation of the facility. A license should be surrendered upon cessation of the operation of the facility by mailing or returning the original license certificate to the Health Facility Licensing Division, End Stage Renal Disease Facility Licensing Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(k) A facility shall notify the department in writing of any change in the facility's main telephone number or mailing address (if different from the physical address) within 30 days after the change is effective.

(l) A facility shall obtain written approval by the department in order to increase the number of stations which appear on the facility license.

(1) A facility shall submit a written request for approval 30 days prior to the anticipated date of increase. The written request shall be accompanied by the following:

(A) evidence that the facility has reviewed staffing availability and added staff positions if indicated to accommodate the increase; and

(B) evidence that the water treatment system is of sufficient size to produce safe water for the increase in stations.

(2) The department may conduct an on-site inspection prior to taking action on the requested increase.

(3) The department shall send the facility notice of approval or disapproval of the increase. If the requested increase is disapproved, the department shall state the reasons for disapproval and the information needed in order to approve the request.

(4) No later than three weeks after initiating use of the new stations, the facility shall submit to the department laboratory reports of chemical analysis and bacteriologic cultures of the product water demonstrating compliance with §§3.2.1 (relating to Water Bacteriology) and 3.2.2 (relating to Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems,

March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation, 3330 Washington Boulevard, Suite 400, Arlington, Virginia 22201, 1 (800) 703-525 Ext. 4890.

§117.13. Change of Ownership.

(a) No license may be transferred or assigned from one person to another person.

(b) A change of ownership of a facility occurs when the name of the licensed person reflected on the license certificate and original application will be changed unless a licensee is simply revising its name as allowed by law (e.g., a corporation is amending the articles of incorporation to revise its name).

(c) A person who desires to receive a license in its name for a facility licensed under the name of another person or to change the ownership of any facility shall submit a license application and the change of ownership license fee at least 60 calendar days prior to the desired date of the change of ownership. The application shall be in accordance with §117.11 of this title (relating to Application and Issuance of Temporary Initial License) and include an affidavit signed by the previous owner acknowledging agreement with the change of ownership; and

(d) The Texas Department of Health (department) shall issue a temporary initial license effective the date of the change of ownership when the person has complied with the provisions of §117. 11 of this title (relating to Application and Issuance of Temporary Initial License). If the presurvey conference and inspection described in §117.11(g) and (h) of this title (relating to Application and Issuance of Temporary Initial License) are waived by the department, the department shall issue an annual license, in lieu of the temporary initial license, which is effective the date of the change of ownership and which expires as described in §117. 12(b) of this title (relating to Issuance and Renewal of Annual License).

(e) The previous owner's license shall be void on the effective date of the change of ownership.

(f) The sale of stock of a corporate licensee does not cause this section to apply.

(g) The provisions of this section are in addition to applicable federal law or regulation relating to change of ownership or control.

§117.14. Time Periods for Processing and Issuing a License.

(a) General.

(1) The date a license application is received is the date the application reaches the Texas Department of Health (department) .

(2) An application for a temporary initial license is complete when the department has received, reviewed, and found acceptable the information described in §117.11 of this title (relating to Application and Issuance of Temporary Initial License).

(3) An application for a renewal license is complete when the department has received, reviewed and found acceptable the information described in §117.12 of this title (relating to Issuance and Renewal of Annual License).

(b) Time Periods. An application from a facility for a temporary initial license and first annual license or a renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the department receives the application and ends on the date the license is issued, or if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 45 days.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the license is issued. The second time period is 45 days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that the department reimburse in full the fee paid in that particular application process. If the department does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) Appeal. If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of the decision to the applicant and the director.

(e) Hearings. If a hearing is proposed during the processing of the application, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearing) are applicable.

§117.15. Inspections.

(a) The Texas Department of Health (department) may conduct an inspection at any time to verify compliance with the statute and this chapter.

(b) After an inspection of a facility, the surveyor shall prepare and provide a statement of deficiencies, if any, to the person in charge of the facility and obtain a plan of correction for deficiencies, either on-site or within ten calendar days from the inspection, which indicates the date(s) by which correction will be made. A plan of correction date shall not exceed 45 days from the date the deficiency is cited.

(c) If a plan of correction is not acceptable, the department shall notify the facility in writing and request that the plan of correction be resubmitted no later than ten calendar days from the facility's receipt of the department's written notice.

(d) After a plan of correction is accepted, the facility shall come into compliance 30 calendar days prior to the expiration date of the license or no later than the dates designated in the plan of correction, whichever comes first.

(e) The department shall verify the correction of deficiencies by mail or an on-site inspection.

(f) Acceptance of a plan of correction does not preclude the department from taking enforcement action as appropriate under Subchapter F of this chapter (relating to Enforcement).

(g) After review of a facility's annual report, the department may request additional information or conduct an inspection to determine compliance with the statute and this chapter.

§117.16. Optional Plan Review and Inspection.

(a) Request for plan review. Plans and specifications covering the construction of new buildings or alterations, additions, conversions, modernizations or renovations to existing buildings may be submitted to the Texas Department of Health (department) for review to determine compliance with this chapter. Submission of plans and specifications is not mandatory.

(1) If a plan review is requested by the facility, plans and specifications shall be submitted in accordance with this section.

(2) A review of minor alterations or remodeling changes which do not include alterations to load-bearing members of partitions, change functional operation, affect fire safety, or add additional stations may be requested. The request for review shall be in writing to the department with a brief description of the proposed changes.

(3) If review of preliminary plans and outline specifications is requested, the submittal shall contain sufficient information to establish the scope of the project and compliance with the design and space requirements in this chapter.

(4) If review of final drawings and specifications is requested, one complete set of drawings shall be submitted. All working drawings shall be well-prepared so that clear and distinct prints may be obtained, be accurately dimensioned, and include all necessary explanatory notes, schedules, and legends. Final drawings shall be complete and adequate for construction contract purposes. All final plans and specifications shall be appropriately sealed and signed by a registered architect and professional engineer licensed by the State of Texas. Drawings and specifications shall comply with the design and space requirements in this chapter.

(b) Inspection. A construction inspection may be scheduled at the convenience of the department at 100% completion when the project is ready to be occupied. The purpose of the inspection shall be to verify compliance with design and space requirements in this chapter.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604555 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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Subchapter C. Minimum Standards for Design and Space, Equipment, Water Treatment and Reuse, and Sanitary and Hygienic Conditions

- **25 TAC §§117.31-117.34**

The new rules are proposed under the Health and Safety Code, §§251.003, 251.014, and 251.032 which provides the board with authority to adopt rules to establish minimum standards regarding the issuance, renewal, denial, suspension, and revocation of an ESRD license; protection of the health and safety of an ESRD facility patient, including the qualifications and supervision of the professional staff (including physicians) and other personnel, the equipment used by the facility, the sanitary and hygienic conditions in the facility, quality assurance for patient care, the provision and coordination of treatment and services by the facility, clinical records maintained by the facility, design and space requirements for safe access and ensuring patient privacy, indicators of quality of care, and water treatment and reuse by the facility; the curricula and instructors used to train individuals to act as dialysis technicians; and the determination of the competency of individuals who have been trained as dialysis technicians; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed rules will affect the Health and Safety Code, Chapter 251.

§117.31. Design and Space Requirements.

(a) General.

(1) The standards in this section shall apply only to a facility which initiates the provision of end stage renal disease services on or after September 1, 1996; or to the area of a facility affected by design and space modifications or renovations completed after September 1, 1996.

(2) A facility must provide a physical environment that protects the health and safety of patients, personnel and the public. The physical premises of the facility and those areas of the facility's surrounding physical structure that are used by the patients (including all stairwells, corridors and passageways) must meet the local building and fire safety codes as they relate to design and space requirements for safe access and patient privacy.

(3) A facility shall comply with Chapter 26 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1994 Edition (NFPA 101), relating to new business occupancies, published by the National Fire Protection Association, Post Office Box 9101, Batterymarch Park, Quincy, Massachussetts 02169, 1-800-593-6372.

(4) A facility shall provide a reception and information counter or desk and a waiting room separate from the patient treatment area. The waiting room shall provide seating equal to the total number of stations in the treatment area and shall not be smaller than 120 square feet.

(5) The patient treatment area shall be designed and equipped to provide proper and safe treatment as well as privacy and comfort for patients. At a minimum, patient treatment stations shall be 70 square feet, with the smallest dimension at seven feet. The 70 square feet shall not include aisles or counters.

(6) If hepatitis B positive patients are treated, a separate room or an area separated by a physical barrier with its own designated machines, clamps, blood pressure cuffs, and other equipment must be used.

(7) A facility shall provide a call system in patient areas outside the treatment area (e.g., patient restrooms, training rooms, and examination rooms) which is usable by a collapsed patient lying on the floor (e.g., inclusion of a pull cord). Calls shall register at and activate a visible signal in the central nurses station. Call systems which provide two-way communication shall be equipped with an indicating light at each call station which lights and remains lighted as long as the voice circuit is operating.

(8) A facility shall have separate toilet and lavatory facilities for staff and patients. Separate toilet and lavatory facilities shall be provided for each gender.

(9) A facility shall provide a private area for meetings with patients or family members.

(10) A facility shall have a room for medical examinations. This examination room shall have a minimum floor area of 80 square feet excluding such spaces as a vestibule or work counter

(whether fixed or movable). The room arrangement shall permit a clearance of at least three feet at each side and at the foot of the examination table. A lavatory or sink equipped for hand washing and a counter or shelf space for writing shall be provided.

(11) Telephone access shall be available in the facility to patients and family members.

(12) A facility located above the ground floor must have an elevator of sufficient size to accommodate a gurney available at all times.

(13) A facility shall provide two exits remote from each other in accordance with NFPA 101, §§5-5.1.3. At least one exit door shall be accessible by an ambulance from the outside. This door may also serve as an entry for loading or receiving goods.

(14) A facility shall provide a separate room for peritoneal dialysis patients if the facility provides on-site peritoneal dialysis treatment or training. This room shall include a lavatory or sink for hand washing.

(15) Doors to an isolation room or peritoneal dialysis room shall not be lockable from inside the room.

(16) Public corridor widths and all other areas where patients may traverse shall accommodate wheel chair or gurney passage.

(17) Items such as drinking fountains, telephone booths, vending machines and portable equipment (including patient care equipment) shall be located so that they do not project into, restrict, or obstruct exit corridor traffic.

(18) A facility shall utilize a ventilation system which provides adequate comfort to patients during treatment and which minimizes the potential of insect access.

(19) Floors that are subject to traffic while wet shall have nonslip surfaces.

(20) Floors in areas and rooms in which flammable agents are stored or used shall comply with §§4-3.1.2.4(e) of the National Fire Protection Association 99, Standard for Health Care Facilities, 1993 Edition (NFPA 99), published by the National Fire Protection Association.

(b) Storage areas.

(1) All storage areas shall be kept clean and orderly at all times.

(2) A facility premises shall be kept free from accumulations of combustible materials not necessary for immediate operation of the facility. Local supplies of combustible liquids shall be stored in cabinets or shelves which are well-ventilated from top to bottom.

(3) A facility shall have a separate space for wheel chair storage.

(4) A facility shall store oxygen in compliance with NFPA 99, §4-3.

(c) Provisions for the handicapped.

(1) If Texas Civil Statutes, Article 9102 applies, a facility shall be designed in accordance with 16 Texas Administrative Code, Chapter 68 (relating to Elimination of Architectural Barriers) administered by the Texas Department of Licensing and Regulation, effective April 1, 1994.

(2) A facility shall meet applicable requirements of 29 United States Code, §794. When federal funds are used for construction, for program requirements, or for client services, the handicapped requirements of §794 will apply.

(3) A facility shall comply with the design and space requirements of the Americans with Disabilities Act, 42 United States Code, §§12182(b)(2)(A)(iv) and (v) and §12183, and the regulations and guidelines promulgated under §12186(b) and (c) and §12204, effective July 28, 1991.

(d) Fire protection.

(1) All sprinkler systems, smoke detectors, and other fire-fighting equipment shall be inspected and tested at least once each year to maintain it in serviceable condition. If a facility has a sprinkler system, the sprinkler system shall be installed and maintained in accordance with the National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1994 Edition , published by the National Fire Protection Association.

(2) A facility shall have an emergency lighting system capable of providing sufficient illumination to allow safe evacuation from the building. Battery pack systems shall be maintained and tested quarterly. If a facility maintains a back-up generator, the generator must be installed, tested and maintained in accordance with the National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1993 Edition (NFPA 110), published by the National Fire Protection Association.

(3) A facility housed in or adjacent to a building classified as a "high hazard industrial occupancy," as defined in §28-1.4.1 of the NFPA 101, must have a special feature such as a two-hour fire wall between the facility and the other occupancy and written approval by the fire authority having jurisdiction.

(e) Construction. If construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of patients during the construction.

(f) Other standards. A facility may impose more stringent design and space standards than the minimum standards in this section.

§117.32. Equipment.

(a) All equipment used by a facility, including backup equipment, shall be maintained free of defects which could be a potential hazard to patients, staff, or visitors. Maintenance and repair of all equipment shall be performed by qualified staff or contract personnel.

(1) Staff shall be able to identify malfunctioning equipment and report such equipment to the appropriate staff for immediate repair.

(2) Medical equipment that malfunctions must be immediately removed from service until the malfunction is identified and corrected.

(3) Written evidence of all maintenance and repairs shall be maintained.

(4) After repairs or alterations are made to any equipment or system, the equipment or system shall be thoroughly tested for proper operation before returning to service.

(b) All patient care related equipment used in a facility or provided by a facility for use by the patient in the patient's home must be included in a program of regularly scheduled preventive maintenance as prescribed by the manufacturer or every 30 days in the absence of manufacturer recommendations.

(c) At least one complete dialysis machine shall be available on-site as backup for every ten dialysis machines in use.

(d) If pediatric patients are treated, a facility shall use equipment and supplies appropriate for this special population.

(e) All equipment and appliances shall be properly grounded in accordance with the National Fire Protection Association 99, Standard for Health Care Facilities, §3-4.1 and §7-5.1, 1990 Edition (NFPA 99), published by the National Fire Protection Asso-

ciation, Post Office Box 9101, Batterymarch Park, Quincy, Massachussetts 02169, 1 (800) 593-6372.

(f) Extension cords and cables shall not be used for permanent wiring.

(g) A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(1) At a minimum, the emergency equipment and supplies shall include the following:

(A) oxygen;

(B) ventilatory assistance equipment, to include airways, manual breathing bag, and mask;

(C) suction equipment;

(D) supplies specified by the medical director;

(E) electrocardiograph; and

(F) cardiac defibrillator or automatic external defibrillator.

(2) If pediatric patients are treated, the facility shall have the appropriate emergency equipment and supplies listed in paragraph (1) of this subsection for this special population.

(3) A facility shall establish, implement, and enforce a policy for the periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.

(h) If a facility employs a central delivery system for bicarbonate dialysate, the system must be drained at the end of each treatment day and cultured weekly to identify potential bacterial contamination. If cultures demonstrate more than 2,000 colony forming units (CFUs) per milliliter, the bicarbonate delivery system must be disinfected and recultured. The results of the cultures must demonstrate a colony count lower than 2,000 CFUs per milliliter before the bicarbonate delivery system may be restored to use.

§117.33. Water Treatment and Reuse.

(a) Compliance required. A facility shall meet the requirements of this section. A facility may follow more stringent requirements for water treatment and reuse of hemodialyzers than the minimum standards required by this section.

(b) Water treatment.

(1) The design for the water treatment system in a facility must be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(2) When a public water system supply is not used by a facility, the source water shall be tested by the facility at monthly intervals in the same manner as a public water system as described in 30 Texas Administrative Code, §290.104 (relating to Control Tests), §290.105 (relating to Maximum Contaminant Levels (MCLs) for Microbiological Contaminants), and §290.106 (relating to Bacteriological Monitoring) as adopted by the Texas Natural Resources Conservation Commission, effective January 1991.

(3) The physical space in which the water treatment system is located must be adequate to allow for maintenance, testing, and repair of equipment. If mixing of dialysate is performed in the same area, the physical space must also be adequate to house and allow for the maintenance, testing, and repair of the mixing equipment and for performing the mixing procedure.

(4) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described in §3.2.1 (relating to Hemodialysis Systems) and §3.2.2 (relating to Maximum Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 400, Arlington, Virginia 22201.

(5) Written policies and procedures for the operation of the water treatment system must be developed and implemented. Parameters for the operation of each component of the water treatment system must be developed in writing and known to the operator. The facility shall establish and post in the water area written procedures describing the action to be taken when parameters are not met.

(6) Each water treatment system must include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks. If the source water is from a private supply which does not use chlorine/chloramine, the two carbon tanks are not required.

(A) Reverse osmosis membranes, if used, shall meet the standards in §§3.2.3.5 (relating to Reverse Osmosis) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the AAMI.

(B) Deionization systems, if used, shall meet the standards in §3.2.3.3 (relating to Regenerated or Reconstituted Devices) and §3.2.3.4 (relating to Deionization) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the AAMI.

(C) The carbon tanks must contain acid washed 30-mesh or smaller carbon placed in-line with a minimum empty bed contact time of five minutes for each tank and a testing port between the tanks. Water from this port must be tested for chlorine/chloramine levels prior to each patient shift. The first test each treatment day for chlorine/chloramine shall be done no sooner than 15 minutes after start-up of the water treatment system.

(D) Test results of greater than 0.1 parts per million (p.p.m.) for chlorine/chloramine from the port between the tanks shall require testing to be performed at the exit of the second tank and replacement of the first tank. If test results greater than 0.1 p.p.m. are determined at the exit of the last tank, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine/chloramine and the medical director shall be notified.

(7) Water softeners, if used, shall have the capacity to treat a sufficient volume of water to supply the facility for the entire treatment day.

(8) Cartridge filters, if used, shall be made of material (e.g., pure polypropylene) which will not leach surfactants, formaldehyde, or other material which has been used in their manufacture.

(9) Cartridge filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(10) The water treatment system must be continuously monitored during patient treatment and be guarded by audible and visual alarms which can be seen and heard in the dialysis treatment area should water quality drop below specified parameters. Quality monitor sensing cells shall be located as the last component of the

water treatment system and at the beginning of the distribution system. No water treatment components shall be located after the sensing cell.

(11) When deionization tanks do not follow a reverse osmosis system, parameters for the rejection rate of the membranes must assure that the lowest rate accepted would provide product water in compliance with §3.2.2 (relating to Maximum Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition published by the AAMI.

(12) A facility shall maintain written logs of the operation of the water treatment system for each treatment day. The log book shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(13) Microbiological testing of product water shall be conducted monthly and following any repair or change to the water treatment system. The results must demonstrate that water quality meets §3.2.1 (relating to Water Bacteriology) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the AAMI. Sample sites must be selected to assure that contamination of the system will be identified. Sites shall include the beginning of the distribution piping, any water storage tanks, the product water in the reuse room, multiple patient stations, and water used for mixing dialysate. Each patient station must be tested quarterly. If testing of water samples is done off-site, shipping methods must assure the protection of the integrity of the sample and the testing methods used must be appropriate for water. A calibrated loop may not be used in microbiological testing of water samples.

(14) A sample of product water must be submitted for chemical analysis every six months and must demonstrate that water quality meets §3.2.2 (relating to Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the AAMI. The sample water for chemical analysis shall be drawn after the quality monitoring sensing cell. Additional chemical analysis shall be submitted if substantial changes are made to the water treatment system or if the percent rejection of a reverse osmosis system decreases 5.0% or more from the percent rejection measured at the time the water sample for the preceding chemical analysis was taken.

(15) Facility records must include all test results and evidence that the medical director has reviewed the results of the water quality testing and directed corrective action when indicated.

(16) Only persons qualified by education or experience may repair or replace components of the water treatment system. Documentation of education or training which qualifies these persons must be maintained on file in the facility.

(c) Reuse of hemodialyzers and related devices.

(1) Reuse practice in a facility must comply with the American National Standard, Reuse of Hemodialyzers, 1993 Edition published by the AAMI.

(2) A transducer protector shall be replaced when wetted during a dialysis treatment and shall be used for one treatment only.

(3) Arterial lines may be reused only when the arterial lines are labeled for reuse by the manufacturer and the manufacturer-established protocols for the specific line have been approved by the United States Food and Drug Administration.

(4) The water supply in the reuse room shall incorporate a device to prevent chemical agents used from inadvertently back flowing into the water distribution system.

(5) Ventilation systems in the reuse room shall be connected to an exhaust system to the outside which is separate from the building exhaust system, have an exhaust fan located at the discharge end of the system, and have an exhaust duct system of noncombustible corrosion-resistant material as needed to meet the planned usage of the system. Exhaust outlets shall be above the roof level and arranged to minimize recirculation of exhaust air into the building.

(6) A facility shall establish, implement, and enforce a policy for dialyzer reuse criteria (including any facility-set number of reuses allowed) which is included in patient education materials and posted in the waiting room and patient treatment areas.

(7) A facility shall consider and address the health and safety of patients sensitive to disinfectant solution residuals.

(8) A facility shall provide each patient with information regarding the reuse practices at the facility, the opportunity to inspect the reuse area, and the opportunity to have questions answered.

(9) A facility shall restrict the reprocessing room to authorized personnel.

(10) A facility shall obtain written informed consent of the patient or legal representative.

(d) Off-site Dialyzer reprocessing. If reprocessing of dialyzers is done off-site, a facility shall:

(1) require the use of automated reprocessing equipment;

(2) maintain responsibility and accountability for the entire reuse process;

(3) adopt, implement, and enforce policies to ensure that the transfer and transport of used and reprocessed dialyzers to and from the off-site location does not increase contamination of the dialyzers, staff, or the environment; and

(4) provide department staff access to the off-site reprocessing site as part of a facility inspection.

§117.34. Sanitary Conditions and Hygienic Practices.

(a) General infection control measures.

(1) Universal precautions.

(A) Universal precautions shall be followed in the facility for all patient care activities in accordance with 29 Code of Federal Regulations, §1910.1030(d)(1)-(3) (relating to Bloodborne Pathogens) and the Health and Safety Code, Chapter 85, Subchapter I (relating to Prevention of HIV and Hepatitis B Virus by Health Care Workers).

(B) Facility staff shall wash their hands before and after each patient contact in which there is a potential exposure to blood or body fluids. Location and arrangement of hand washing facilities shall permit ease of access and proper use.

(i) One hand washing sink shall be available for every six stations, with a separate sink available in any area designated for hepatitis B positive patient treatments. Each sink shall be located in close proximity to the stations served.

(ii) All fixtures and lavatories shall be trimmed with valves which can be operated without the use of hands. There shall be sufficient clearance for the operation of blade-type handles, if they are used.

(iii) Provisions for hand drying shall be included at all hand washing facilities.

(C) Facility staff shall explain the potential risks associated with blood and blood products to patients and family members and provide the indicated personal protective equipment to a patient or family member if the patient or family member assists in procedures which could result in contact with blood or body fluids.

(2) Documentation and coordination of infection control activities.

(A) The facility must designate a person to monitor and coordinate infection control activities.

(B) A facility shall develop and maintain a system to identify and track infections to allow identification of trends or patterns. This activity shall be reviewed as a part of the facility's quality assurance program. The record shall include trends, corrective actions, and improvement actions taken.

(3) No smoking policy.

(A) The facility shall establish, implement, and enforce a "no smoking" policy.

(B) Smoking shall be prohibited in those areas restricted by the policy and in areas where flammable liquids or gases are stored or in areas of combustible storage.

(C) "No Smoking" signs shall be posted in the restricted areas.

(b) Environmental infection control.

(1) General procedures.

(A) A facility shall provide and actively monitor a sanitary environment which minimizes or prevents transmission of infectious diseases.

(i) A The facility shall provide a janitor's closet with space for cleaning supplies and equipment.

(ii) Wall bases in patient treatment and other areas which are frequently subject to wet cleaning methods shall be made integral and covered with the floor, tightly sealed to the wall, impervious to water and constructed without voids that can harbor insects.

(iii) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. In all areas subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions.

(iv) Wall finishes shall be washable and, in the immediate areas of plumbing fixtures, smooth and moisture resistant.

(v) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(vi) All exposed ceilings and ceiling structures in areas normally occupied by patients, staff, and visitors shall be finished so as to be cleanable with equipment used in daily housekeeping activities. Ceiling tiles stained with blood shall be cleaned or replaced.

(vii) Ceiling fans shall not be utilized in patient treatment areas.

(B) Blood spills shall be cleaned immediately or as soon as is practical with a disposable cloth and an appropriate chemical disinfectant.

(i) The surface should be subjected to intermediate level disinfection in accordance with the manufacturer's instructions, if a commercial liquid chemical disinfectant is used.

(ii) If a solution of chlorine bleach (sodium hypochlorite) is used, the solution shall be at least 1:10 sodium hypochlorite and the surface to be treated must be compatible with this type of chemical treatment.

(2) Specific procedures for equipment and dialysis machines.

(A) Routine disinfection of active and backup dialysis machines shall be performed according to facility defined protocol, accomplishing at least intermediate level disinfection.

(B) Samples of dialysate from machines chosen at random shall be cultured monthly, and culture results shall not exceed 2,000 colony forming units per milliliter.

(C) Between patient shifts, facility staff shall clean machine exteriors, treatment chairs and ancillary equipment (such as hemostats, blood pressure cuffs, tourniquets, infusion pumps, and chair-side stools).

(c) Medical waste and liquid/sewage waste management.

(1) The facility shall comply with the requirements set forth by the department in §§1.131-1.137 of this title (relating to Definition, Treatment and Disposition of Special Waste from Health Care Related Facilities) and the Texas Natural Resource Conservation Commission's requirements in Title 30, Texas Administrative Code, §330.1004 (relating to Generators of Medical Waste).

(2) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the Texas Natural Resource and Conservation Commission in accordance with Title 30, Texas Administrative Code, Chapter 285 (relating to On-site Wastewater Treatment).

(d) Hepatitis B prevention.

(1) Prevention requirements concerning staff.

(A) Hepatitis B vaccination.

(i) The facility shall offer hepatitis B vaccination to previously unvaccinated, susceptible new staff members in accordance with 29 Code of Federal Regulations, §1910.1030(f)(1)-(2) (relating to Bloodborne Pathogens).

(ii) Staff vaccination records shall be maintained in each staff member's health record.

(B) Serologic screening of staff.

(i) New staff members shall be screened for hepatitis B surface antigen (HBsAg) and the results reviewed prior to the staff providing patient care, unless the new staff member provides the facility documentation of positive serologic response to hepatitis B vaccine.

(ii) The facility shall establish, implement and enforce a policy for repeated serologic screening of staff. The repeated serologic screening shall be based on each staff member's HBsAg/antibody to HBsAg (anti-HBs), and shall be congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 1993, published by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Hospital Infection Program, Mail Stop C01, Atlanta, Georgia 30333, 404-639-2318.

(2) Prevention requirements concerning patients.

(A) Hepatitis B vaccination.

(i) With the advice and consent of a patient's attending nephrologist, facility staff shall make the hepatitis B vaccine available to a patient who is susceptible to hepatitis B, provided that the patient has coverage or is willing to pay for vaccination.

(ii) The facility shall make available to patients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Serologic screening of patients.

(i) Candidates for dialysis shall be screened for HBsAg within one month before or at the time of admission to the facility.

(ii) Repeated serologic screening shall be based on the antigen or antibody status of the patient.

(I) Monthly screening for HBsAg is required for patients whose previous test results are negative for HBsAg.

(II) Screening of HBsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis, provided that the facility's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 1993, published by the United States Department of Health and Human Services.

(C) Isolation procedures for the HBsAg-positive patient.

(i) The facility shall treat patients positive for HBsAg in a segregated treatment area which includes a handwashing sink, a work area, patient care supplies and equipment, and sufficient space to prevent cross-contamination to other patients.

(ii) A patient who tests positive for HBsAg shall be dialyzed on equipment reserved and maintained for the HBsAg-positive patient's use only.

(iii) If an HBsAg-positive patient is discharged, the equipment which had been reserved for that patient shall be terminally cleaned and given intermediate level disinfection prior to use for a patient testing negative for HBsAg.

(iv) A patient who is admitted for treatment before results of HBsAg testing are known shall undergo treatment as if the HBsAg test results were potentially positive.

(I) If a central delivery system is used by the facility, the facility shall treat potentially HBsAg-positive patients on the last machine on the loop and may not reuse the dialyzer until the HBsAg test results are known.

(II) The dialysis machine used by this patient shall be terminally cleaned and given intermediate level disinfection prior to its use by another patient.

(e) Tuberculosis prevention.

(1) Prevention requirements concerning staff.

(A) Facility staff shall be screened for tuberculosis upon employment or receiving privileges as a member of the medical staff and prior to patient contact.

(B) Subsequent screening of facility staff shall be performed after any potential exposure to laryngeal or pulmonary tuberculosis.

(C) Respiratory isolation procedures and precautions developed by the facility shall be employed by facility staff providing treatment to patients with pulmonary tuberculosis.

(2) Prevention requirements concerning patients.

(A) If the facility treats active pulmonary tuberculosis patients, a separate room with an isolated air handling system shall be utilized for these patients.

(B) The facility shall screen patients for tuberculosis upon admission and when indicated by the presence of risk factors for, or the signs and symptoms of tuberculosis. Screening shall be performed after potential exposure to active laryngeal or pulmonary tuberculosis.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604556 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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Subchapter D. Minimum Standards for Patient Care and Treatment

- **25 TAC §§117.41-117.45**

The new rules are proposed under the Health and Safety Code, §§251.003, 251.014, and 251.032, which provides the board with authority to adopt rules to establish minimum standards regarding the issuance, renewal, denial, suspension, and revocation of an ESRD license; protection of the health and safety of an ESRD facility patient, including the qualifications and supervision of the professional staff (including physicians) and other personnel, the equipment used by the facility, the sanitary and hygienic conditions in the facility, quality assurance for patient care, the provision and coordination of treatment and services by the facility, clinical records maintained by the facility, design and space requirements for safe access and ensuring patient privacy, indicators of quality of care, and water treatment and reuse by the facility; the curricula and instructors used to train individuals to act as dialysis technicians; and the determination of the competency of individuals who have been trained as dialysis technicians; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed rules will affect the Health and Safety Code, Chapter 251.

§117.41. Quality Assurance for Patient Care.

(a) A facility shall perform a systematic, ongoing, concurrent and comprehensive review of the care provided. The review shall be specific to the facility. A facility shall adopt, implement, and enforce a quality assurance program based on the August 1989 edition of the Criteria and Standards, Criteria for Facility Quality Assurance Programs, §J, Pages 1-4 as published by the End Stage Renal Disease Network of Texas, Inc., 1755 North Collins Boulevard, Suite 221, Richardson, Texas 75080, 214-669-3311.

(b) Quality management activities shall demonstrate that facility staff evaluates the provision of dialysis care and patient services, sets treatment goals, identifies opportunities for improvement, develops and implements improvement plans, and evaluates the implementation until resolution is achieved. Evidence shall support that aggregate patient data is continuously reviewed for trends.

(c) Core staff members shall actively participate in the quality assurance activities.

(d) A facility shall conduct quality assurance meetings monthly or more often as necessary to identify or correct problems. The meetings shall be documented in written minutes which are maintained in the facility.

(e) A record of each accident or incident occurring in a facility, including medication errors and adverse drug reactions, shall be prepared immediately. Accidents or incidents resulting in serious injury, death, or hospitalization of a patient (e.g., conversions to HBsAg positive, pyrogenic reactions, estimated blood loss greater than 100 cubic centimeters, hemolysis, cardiopulmonary arrest, air embolism, transfusion reaction, exposure to disinfectant, dialyzer reaction, incorrect dialyzer, fire), shall be reported by facsimile to the director within one working day of the occurrence.

§117.42. Indicators of Quality of Care.

(a) Each facility shall submit an annual report to the Texas Department of Health (department) or the department's designee to include aggregrate data on specified indicators of the quality of care provided to patients. Examples of indicators include:

(1) hematocrit level;

(2) albumin level;

(3) measures of the adequacy of dialysis;

(4) peritonitis rate; and

(5) hospitalization rate.

(b) The form and data to be submitted will be specified annually by the department. The department shall provide notice to a facility of the required content for the report in sufficient time to enable facility staff to collect the data. The form required by the department will be constructed in consideration of the reports required by the Health Care Financing Administration and Centers for Disease Control to reduce or eliminate redundancy. The department may request data to validate the aggregate information contained in the annual report. All information gathered will be available to the department for review.

(c) Data from each facility will be reviewed and compared with statewide and national aggregrate data to identify opportunities to improve care. Assistance in improving care from the department or department's designee may include feedback of comparative data, a corrective action plan, or an onsite inspection.

(d) A renewal license will not be issued to a facility until the facility's current annual report is received complete.

§117.43. Provision and Coordination of Treatment and Services.

(a) Patient rights. Each facility shall adopt, implement, and enforce policies and procedures which ensure that each patient is:

(1) treated with respect, dignity, and full recognition of the patient's individuality and personal needs;

(2) provided privacy and confidentiality, for the patient and the clinical record;

(3) provided a safe and comfortable treatment environment;

(4) provided information in a manner to facilitate understanding by the patient and the patient's legal representative, family or significant other. Written patient information materials shall be available in at least English and Spanish, with materials in other languages required if the census of the facility includes more than four patients who read that primary language. In lieu of written materials in the patient's primary language, an interpreter may be provided if documentation and patient interview support that information sufficient to allow the patient to participate in the treatment has been communicated;

(5) informed by a physician of the patient's medical status;

(6) informed of all treatment modalities and settings for the treatment of end stage renal disease;

(7) informed about and participates in, if desired, all aspects of care, including the right to refuse treatment, and informed of the medical consequences of such refusal;

(8) aware of all services available in the facility and the charges for services provided;

(9) informed about the facility's reuse of dialysis supplies, including hemodialyzers, and told the number of times the patient's dialyzer has been reprocessed prior to each dialysis treatment. If printed materials such as brochures are used to describe a facility and its services, the brochures shall contain a statement with respect to reuse;

(10) assured of a reasonable response by the facility to the patient's requests and needs for treatment or service, within the facility's capacity, the facility's stated mission, and applicable law and regulation;

(11) provided hours of dialysis that are scheduled for patient convenience whenever feasible or possible. Consideration shall be given to a patient's work or school schedule;

(12) transferred only for medical reasons, for the patient's welfare or that of other patients, or for nonpayment of fees. A patient shall be given advance notice to ensure orderly transfer or discharge;

(13) provided information regarding advance directives and allowed to formulate such directives to the extent permitted by law. This includes documents executed under the Natural Death Act, Health and Safety Code, Chapter 672; Civil Practice and Remedies Code, Chapter 135 relating to durable power of attorney for health care; and Health and Safety Code, Chapter 674 relating to out-of-hospital do-not-resuscitate;

(14) aware of the mechanisms and agencies to express a complaint against the facility without fear of reprisal or denial of services. A facility shall provide to each individual who is admitted to the facility a written statement that informs the individual that a complaint against the facility may be directed to the department. The statement shall be provided at the time of admission and shall advise the patient that registration of complaints may be filed with the director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, 1-800-228-1570; and

(15) fully informed of the rights and responsibilities listed in this subsection, and of all rules and regulations governing patient conduct and responsibilities. A written copy of the patient's rights and responsibilities listed in this subsection shall be provided to each patient or the patient's legal representative upon admission and a copy shall be posted with the facility license.

(b) Patient care plan.

(1) A facility shall establish, implement, and enforce a policy whereby patient services are coordinated using an interdisci-

plinary team approach. The interdisciplinary team shall consist of the patient's primary dialysis physician, registered nurse, social worker, and dietitian.

(2) The interdisciplinary team shall develop a written, individualized, comprehensive patient care plan that specifies the services necessary to address the patient's medical, psychological, social, and functional needs, and includes measurable and expected outcomes and estimated timetables to meet the expectations.

(3) The patient care plan shall include evidence of coordination with other service providers (e.g. hospitals, long term care facilities, home and community support services agencies, or transportation providers) as needed to assure the provision of safe care.

(4) The patient care plan shall include evidence of the patient's (or patient's legal representative's) input and participation, unless they refuse to participate. At a minimum, the patient care plan shall demonstrate that the content was shared with the patient or the patient's legal representative.

(5) The patient care plan shall be developed within 30 days from the patient's admission to the facility and updated as indicated by any change in the patient's medical, nutritional, or psychosocial condition, or at least every six months. Evidence of the review of the patient care plan with the patient and the interdisciplinary team to evaluate the patient's progress or lack of progress toward the goals of the care plan, and interventions taken when the goals are not achieved, shall be documented and included in the patient's clinical record.

(c) Emergency preparedness.

(1) A facility shall implement written procedures which describe staff and patient actions to manage potential medical and non-medical emergencies, including but not limited to, fire, equipment failure, power outages, medical emergencies, and natural disasters which are likely to threaten the health or safety of facility patients, the staff, or the public.

(2) A facility shall have a functional plan to access the community emergency medical services.

(3) A facility shall have personnel qualified to operate emergency equipment and to provide emergency care to patients on-site and available during all treatment times. A registered nurse qualified to administer emergency life support shall be available in the treatment area whenever patients are present. All clinical and technical staff members shall maintain current certification in cardiopulmonary resuscitation.

(4) A facility shall have a transfer agreement with one or more hospitals which provide acute dialysis service for the provision of inpatient care and other hospital services to the facility's patients. The facility shall have documentation from the hospital to the effect that patients from the facility will be accepted and treated in emergencies. There shall be reasonable assurances that:

(A) the transfer or referral of patients will be effected between the hospital and the facility whenever such transfer or referral is determined as medically appropriate by the attending physician, with timely acceptance and admission;

(B) the interchange of medical and other information necessary or useful in the care and treatment of the patient transferred will occur within one working day; and

(C) security and accountability will be assured for the transferred patient's personal effects.

(5) A facility shall establish, implement and enforce a written plan for the protection of patients in the event of a fire.

(A) An evacuation plan shall be developed and diagrams posted in conspicuous places.

(B) The facility shall provide approved fire extinguishing equipment adequate for the conditions involved. Every portable fire extinguisher maintained in the facility shall be installed and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1994 Edition, and the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1994 Edition, §26-3.5, published by the National Fire Protection Association, Post Office Box 9101, Batterymarch Park, Quincy, Massachussetts 02169, 1-800-593-6372. Fire extinguishers shall be refilled when necessary, kept in condition for instant use, and tagged or labeled to indicate the name, address, and telephone number of the person recharging the unit and the date of the last inspection. The hose, nozzle, gaskets, and all other parts shall be maintained in good repair at all times.

(C) The facility shall conduct fire drills at least every six months for each patient shift to include the use of alarms; simulated evacuation of patients, visitors, employees and staff; and the use of equipment. Reports shall be maintained to include evidence of staff and patient participation.

(D) All staff shall be familiar with the locations of fire-fighting equipment. Fire-fighting equipment shall be located so that a person shall not have to travel more than 75 feet from any point to reach the equipment.

(6) A written disaster preparedness plan specific to each facility shall be developed and in place. The plan shall be based on an assessment of the probability and type of disaster in each region and the local resources available to the facility. The plan shall include procedures designed to minimize harm to patients and staff along with ensuring safe facility operations. The plan and in-service programs for patients and staff shall include provisions or procedures for responsibility of direction and control, communications, alerting and warning systems, evacuation, and closure.

(d) Medication storage and administration.

(1) Pharmaceutical services shall be provided in accordance with accepted professional principles and federal and state laws and regulations.

(2) Medications shall be administered only if such medication is ordered by the patient's physician.

(3) All verbal or telephone orders shall be received by a licensed nurse or physician assistant and countersigned by the physician within 30 days.

(4) Medications maintained in the facility shall be properly stored and safeguarded in enclosures of sufficient size which are not accessible to unauthorized persons. Refrigerators used for storage of medications shall maintain appropriate temperatures for such storage.

(5) A facility shall maintain an emergency stock of medications, as specified by the medical director, to treat the emergency needs of patients.

(6) Medications shall be prepared for administration in an area which includes a work counter and a sink. This area shall be located in such a manner as to prevent contamination of medicines being prepared for administration.

(7) Medications not given immediately shall be labeled with the patient's name, the name of the medication, the dosage prepared, and the initials of the person preparing the medication. All medications shall be administered by the individual who prepares them.

(8) All medications shall be administered by licensed nurses, physician assistants, or physicians except that intravenous normal saline, intravenous heparin, and subcutaneous lidocaine may be administered as part of a routine hemodialysis treatment by dialysis technicians qualified according to §117.62(b) of this title (relating to Training Curricula and Instructors) and §117.63 (d) of this title (relating to Competency Evaluation). Such administration by dialysis technicians shall be in compliance with the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d), relating to the delegation of medical acts by a licensed physician in the State of Texas.

(e) Nursing services.

(1) A full-time supervising nurse shall be employed to manage the provision of patient care.

(2) A registered nurse shall be available in the treatment area to provide patient care during all dialysis treatments.

(3) A least one licensed nurse shall be available on-site to provide patient care for every ten patients or portion thereof.

(4) A registered nurse with experience or training in pediatric dialysis shall be available on-site to provide care for pediatric dialysis patients younger than 12 years of age or smaller than 30 kilograms in weight.

(5) Sufficient direct care staff shall be on-site to meet the needs of the patients. An acuity-based assessment system shall be adopted, implemented, and enforced to assure that adequate staffing is provided. At a minimum, a facility shall provide one direct care staff member for every four patients on each shift. For pediatric dialysis patients, one licensed nurse shall be provided for each patient weighing less than ten kilograms and one licensed nurse for every two patients weighing from ten to 20 kilograms.

(6) A facility shall provide a nursing station(s) to allow adequate visual monitoring of patients by nursing staff during treatment.

(7) An assessment before and after treatment of each patient shall be completed by a registered nurse. Data collection for these assessments, such as notation of patient complaints, vital signs, weight, lung sounds, and presence of edema, may be done by any member of the direct care staff.

(8) The initial nursing assessment shall be initiated by a registered nurse at the time of the first treatment in the facility and completed by a registered nurse within the first three treatments.

(f) Licensed vocational nurses. This chapter does not preclude a licensed vocational nurse (LVN) from practicing in accordance with the rules adopted by the Texas Board of Vocational Nurse Examiners. If the LVN is acting in the capacity of a dialysis technician, the facility shall determine that the LVN has passed a training and competency evaluation curriculum which meets the requirements in §117.62 of this title (relating to Training Curricula) and §117.63 of this title (relating to Competency Evaluation).

(g) Dialysis technicians. A dialysis technician providing direct patient care shall demonstrate knowledge and competency for the responsibilities specified §117.63 of this title.

(h) Nutrition services.

(1) Nutrition services shall be provided to a patient and the patient's caregiver(s) in order to maximize the patient's nutritional status.

(2) The dietitian shall be responsible for:

(A) conducting a nutrition assessment of a patient;

(B) participating in a team review of a patient's progress;

(C) recommending therapeutic diets and changes in treatment based on the patient's nutrition needs in consultation with the patient's physician;

(D) counseling a patient, a patient's family, and a patient's significant other on prescribed diets and monitoring adherence and response to diet therapy;

(E) referring a patient for assistance with nutrition resources such as financial assistance, community sources or in-home assistance; and

(F) participating in continuous quality improvement activities.

(3) The collection of objective and subjective data to assess nutrition status shall occur within two weeks or seven treatments from admission to the facility, whichever occurs later. A comprehensive nutrition assessment with an educational component shall be completed within 30 days or 13 treatments from admission to the facility, whichever occurs later.

(4) A nutrition reassessment shall be conducted annually or more often if indicated.

(5) Each faciltiy shall employ or contract with a dietition(s) to provide clinical nutrition services for each patient. One full-time equivalent of dietitian time shall be available for each 100 patients, and an adjusted portion of dietitian time shall be available for additional patients.

(6) Nutrition services shall be available at the facility during scheduled treatment times. Access to services may require an appointment.

(i) Social services.

(1) Social services shall be provided to patients and their families and shall be directed at supporting and maximizing the adjustment, social functioning, and rehabilitation of the patient.

(2) The social worker shall be responsible for:

(A) conducting psychosocial evaluations;

(B) participating in team review of patient progress;

(C) recommending changes in treatment based on the patient's current psychosocial needs;

(D) providing case work and group work services to patients and their families in dealing with the special problems associated with end stage renal disease; and

(E) identifying community social agencies and other resources and assisting patients and families to utilize them.

(3) Initial contact between the social worker and the patient shall occur and be documented within seven days or three treatments from the patient's admission. A comprehensive psychoso-

cial assessment shall be completed within 30 days or 13 treatments from the patient's admission, whichever occurs later

(4) A psychosocial reassessment shall be conducted annually or more often if indicated.

(5) Each facility shall employ or contract with a social worker(s) to meet the psychosocial needs of the patients. One full-time equivalent of social worker time shall be available for each 80 patients, and an adjusted portion of social worker time shall be available for additional patients.

(6) Social services shall be available at the facility during the times of patient treatment. Access to social services may require an appointment.

(j) Medical services.

(1) Medical director. The medical director is responsible for:

(A) the development of facility treatment goals which are based on review of aggregate data assessed through quality management activities;

(B) assuring adequate training of licensed nurses and dialysis technicians;

(C) adequate monitoring of patients and the dialysis process; and

(D) the development and implementation of all policies required by this chapter.

(2) Medical staff.

(A) Each patient shall be under the care of a physician on the medical staff.

(B) The care of a pediatric dialysis patient shall be in accordance with this subparagraph. If a pediatric nephrologist is not available as the primary physician, an adult nephrologist may serve as the primary physician with direct patient evaluation by a pediatric nephrologist according to the following schedule:

(i) for patients two years of age or younger - monthly (two of three evaluations may be by phone);

(ii) for patients three to 12 years of age - quarterly; and

(iii) for patients 13 to 18 years of age - semiannually.

(C) At a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once every two weeks. There shall be evidence of monthly assessment for new and recurrent problems and review of dialysis adequacy.

(D) A physician on the medical staff shall be on call and available 24 hours a day (in person or by telecommunication) to patients and staff. The response time shall not be more than 30 minutes.

(E) Orders for treatment shall be in writing and signed by the prescribing physician. Routine orders for treatment shall be updated at least annually. Orders for treatment shall include treatment time, dialyzer, blood flow rate, target weight, medications including heparin, and specific infection control measures as needed.

(F) If advanced practice nurses or physician assistants are utilized to augment physician services:

(i) there shall be evidence of communication with the treating physician whenever the advanced practice nurse or physician assistant changes treatment orders;

(ii) the advanced practice nurse or physician assistant may not replace the physician in participating in patient care planning or in quality management activities; and

(iii) the treating physician shall be notified and direct the care of patient medical emergencies.

(G) If the medical staff includes two or more physicians, the medical staff shall meet at least quarterly to review the care provided in the facility to assure that staff physicians are meeting treatment goals as established by the medical director. Minutes of these meetings shall be maintained and available for review.

(k) Home dialysis (self dialysis).

(1) If a facility provides self dialysis training, the training shall be provided by a registered nurse, who has had at least 12 months experience in dialysis and has completed a recognized training course specific to training patients for home dialysis.

(2) For a patient who performs self dialysis at home, the following services shall be provided:

(A) a yearly physical examination;

(B) monthly contact from facility staff by telephone calls or clinic visits;

(C) a clinic visit at least every three months;

(D) referral to appropriate interdisciplinary team members;

(E) routine laboratory work according to facility policy; and

(F) a mechanism to contact staff at any time in the event of an emergent need.

(3) The facility shall provide directly or under arrangement the following services.

(A) For hemodialysis, the required services are:

(i) surveillance of the patient's home adaptation, including provisions for visits to the home;

(ii) consultation for the patient with a registered nurse, social worker and a dietitian;

(iii) a record keeping system which assures continuity of care;

(iv) installation and maintenance of equipment;

(v) testing and appropriate treating of the water used for dialysis; and

(vi) ordering of supplies on an ongoing basis.

(B) For continuous ambulatory peritoneal dialysis, the required services are:

(i) consultation for the patient with a registered nurse, a social worker and a dietitian;

(ii) a record keeping system which assures continuity of care; and

(iii) ordering of supplies on an ongoing basis.

(C) For continuous cycling peritoneal dialysis, the required services are:

(i) surveillance of the patient's home adaptation, including provisions for visits to the home;

(ii) consultation for the patient with a registered nurse, a social worker and a dietitian;

(iii) a record keeping system which assures continuity of care;

(iv) installation and maintenance of equipment; and

(v) ordering of supplies on an ongoing basis.

(l) Laboratory services. A facility that provides laboratory services shall comply with the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all facilities that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(m) Illegal remuneration prohibited. A facility shall not violate the Health and Safety Code, §161.191, et seq relating to the prohibition on illegal remuneration for the purpose of securing or soliciting patients or patronage.

(n) Do-not-resuscitate orders. The facility shall comply with the Health and Safety Code, Chapter 674 relating to out-of-hospital do-not-resuscitate orders.

§117.44. Qualifications of staff.

(a) General.

(1) A written orientation program to familiarize all new employees (including office staff) with the facility, its policies, and job responsibilities shall be developed and implemented.

(2) In order to assure that each new direct patient care staff member is provided sufficient time to become familiar with the facility, the orientation program provided by the facility shall be a minimum time of two weeks for individuals with previous dialysis experience. For new direct patient care staff members with no previous dialysis experience, the orientation program shall be two weeks plus additional orientation time as determined by the facility.

(3) A facility shall provide registered nurses with no previous dialysis experience an orientation program of a minimum of six weeks. For these registered nurses, the six-week orientation program shall contain at least the following subject content:

(A) fluid, electrolyte and acid-base balance;

(B) kidney disease and treatment;

(C) dietary management of kidney disease;

(D) principles of dialysis;

(E) dialysis technology;

(F) venipuncture technique;

(G) care of the dialysis patient;

(H) psychological, social, financial, and physical complications of long-term dialysis;

(I) prevention of hepatitis and other infectious diseases; and

(J) risks and benefits of reuse (if reuse is practiced).

(4) Each licensed nurse and dialysis technician shall demonstrate competency through written and skills testing annually. Evidence of competency shall be documented in writing and maintained in personnel files.

(5) A facility shall maintain documentation to demonstrate that each staff member providing patient care completes at least five hours of continuing education related to end stage renal disease annually. Continuing education may be provided by facility staff.

(b) Medical staff.

(1) Each physician on the medical staff shall have a current license to practice medicine in the State of Texas.

(2) The governing body of a facility shall designate a medical director.

(3) The members of the medical staff may include nephrologists and other physicians with training or demonstrated experience in the care of end stage renal disease patients.

(4) If an advanced nurse practitioner or physician assistant is utilized to augment physician services, such individuals shall meet the requirements established by the Board of Nurse Examiners (for an advanced nurse practitioner) or the Board of Medical Examiners (for a physician assistant).

(c) Nursing staff.

(1) Each licensed nurse shall have a current Texas license to practice nursing.

(2) Each licensed nurse assigned charge responsibilities shall have six months experience in hemodialysis obtained within the last 24 months.

(3) If patient self-care training is provided, a registered nurse who has at least 12 months experience in dialysis obtained within the last 24 months or has completed a recognized training course specific to training patients for home dialysis shall be responsible and provide training to the patient or family. When other personnel assist in the training, supervision by the registered nurse shall be demonstrated.

(d) Nutritional staff. Each dietitian shall be licensed in Texas, be eligible for registration by the American Dietetic Association and have one year of experience in clinical dietetics.

(e) Social services staff. Each social worker shall be licensed under the Human Resources Code, Chapter 50 and hold a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

(f) Staff responsible for the water treatment system.

(1) Facility staff responsible for the water treatment system shall demonstrate understanding of the risks to patients of exposure to water which has not been treated so as to remove contaminants and impurities. Documentation of training to assure safe operation of the water treatment system shall be maintained for each individual responsible for the operation of the system.

(2) Only individuals qualified by training, education, or experience may repair or replace components of the water treatment system. Documentation of such training to qualify these persons shall be maintained on file in the facility.

(g) Staff responsible for equipment maintenance and repair. Staff providing equipment maintenance and repair shall have successfully completed a training course and demonstrated competency in providing maintenance and repair for the equipment being serviced. The training course shall include at least the following components:

(1) prevention of transmission of hepatitis through dialysis equipment;

(2) safety requirements of dialysate delivery systems;

(3) bacteriologic control;

(4) water quality standards; and

(5) repair and maintenance of dialysis and other equipment in use.

§117.45. Clinical Records.

(a) A facility shall establish and maintain a clinical record system to assure that the care provided to each patient is completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information.

(1) All information shall be centralized in the patient's clinical record and be protected against loss or damage.

(2) The facility shall provide an area for clinical records storage which is separate from all patient treatment areas. The clinical records area shall have adequate space for reviewing, dictating, sorting, or recording records. If electronic imaging devices are employed (i.e., microfilm or optical disc), the clinical records area shall have adequate space for transcribing records in the electronic format.

(3) The facility shall ensure that each patient's personal and medical records are treated with confidentiality.

(4) Signature stamps may not be used to authenticate medical record entries.

(5) Computerized records shall meet all requirements of paper records including protection from casual access and retention for the specified period. Systems shall assure that entries regarding the delivery of care may not be altered without evidence and explanation of such alteration.

(6) Inactive clinical records may be preserved on microfilm, optical disc or other electronic means as long as the record is readily retrievable for review by the department or the department's designee.

(7) Each clinical record shall include:

(A) identifying information;

(B) consents and notifications;

(C) physician orders;

(D) progress notes;

(E) problem list;

(F) medical history and physical;

(G) professional assessments by the registered nurse, social worker, and dietitian;

(H) medication record to include medications given during treatment (which may be listed on the treatment record) and a listing of medications the patient takes at home;

(I) transfusion record;

(J) laboratory reports;

(K) diagnostic studies;

(L) hospitalization records;

(M) consultations;

(N) record of creation and revision of access for dialysis;

(O) patient care plans;

(P) evidence of patient education;

(Q) daily treatment records; and

(R) discharge summary, if applicable.

(b) A patient's medical history and physical shall be completed within seven days prior to or on the day of admission to the facility, and available to the treatment staff.

(c) Progress notes shall provide an accurate picture of the progress of the patient, reflecting changes in patient status, plans for and results of changes in treatment, diagnostic testing, consultations, and unusual events. Each of the interdisciplinary team members shall record the progress of the patient as indicated by any change in the patient's medical, nutritional, or psychosocial condition or at least every six months.

(d) The patient's condition and response to treatment shall be noted on the daily treatment record.

(e) Clinical records of transient patients shall include, at a minimum, orders for treatment in this facility, laboratory reports performed within a month of treatment at this facility including hepatitis B antigen status, the most current patient care plan and treatment records from the home facility, and records of care and treatment at this facility.

(f) Clinical records shall be completed within 30 days after discharge. The discharge summary shall clearly identify the disposition of the patient and include the final diagnosis or cause of death, date of discharge or death, and location of death.

(g) Clinical records are the property of the facility and shall not be removed from the premises except by subpoena or court order, or for protection in disaster situations.

(h) Copies of pertinent portions of a patient's record shall be provided when the patient is admitted to an inpatient unit or transferred to another outpatient facility. The records provided shall include, at a minimum, the most current orders for dialysis treatment, the last three treatment records, the most current patient care plan, and the most current progress note from each member of the interdisciplinary team. If the patient is transferred to another outpatient facility, copies of the most recent history and physical and assessment of each member of the interdisciplinary team shall also be provided.

(i) Original records shall be retained by a facility for a minimum of ten years after the discharge of the patient. The facility may not destroy clinical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(j) If a facility ceases operation, there shall be an arrangement for the preservation of records to insure compliance with this section. The facility shall send the department written notification of the location of the clinical records and the name and address of the clinical records custodian.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604557 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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Subchapter E. Dialysis Technicians

- **25 TAC §§117.61-117.65**

The new rules are proposed under the Health and Safety Code, §§251.003, 251.014, and 251.032, which provides the board with authority to adopt rules to establish minimum standards regarding the issuance, renewal, denial, suspension, and revocation of an ESRD license; protection of the health and safety of an ESRD facility patient, including the qualifications and supervision of the professional staff (including physicians) and other personnel, the equipment used by the facility, the sanitary and hygienic conditions in the facility, quality assurance for patient care, the provision and coordination of treatment and services by the facility, clinical records maintained by the facility, design and space requirements for safe access and ensuring patient privacy, indicators of quality of care, and water treatment and reuse by the facility; the curricula and instructors used to train individuals to act as dialysis technicians; and the determination of the competency of individuals who have been trained as dialysis technicians; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed rules will affect the Health and Safety Code, Chapter 251.

§117.61. General Requirements.

(a) An individual may not act as a dialysis technician unless that individual is trained and competent under this subchapter.

(b) Trainees shall be identified as such during any time spent in the patient treatment area.

(c) Until the successful completion of the competency evaluation, the trainee may provide patient care only as part of the training program and under the immediate supervision of a registered nurse or an assigned preceptor. A preceptor shall be a licensed nurse or dialysis technician who has one year of experience in hemodialysis obtained within the last 24 months, a recommendation by the supervising nurse to be a preceptor and a current competency skills checklist on file in the facility.

§117.62. Training Curricula and Instructors.

(a) Specific objectives for training curricula. Each training program for dialysis technicians shall develop a written curriculum with objectives specified for each section.

(b) Components of training curricula. The training curricula for dialysis technicians shall include the following minimum components:

(1) introduction to dialytic therapies to include history and major issues as follows:

(A) history of dialysis;

(B) definitions and terminology;

(C) communication skills;

(D) ethics and confidentiality;

(E) multidisciplinary process;

(F) roles of other team members; and

(G) information about renal organizations and resources;

(2) principles of hemodialysis to include:

(A) principles of dialysis;

(B) access to the circulatory system; and

(C) anticoagulation, local anesthetics, and normal saline;

(3) understanding the individual with kidney failure to include:

(A) basic renal anatomy, physiology, and pathophysiology;

(B) the effect of renal failure on other body systems;

(C) symptoms and findings related to the uremic state;

(D) modes of renal replacement therapy, including transplantation;

(E) basic renal nutrition;

(F) basic psychosocial aspects of end stage renal disease (ESRD);

(G) medications commonly administered to patients with ESRD;

(H) confidentiality of patient personal and clinical records;

(I) professional conduct;

(J) patient rights and responsibilities; and

(K) rehabilitation;

(4) dialysis procedures to include:

(A) using aseptic technique;

(B) technical aspects of dialysis, operation and monitoring of equipment, initiation and termination of dialysis;

(C) delivering an adequate dialysis treatment and factors which may result in inadequate treatment;

(D) observing and reporting patient reactions to treatment;

(E) glucose monitoring and hemoglobin/hematocrit monitoring;

(F) emergency procedures and responses such as cardiopulmonary resuscitation, air embolism management, and response to line separation and hemolysis;

(G) external and internal disasters, fire, natural disasters, and emergency preparedness; and

(H) safety, quality control, and continuous quality improvement;

(5) hemodialysis devices to include:

(A) theory and practice of conventional, high efficiency, and high flux dialysis;

(B) dialysate composition, options, indications, complications, and safety;

(C) monitoring and safety; and

(D) disinfection of equipment;

(6) water treatment to include:

(A) standards for water treatment used for dialysis as described in the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the American Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 400, Arlington, Virginia 22201;

(B) systems and devices;

(C) monitoring; and

(D) risks to patients of unsafe water;

(7) reprocessing, if the facility practices reuse, to include:

(A) principles of reuse;

(B) safety, quality control, universal precautions, and water treatment; and

(C) standards for reuse as described in the American National Standard, Reuse of Hemodialyzers, 1993 Edition, published by the AAMI;

(8) patient teaching to include:

(A) the role of the technician in supporting patient education goals; and

(B) adult education principles;

(9) infection control and safety to include:

(A) risks to patients of nosocomial infections, accidents, and errors in treatment;

(B) universal precautions, aseptic technique, sterile technique, and specimen handling;

(C) basic bacteriology and epidemiology;

(D) risks to employees of blood and chemical exposure; and

(E) electrical, fire, disaster, environmental safety, and hazardous substances; and

(10) quality assurance and continuous quality improvement (QA/CQI) to include:

(A) role of the technician in quality assurance activities;

(B) principles of QA/CQI; and

(C) the importance of ongoing quality control activities in assuring safe dialysis treatments are provided to patients.

(c) Additional responsibilities.

(1) If a dialysis technician is to assist with training or treatment of peritoneal dialysis patients, the following content must also be included:

(A) principles of peritoneal dialysis;

(B) sterile technique;

(C) peritoneal dialysis delivery systems;

(D) symptoms of peritonitis; and

(E) other complications of peritoneal dialysis.

(2) If a dialysis technician, other than a licensed vocational nurse (LVN), is to cannulate access or administer normal saline, heparin, or lidocaine, the following content must be included:

(A) access to the circulation to include:

(i) fistula: creation, development, needle placement, and prevention of complications;

(ii) grafts: materials used, creation, needle placement, and prevention of complications; and

(iii) symptoms to report;

(B) safe administration of medications to include:

(i) identifying the right patient;

(ii) assuring the right medication;

(iii) measuring the right dose;

(iv) ascertaining the right route; and

(v) checking the right time for administration;

(C) administration of normal saline to include:

(i) reasons for administration;

(ii) potential complications;

(iii) administration limits; and

(iv) information to report and record;

(D) administration of heparin to include:

(i) reasons for administration;

(ii) methods of administration;

(iii) preparation of ordered dose;

(iv) potential complications; and

(v) information to report and record; and

(E) administration of lidocaine to include:

(i) reasons for administration;

(ii) method of administration;

(iii) preparation of ordered dose;

(iv) potential complications and risks; and

(v) information to report and record.

(d) Roster. A roster of attendance for each training class shall be maintained by the instructor.

(e) Trainee evaluation. Each trainee shall be evaluated on a weekly basis during the training program to ascertain the trainee's progress.

(f) Written examination. The dialysis technician trainee shall complete a written examination. The examination shall encompass the content required in subsection (b) of this section. If the dialysis technician trainee will cannulate access and administer medications, the examination shall encompass the content described in subsection (c) of this section. A score of 80% is required on the written examination

(s) covering the required content.

(g) Instructors. An instructor for the course to train an individual as a dialysis technician shall be:

(1) a physician who qualifies as a medical director; or

(2) a registered nurse with at least 12 months of experience in hemodialysis obtained within the last 24 months and a current competency skills checklist on file in the facility or a registered nurse instructor of a dialysis technician training course of an accredited college or university.

(h) Preceptors. Licensed nurses and patient care technicians who have a least one year of experience in hemodialysis and a current competency skills checklist on file in the facility may assist in didactic sessions and serve as preceptors.

(i) Length of training. For persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of directly supervised clinical training shall be required. Training programs for dialysis technician trainees who have previous direct patient care experience may be shortened if competency with the required knowledge and skills is demonstrated, but may not be less than a total of 80 clock hours of combined classroom education and clinical training.

§117.63. Competency Evaluation.

(a) Each facility shall appoint a training review committee to consist of at least the medical director; supervising nurse; chief technician; and administrator. This committee shall review the training records of each trainee, including tests and skills checklists, hear comments from the training instructor(s) and preceptor(s), and validate that the trainee has successfully completed the training program.

(b) An individual who completed the facility's orientation program and was determined by the facility to be qualified to deliver dialysis patient care before September 1, 1996, may qualify as a dialysis technician by passing the written examination described in §117. 62(f) of this title (relating to Training Curricula and Instructors) and demonstrating competency by completion of the skills checklist described in subsection (c) of this section.

(c) The supervising nurse or a registered nurse who qualifies as an instructor under §117.62(e)(2) of this title shall complete a competency skills checklist to document each dialysis technician trainee's knowledge and skills for the following allowed acts:

(1) assembling necessary supplies;

(2) preparing dialysate according to procedure and dialysis prescription;

(3) assembling and preparing the dialysis extracorporeal circuit correctly;

(4) securing the correct dialyzer for the specific patient;

(5) installing and rinsing dialyzer and all necessary tubing;

(6) testing monitors and alarms, conductivity, and (if applicable) presence and absence of residual sterilants;

(7) setting monitors and alarms according to facility and manufacturer protocols;

(8) obtaining predialysis vital signs, weight, and temperature according to facility protocol and informing the registered nurse of unusual findings;

(9) inspecting access for patency and, after cannulation is performed and heparin administered, initiating dialysis according to the patient's prescription, observing universal precautions, and reporting unusual findings to the registered nurse;

(10) adjusting blood flow rates according to established protocols and the patient's prescriptions;

(11) calculating and setting the dialysis machine to allow fluid removal rates according to established protocols and the patient's prescription;

(12) monitoring the patient and equipment during treatment, responding appropriately to patient needs and machine alarms, and reporting unusual occurrences to the registered nurse;

(13) changing fluid removal rate, changing patient position, and administering replacement normal saline as directed by the registered nurse, physician order, or facility protocol;

(14) documenting findings and actions per facility protocol;

(15) describing appropriate response to dialysis-related emergencies such as cardiac or respiratory arrest, needle displacement or infiltration, clotting, blood leaks, or air emboli and to nonmedical emergencies such as power outages or equipment failure;

(16) discontinuing dialysis and establishing hemostasis:

(A) inspecting, cleaning, and dressing access according to facility protocol; and

(B) reporting unusual findings and occurrences to the registered nurse;

(17) obtaining and recording post dialysis vital signs, temperature, and weight and reporting unusual findings to the registered nurse;

(18) discarding supplies and sanitizing equipment and treatment chair according to facility protocol;

(19) communicating the patient's emotional, medical, psychological, and nutritional concerns to the registered nurse;

(20) obtaining current certification in cardiopulmonary resuscitation; and

(21) maintaining professional conduct, good communication skills, and confidentiality in the care of patients.

(d) For dialysis technician trainees who will be assisting with training or treatment of peritoneal dialysis patients, the following checklist shall be completed satisfactorily:

(1) assisting patients in ordering supplies;

(2) making a dialysate exchange (draining and refilling the peritoneal space with dialysate) to include continuous ambulatory peritoneal dialysis exchange procedures and initiation or discontinuation of continuous cycling peritoneal dialysis;

(3) observing peritoneal effluent;

(4) knowing what observations to report;

(5) collecting dialysate specimen;

(6) performing a transfer tubing change; and

(7) setting up and operating continuous cycling peritoneal dialysis equipment.

(e) For dialysis technician trainees who will be cannulating dialysis access and administering heparin and normal saline, the following checklist shall also be completed satisfactorily:

(1) cannulation to include:

(A) inspecting the access for patency;

(B) preparing the skin;

(C) using aseptic technique;

(D) placing needles correctly;

(E) establishing blood access;

(F) replacing needles;

(G) knowing when to call for assistance; and

(H) securing needles;

(2) administration of heparin to include:

(A) checking the patient's individual prescription;

(B) preparing the dose;

(C) labeling the prepared syringe;

(D) administering the dose; and

(E) observing for complications;

(3) administration of normal saline to include:

(A) understanding unit protocol;

(B) checking the patient's prescription;

(C) recognizing signs of hypotension;

(D) notifying the registered nurse;

(E) administering normal saline; and

(F) rechecking vital signs; and

(4) administration of lidocaine to include:

(A) checking the patient's prescription;

(B) identifying the correct vial of medication;

(C) preparing the dose;

(D) administering the dose; and

(E) observing for complications.

(f) If a dialysis technician other than an LVN is to cannulate a dialysis access or administer normal saline, heparin or lidocaine, the medical director must verify and document competency of the dialysis technician to perform these tasks and delegate authority to the technician in accordance with the Medical Practice Act, Article 4495b, §3.06(d).

§117.64. Documentation of Competency.

(a) A training program is required to provide a document to the trainee on the successful completion of the training program and competency evaluation. This document shall indicate that the program completed met the requirements of this subchapter.

(b) The document described in subsectio7n (a) of this section may be accepted by another facility that may later employ the dialysis technician. The competency evaluation documentation may only be accepted for a period of six months after the date of completion. After that date, a competency skills checklist shall be recompleted in accordance with §117.63 (c), (d), and (e) of this title (relating to Competency Evaluation).

§117.65. Prohibited Acts.

(a) Performance of the following acts by any dialysis technician is prohibited:

(1) patient assessment;

(2) initiation of patient education; or

(3) alteration of ordered treatment, including shortening of the treatment time.

(b) Performance of the following acts by a dialysis technician who is not a licensed vocational nurse is prohibited:

(1) initiation of dialysis via a central catheter;

(2) administration of medications other than normal saline, heparin or lidocaine, which may only be administered in the course of a routine dialysis treatment;

(3) administration of blood or blood products;

(4) performance of non-access site venipuncture;

(5) performance of arterial puncture;

(6) acceptance of physician orders; or

(7) provision of hemodialysis treatment to pediatric patients under 12 years of age or under 30 kilograms.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604558 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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Subchapter F. Enforcement

• 25 TAC §§117.81-117.85

The new rules are proposed under the Health and Safety Code, §§251. 003, 251.014, and 251.032 which provides the board with authority to adopt rules to establish minimum standards regarding the issuance, renewal, denial, suspension, and revocation of an ESRD license; protection of the health and safety of an ESRD facility patient, including the qualifications and supervision of the professional staff (including physicians) and other personnel, the equipment used by the facility, the sanitary and hygienic conditions in the facility, quality assurance for patient care, the provision and coordination of treatment and services by the facility, clinical records maintained by the facility, design and space requirements for safe access and ensuring patient privacy, indicators of quality of care, and water treatment and reuse by the facility; the curricula and instructors used to train individuals to act as dialysis technicians; and the determination of the competency of individuals who have been trained as dialysis technicians; and under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The proposed rules will affect the Health and Safety Code, Chapter 251.

§117.81. Corrective Action Plan.

(a) Medical review board. The medical review board (MRB) may assist the Texas Department of Health (department) in determining the corrective action required when the results of an inspection or an annual report indicate that significant problems potentially impacting patient outcomes exist.

(1) At the conclusion of an on-site inspection, the department may refer a facility to the MRB if the results of the inspection present concerns related to patient outcomes.

(2) The MRB will review data from facilities' annual reports and identify to the department facilities with potential quality issues. These facilities may be requested to provide additional information or may be subject to an on-site inspection, corrective action plan or enforcement action.

(b) Corrective action plan. A corrective action plan may be used in accordance with §251.061 of the statute. This subsection is consistent with §251.061 of the statute.

(1) The department may use a corrective action plan as an alternative to enforcement action under the statute.

(2) Before taking enforcement action, the department shall consider whether the use of a corrective action plan is appropriate. In determining whether to use a corrective action plan, the department shall consider whether:

(A) the facility has violated the statute or this chapter and the violation has resulted in a adverse patient result;

(B) the facility has a previous history of lack of compliance with the statute, this chapter or a previously executed corrective action plan; or

(C) the facility fails to agree to a corrective action plan.

(3) The department may use a level one, level two, or level three corrective action plan, as determined by the department in accordance with this subsection, after inspection of the facility.

(4) A level one corrective action plan is appropriate if the department finds that the facility is not in compliance with the statute or this chapter, but the circumstances are not serious or life-threatening.

(A) Under a level one corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department.

(B) The department or a monitor may supervise the implementation of the plan.

(5) A level two corrective action plan is appropriate if the department finds that the facility is not in compliance with the statute or this chapter and the circumstances are potentially serious or life-threatening or if the department finds that the facility failed to implement or comply with a level one corrective action plan.

(A) Under a level two corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department.

(B) The department or a monitor shall supervise the implementation of the plan. Supervision of the implementation of the plan may include on-site supervision, observation, and direction.

(6) A level three corrective action plan is appropriate if the department finds that the facility is not in compliance with the statute or this chapter and the circumstances are serious or life-threatening or if the department finds that the facility failed to comply with a level two corrective action plan or to cooperate with the department in connection with that plan.

(A) Under a level three corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department.

(B) In connection with requiring a level three corrective action plan, the department may seek the appointment of a temporary manager under §117.82 of this title (relating to Appointment of a Temporary Manager).

(7) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under the Government Code, Chapter 552 or other applicable law.

(8) The department shall select the monitor for a corrective action plan. The monitor shall be an individual or team of individuals and may include a professional with end stage renal disease experience or a member of the MRB.

(A) The monitor may not be or include individuals who are current or former employees of the facility that is the subject of the corrective action plan or of an affiliated facility.

(B) The purpose of the monitor is to observe, supervise, consult, and educate the facility and the employees of the facility under a corrective action plan.

(C) The facility shall pay the cost of the monitor.

§117.82. Appointment of Temporary Manager.

(a) Appointment by agreement. A person holding a controlling interest in a facility may, at any time, request the Texas Department of Health (department) to assume the management of the facility through the appointment of a temporary manager in accordance with §251.091 of the statute.

(1) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(2) An agreement under this subsection shall:

(A) specify all terms and conditions of the temporary manager's appointment and authority; and

(B) preserve all rights of the individuals served by the facility granted by law.

(3) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(4) The appointment terminates at the time specified by the agreement.

(b) Involuntary appointment.

(1) Under §251.092 of the statute, the department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a temporary manager to manage a facility if:

(A) the facility is operating without a license;

(B) the department has denied, suspended or revoked the facility's license but the facility continues to operate;

(C) the license denial, suspension or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(D) the department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility;

(E) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(F) the department determines a level three corrective action plan under §117.81(b) (6) of this title (relating to Corrective Action Plan) that includes appointment of a temporary manager is necessary to address serious or life-threatening conditions at the facility.

(2) After a hearing, a court shall appoint a temporary manager to manage a facility if the court finds that the appointment of the manager is necessary.

(A) The court order shall address the duties and authority of the temporary manager, which may include management of the facility and the provision of dialysis services to facility patients until specified circumstances occur, such as new ownership of the facility, compliance with the statute or this chapter, or closure of the facility.

(B) If possible the court shall appoint as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(C) Venue for an action under this subsection is in Travis County.

(3) A temporary manager appointed under this subsection is entitled to a reasonable fee as determined by the court in accordance with §251.093 of the statute.

(A) The fee shall be paid by the facility.

(B) The temporary manager may petition the court to order the release to the manager of any payment owed the manager for care and services provided to patients of the facility if the payment has been withheld.

(C) Withheld payments that may be released may include payments withheld by a governmental agency or other entity before or during the temporary manager, including:

(i) Medicaid, Medicare, or insurance payment; or

(ii) payments from another third party.

§117.83. Disciplinary Action.

(a) The Texas Department of Health (department) may deny, suspend, or revoke a license if the applicant or facility:

(1) fails to comply with any provision of the statute;

(2) fails to comply with any provision of this chapter;

(3) commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to this chapter;

(4) has aided, abetted or permitted the commission of an illegal act; or

(5) fails to comply with an order of the commissioner of health or another enforcement procedure under the statute.

(b) The department may deny a license if the applicant or licensee fails to provide the required license fee, application or renewal information.

(c) The department may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensed facility.

(1) In determining whether a criminal conviction directly relates, the department shall consider the provisions of Texas Civil Statutes, Article 6252-13c.

(2) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(A) a misdemeanor violation of the statute;

(B) a conviction relating to deceptive business practices;

(C) a misdemeanor or felony involving moral turpitude;

(D) a misdemeanor of practicing any health-related profession without a required license;

(E) a conviction under any federal or state law relating to drugs, dangerous drugs or controlled substances;

(F) an offense under the Texas Penal Code, Title 5, involving a patient or a patient of any health care facility, a home and community support services agency or a health care professional; or

(G) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate a facility if action by the department will promote the intent of the statute, this chapter, or Texas Civil Statutes, Article 6252-13c.

(3) Upon a licensee's felony conviction, felony probation revocation, revocation or parole, or revocation of mandatory supervision, the license shall be revoked.

(d) If the department proposes to deny, suspend, or revoke a license, the department shall notify the facility by certified mail, return receipt requested, or personal delivery of the reasons for the proposed action and offer the facility an opportunity for a hearing.

(1) The facility shall request a hearing within 30 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the tenth day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(2) The request for a hearing shall be in writing and submitted to the Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(3) A hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(4) If the facility does not request a hearing in writing within 30 calendar days of receipt of the notice, the facility is deemed to have waived the opportunity for hearing and the proposed action shall be taken.

(5) If the facility fails to appear or be represented at the scheduled hearing, the facility has waived the right to a hearing and the proposed action shall be taken.

(e) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. An authorized representative of the department shall investigate prior to making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to the department.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(f) If the department revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(g) Upon revocation or nonrenewal, a license holder shall return the license to the department.

§117.84. Administrative Penalties.

(a) Under §§251. 066-251.070 of the statute, the Texas Department of Health (department) may assess an administrative penalty against a person who violates the statute or this chapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty are subject to the Administrative Procedure Act, Government Code, Chapter 2001.

(e) If after investigation of a possible violation and the facts surrounding that possible violation the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty, based on the factors listed in subsection (c)(2) of this section; and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

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

(g) If the person notified of the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(h) If the person notified fails to respond in a timely manner to the notice or if the person requests a hearing, the commissioner's designee shall:

(1) set a hearing;

(2) give written notice of the hearing to the person; and

(3) designate a hearings examiner to conduct the hearing. The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(i) Based upon the findings of fact and conclusions of law and the recommendation of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred. The commissioner or the commissioner's designee shall give notice of the commissioner's order to the person notified. The notice shall include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the commissioner's order.

(j) Not later than the 30th day after the date the decision is final, the person shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. Within the 30-day period, a person who acts under this subparagraph may:

(A) stay enforcement of the penalty by:

(i) paying the amount of the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(ii) giving a copy of the affidavit to the department by certified mail.

(k) If the department receives a copy of an affidavit under subsection (j)(3)(B) of this section, the department may file with the court, within five days after the date the copy is received, a contest to the affidavit.

§117.85. Recovery of costs.

(a) The Texas Department of Health (department) may assess reasonable expenses and costs against a person in a administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person.

(b) The person shall pay expenses and costs assessed under this section not later than the 30th day after the date of a board order requiring the payment of expenses and costs is final.

(c) The department may refer the matter to the attorney general for collection of the expenses and costs.

(d) If the attorney general brings an action against a person under §§251.063 or 251.065 of the statute or to enforce an administrative penalty assessed, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(e) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604559 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 7. Memoranda of Understanding

- **30 TAC §7.101**

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §7.101, concerning entering into a Memorandum of Understanding (MOU) with the Texas Department of Commerce (TDOC). The addition of this section will satisfy statutory requirements established in Texas Health and Safety Code, §382.0365(e) and Texas Government Code, §§481.028, 481.123, 481.129.

The purpose of the MOU is to coordinate assistance to small businesses applying for environmental permits. The MOU will allow the TNRCC and the TDOC to coordinate their activities and programs directed toward small businesses in a more efficient manner.

The agency has conducted a Takings Impact Assessment and determined this rule will have no affect on private real property.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Minick 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 improvements in the coordination of permitting assistance, streamlining of permit applications, and transfer of financial information between the agencies for the benefit of small businesses. There will be no costs or adverse impacts anticipated for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

A public hearing on the proposal will be held May 2, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or e-mailed to LMARTIN@SMTPGATE.TNRCC.STATE.TX.US. All comments should reference Rule Log Number 95169-007-AD. Comments must be received by 5:00 p.m., May 16, 1996. For further information, please contact Lisa Evans, Air Policy and Regulations Division, (512) 239-5885.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new section is proposed under Texas Water Code, §§5.103, 5.105, 13. 041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401. 011, 401.051, and 401.412, which provide the TNRCC with the authority to adopt the rules necessary to carry out its powers and duties.

The new section implements Texas Health and Safety Code, §382.0365(e) and Texas Government Code, §481.028(b)(6).

§7.101. Memorandum of Understanding between the Texas Department of Commerce and the Texas Natural Resource Conservation Commission.

(a) Need for agreement. Texas Health and Safety Code, §382.0365(e) directs the Texas Natural Resource Conservation Commission (TNRCC) to enter into a Memorandum of Understanding (MOU) with the Texas Department of Commerce (TDOC) to coordinate assistance to any small business applying for permits from the commission. Texas Government Code, §481.028(b)(6) directs the TDOC to develop an MOU with the TNRCC to cooperate in program planning and budgeting regarding small business finance and permits, the marketing of recyclable products, and business permits.

(b) Responsibilities.

(1) The TNRCC:

(A) is the agency of the state given primary responsibility for implementing the Constitution and laws of this state relating to the conservation of natural resources and the protection of the environment;

(B) sets standards, criteria, levels, and limits for pollution to protect the air and water quality of the state's natural resources and the health and safety of the state's citizens;

(C) protects the air, land, and water resources through the development, implementation, and enforcement of control programs as necessary to satisfy all federal and state environmental laws and regulations;

(D) maintains a Small Business Assistance Program as defined in Texas Health and Safety Code, §382.0365;

(E) establishes programs designed to encourage Texas businesses to reduce, reuse, and recycle industrial and hazardous wastes; and

(F) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(2) The TDOC:

(A) is the state agency designated to promote economic development and tourism and provide business services for small business owners;

(B) serves as an information center and referral agency for information on various state and federal programs affecting small businesses, including local governments, local economic development organizations, and small business development centers to promote business development in the state;

(C) supports small business ownership and development for the state;

(D) collects, publishes, and disseminates information useful to small businesses, including data on employment and business activities and trends; and

(E) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(c) Activities.

(1) The TNRCC will, in a timely manner:

(A) refer small business owners to the TDOC for information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(B) provide the TDOC with information regarding environmental permitting processes, registration timelines, fee schedules, reporting requirements, pollution prevention techniques; as well as scheduled workshops, seminars, and conferences that educate small businesses on environmental concerns;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TDOC;

(D) maintain current information supplied by the TDOC on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(E) research the requirements and costs of pollution control equipment and environmental audits needed by small businesses for compliance with environmental regulations;

(F) train TDOC staff, as requested and subject to staff availability, on environmental regulations, environmental management techniques, and pollution prevention and recycling practices that apply to small businesses;

(G) share information with the TDOC to ensure non-duplication of agency efforts;

(H) provide the necessary permit applications and forms to the TDOC, upon request, so that the TDOC may complete a comprehensive application request by a business; and

(I) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TDOC any report required by Texas Government Code, §481.129.

(2) The TDOC will, in a timely manner:

(A) refer small business owners and prospective owners to the TNRCC Small Business Assistance Program for help with environmental permitting, registration, compliance, and reporting requirements and pollution prevention techniques;

(B) provide information to the TNRCC regarding information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TNRCC;

(D) maintain current information supplied by the TNRCC on the application process and timelines for environmental permits, registrations, certifications, or other general environmental compliance information needed to operate a place of business in Texas;

(E) incorporate the TNRCC information concerning businesses' rights, obligations, and requirements under environmental regulations into the general material distributed by the TDOC to people establishing business operations in Texas;

(F) identify and provide information to the TNRCC on financial assistance programs that make loans to small businesses for the purchase of new equipment or process upgrades necessary to operate in compliance with environmental regulations;

(G) serve as a point of contact, when requested, between the TNRCC and the Small Business Administration, Farmers Home Administration, the Small Business Development Centers, the Texas Manufacturing Assistance Centers, Community Development Corporations, and other business and financial assistance programs;

(H) maintain the information produced by the TNRCC about the impacts of environmental regulations on the state's economy and small business community;

(I) share information with the TNRCC to ensure non-duplication of agency efforts; and

(J) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TNRCC any report required by Texas Government Code, §481.129.

(d) Review of MOU. This memorandum shall terminate August 31, 1999, unless extended by mutual agreement. The TNRCC and the TDOC by rule shall adopt the memorandum and all revisions to the memorandum.

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

Issued in Austin, Texas, on March 27, 1996.

TRD-9604379 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: July 10, 1996

For further information, please call: (512) 239-1966

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Chapter 114. Control of Air Pollution From Motor Vehicles

• 30 TAC §114.21

(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 Natural Resources Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §114.21, concerning the Employer Trip Reduction (ETR) program. This action is proposed to remove a regulation no longer required due to an amendment to the Federal Clean Air Act (FCAA).

The ETR rule was adopted in October 1992, to meet the mandate established in the FCAA Amendments of 1990 (§182 (d)(1)(B)). This section of the FCAA required states with severe or extreme ozone nonattainment areas to develop and implement ETR programs in those areas. For Texas, the only area affected was the Houston/Galveston area. The rule required large employers (those with 100 or more employees) to implement trip reduction programs that would increase the average passenger occupancy rate of vehicles arriving at the workplace during the peak travel period by 25% above the average for the area.

Congress amended the FCAA in December of 1995 by passing H.R. 325. This amendment made the ETR program optional for states. As a result, the commission is initiating actions to remove the ETR program from the State Implementation Plan (SIP) and to repeal the rule. As such, large employers will no longer have to implement trip reduction programs. The Houston/Galveston ozone nonattainment area will, however, through the coordination of the Houston-Galveston Area Council, implement a voluntary regional initiative to reduce vehicle trips.

Steven Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed repeal is in effect there will be fiscal implications as a result of the repeal. There are no cost implications of the repeal for state government. There are no fiscal implications for local governments that are not subject to the existing ETR program requirements. Local governments that were subject to these requirements will realize potential savings on the costs associated with implementation of the trip reduction program, similar to any other employer subject to the section proposed to be repealed.

Mr. Minick also has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal will be more cost-effective control of air quality and the reduction of costs to large employers in air quality nonattainment areas. Employers will benefit through the removal of the requirement to maintain a trained Employee Transportation Coordinator (ETC) and the

need to dedicate people, time, or resources to the program. These cost savings will vary with the size of the work force of any business or employer, the type of business, and its location, among other factors. No estimate of the potential savings for affected employers has been made. Any costs incurred through voluntary compliance with the trip reduction program will be at the discretion of the employer electing to participate. There are no economic costs anticipated for any person affected by the repeal of the section.

The commission has prepared a Takings Impact Assessment for this action pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of this action is to repeal the ETR rule. Promulgation and enforcement of this action will not affect private real property.

Public hearings on this proposal will be held in Beaumont on May 6, 1996 at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; in Houston on May 7, 1996 at 2:00 and 7:00 p.m. in Conference Room A of the Houston-Galveston Area Council, 3555 Timmons Lane, Houston; in El Paso on May 8, 1996 at 6:00 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; and on May 9, 1996 at 1:00 p.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

Written comments may be mailed to Heather Evans, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 95155-114-AI. Comments must be received by 5:00 p.m., May 13, 1996. For further information, please contact Thomas Ortiz, Air Policy and Regulations Division, (512) 239-1054.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The repeal is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal implements the Health and Safety Code, §382.017.

§114.21. Employer Trip Reduction Program.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604420 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: July 31, 1996

For further information, please call (512) 239-1970

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TITLE 31. NATURAL RESOURCE AND CONSERVATION

Part I. General Land Office

Chapter 25. Beach Cleaning and Maintenance Assistance Program

• 31 TAC §§25.4, 25.6, 25.12, 25.13, 25.16

The Texas General Land Office proposes amendments to §§25.4, 25.6, 25. 12, 25.13 and 25.16, concerning the administration of the Beach Maintenance Fund Program (BMFP). These amendments are necessary to make Chapter 25 conform to amendments to the Texas Natural Resources Code, §61.076 (relating to the limitation on the state share), and the Tax Code, §156.2511 (concerning hotel occupancy tax), resulting from House Bill (HB) 2129 as passed by the 74th Legislature in 1995. These legislative changes to the Texas Natural Resources Code and the Tax Code provide an opportunity for eligible coastal municipalities (ECM) as defined by the Tax Code, §156.2511(1), to collect a refund based on the collection of hotel occupancy taxes received from hotels located in the ECM (hereafter referred to as the "tax refund"). The tax refund must be used to clean and maintain the public beaches in that ECM as mandated by the Tax Code, §156.2511. Other monies expended by local governments to clean and maintain the public beach may qualify for reimbursement through the BMFP. The amendments to these rules will clarify the relationship and the distinction between the BMFP reimbursement and the tax refund. Other amendments proposed by the Texas General Land Office streamline the BMFP process by: revising the time period for calculating expenditure history to conform to the end of the state's fiscal year; removing the requirement that an independent certified public accountant certify BMFP reimbursement applications as true and correct; and adding a provision which permits funds expended by local governments on beach nourishment projects to be considered for BMFP reimbursement.

The purpose of the Texas Natural Resources Code, Chapter 61, Subchapter C, is to allocate responsibility for cleaning the beaches of this state, and to preserve and protect local initiative in the maintenance and administration of Texas' public beaches. Pursuant to Texas Natural Resources Code, Chapter 61, the Texas General Land Office first adopted 31 TAC Chapter 25, related to the administration of the BMFP, in 1991. The BMFP is a state fund administered by the Texas General Land Office for the purpose of reimbursing eligible cities and counties. The Texas General Land Office calculates the amount allocated to each community using a formula based primarily on past expenditures for cleaning and maintaining gulf beaches and secondarily on the proportionate share of total linear footage of gulf beach cleaned and maintained.

The current period for calculation of expenditure history in §25.4 (concerning notification of availability of funds) is the 11 quarters (2-3/4 years) prior to June 1 of the state's fiscal year, which runs from September 1 to August 31. The Texas General Land Office uses a local government's expenditure history to calculate the appropriate reimbursement amount for the fiscal year for which an applicant seeks reimbursement. The Texas General Land Office adopted the 11 quarter time period to facilitate reimbursement by providing BMFP applicants the opportunity to submit their claims for reimbursement prior to the expiration of the state's fiscal year; however, most applicants prefer to submit their claims for BMFP reimbursement closer to the end of the state's fiscal year. The time period in §25.4 is changed to two fiscal years preceding the year for which the applicant seeks reimbursement. This change to the BMFP reimbursement filing procedure streamlines the program by conforming the time period to the end of the state's fiscal year. This change is expected to reduce paperwork, and minimize state and local government expenditures of time and resources.

Subsection (e) is added to §25.6 to require a local official designated by resolution of the appropriate local governing body to certify as true and correct the BMFP reimbursement application. Subsection 25.16(b) (concerning certification of expenses billed as true and correct) is deleted because such certification will now occur pursuant to new §25.6(e). This change eliminates the requirement that cities or counties which do not employ a staff auditor hire an independent auditor and reduces associated costs for local governments. This amendment will provide local governments the opportunity to designate a local official to certify BMFP program applications as true and correct.

In order to accommodate the deletion of §25.16(b), §25.16(c) is now subsection (b); §25.16(d) is now subsection (c); and §25.16(e) is now subsection (d).

Subsection (e) is added to §25.12 (concerning eligible costs) to indicate that funds expended by cities and counties on beach nourishment projects, conducted under the Texas Natural Resources Code, Chapter 33, Subchapter H, may be included as an eligible expense for the purpose of setting the two-thirds cap imposed by the Texas Natural Resources Code, §61.076(a), and §25.13(a) of this title, on the state's share of funds (comprised of BMFP reimbursements and tax refunds) refunded to individual local governments through the BMFP and the tax. This means that no local government may receive as its state's share more than two-thirds of the amount it spends to clean and maintain the public beach.

Subsection (c) is added to §25.13 to provide rules consistent with the HB 2129 amendments to the Tax Code, Chapter 156, Subchapter F, §156.2511, and the Texas Natural Resources Code, §61.076. The Comptroller of the State of Texas is responsible for disbursing tax refunds to ECM. The Texas General Land Office administers the BMFP and reimburses eligible cities and counties for expenditures on cleaning and maintaining gulf beaches. Although tax refunds received by local governments from the Comptroller's office must be spent on cleaning and maintaining the public beach, they are not eligible for BMFP reimbursement, nor are they included in the calculation of the two-thirds cap as prohibited by the HB 2129 amendment to the Texas Natural Resource Code, §61.076(c)(1). Therefore, any tax refund portion of local expenditures used to clean and maintain the beach is not included in the BMFP calculation. For example: if ECM#1 spends a total of $100 ($80 local expenditure and $20 tax refund) to clean and maintain the beach for Fiscal Year 1996, only $80 is eligible for BMFP reimbursement for Fiscal Year 1996.

John Hamilton, Texas General Land Office program director for the BMFP, has determined that for the first five-year period the rules are in effect there will be no significant fiscal impact on state or local government as a result of enforcing or administering the rules. The amendments to Chapter 25 of this title do not create additional criteria to the existing BMFP, nor do they result in additional responsibilities or duties for local governments seeking BMFP reimbursement.

Mr. Hamilton also has determined that for each year of the first five years the rules are in effect the public benefits anticipated as a result of enforcing these rules will be the upgrading of beach maintenance services and streamlining the BMFP reimbursement process for eligible local governments. There will be no cost of compliance for small businesses in the administration of these rules. There will be no cost of compliance for individuals in the administration of these rules.

Comments on the proposed amendments may be submitted to Mrs. Cheli Cook, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495, FAX: (512) 463-6311. Comments on the proposed amendments must be received by 5:00 p.m. on May 13, 1996.

The amendments are proposed under the Texas Natural Resources Code, §§61. 061 et seq, which provides the Texas General Land Office with the authority to allocate responsibility for cleaning the beaches of Texas and to preserve and protect local initiative in the maintenance and administration of beaches.

The Natural Resources Code, Chapter 61, Subchapter C, is affected by these proposed amendments.

§25.4. Notification of Available Funds.

(a) The agency shall use the following formula for calculating the amount of funds available to each city and county for the fiscal year **for which they seek reimbursement.** Seventy-five percent of funds available for distribution shall be allocated by determining each participant's proportionate share of total participant expenditures during the **two fiscal years** [11 quarters prior to June 1 of the fiscal year] preceding the year **for which** participant is applying for reimbursement. Twenty-five percent of the funds available for distribution shall be allocated by determining each participant's proportionate share of total linear footage of gulf beach which the participants will clean and maintain pursuant to project agreements authorized in §25.11 of this title (relating to Project Agreement).

(b) (No change.)

§25.6. Application for Funds Assistance.

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

(e) The contents of all applications submitted to the agency shall be certified true and correct by a local official designated by resolution of the appropriate local governing body.

§25.12. Eligible Costs.

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

(e) Costs incurred by coastal cities and counties in implementing beach nourishment projects, conducted under Texas Natural Resources Code, Chapter 33, Subchapter H, may qualify as eligible expenses under §25.13(a) of this title (relating to Extent of State Assistance) and for BMFP reimbursement subject to §25.3 of this title (relating to Administration of Funds).

§25.13. Extent of State Assistance.

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

(c) Monies received by an eligible coastal municipality under the Tax Code, §156.2511, shall be included as part of the state share as required by the Texas Natural Resources Code, §61.076(c)(2), and must be spent on cleaning and maintaining the beach as required by the Tax Code, §156.2511(b); however these funds are not eligible for reimbursement from the BMFP program as specifically prohibited by the Texas Natural Resource Code, §61.076(c)(1).

§25.16. Billing.

(a) Billing will consist of a breakdown of project cost elements and will be in a summary format requiring minimal supporting detail.

(b) **The agency reserves the right to require full documentation if deemed necessary.** [All expenses billed must be certified as true and correct by the county or city internal auditor and chief financial officer, or if the county or city does not have an internal auditor, by a certified independent public accountant to be chosen by the county or city and a chief financial officer.]

(c) **Billing records, certification, and all documentation substantiating billings will be maintained in the office of the county or city internal auditor or if the county or city does not have an internal auditor, in the office of its chief financial officer.** [The agency reserves the right to require full documentation if deemed necessary.]

(d) **All billing and certification documents will be provided by the agency.** [Billing records, certification, and all documentation substantiating billings will be maintained in the office of the county or city internal auditor or if the county or city does not have an internal auditor, in the office of its chief financial officer.]

[(e) All billing and certification documents will be provided by the agency.]

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604468 Gary Mauro
Commissioner, General Land Office
General Land Office

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 305-9129

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Part II. Texas Parks and Wildlife Department

Chapter 69. Resource Protection

The Texas Parks and Wildlife Department proposes repeal of §§69.20-69. 31 and new §§69.20-69.29 concerning fish and wildlife values. The department is authorized to seek civil restitution for fish, wildlife and animals which have been illegally killed, injured, damaged or taken.

Frequently large numbers of fish are killed by illegal discharges of wastewater or other types of pollution such as chemical spills. Civil restitution also may be sought by the department for fish and wildlife which are taken illegally by fishermen and hunters. The rule describes how the department will assign monetary value to fish and wildlife for the purpose of obtaining civil restitution.

New §69.20 (concerning Application) describes the circumstances which result in deaths of fish and wildlife for which civil restitution may be sought. New §69.21 (concering Definitions) provides definitions for those terms necessary to clarify the application of the rule. Proposed new §69.22 (concerning Wildlife Recovery Values) establishes the procedures for determining the monetary value of wildlife species exclusive of fish. New §69.23 (concerning Endangered Species) establishes means of determining additional values which would be assigned to endangered and threatened species. Proposed new §69.24 (concerning Basic Value-Aquatic Life) describes how the basic value for fish will be calculated. New §69.25 (concerning Aquatic life-Recovery Value) describes how the recovery value, including basic value and when appropriate, recreational value, will be calculated. New §69.26 (concerning Commercial Species - Recovery Value) describes how the civil restitution value for fish, shellfish and alligators sold commercially will be determined. Proposed new §69.27 (concerning Updating Existing Recovery Values) describes when the civil restitution values will be updated by the department. New §69.28 (concerning Savings Clause) states that the remainder of a rule will remain in effect even if a part of the rule is shown to be invalid. Proposed new §69.29 (concerning Computed Values for Selected Species) describes how the values and information about the values of different species of wildlife are obtained.

Dave Buzan, has determined that for each of the first five years the repeal and new rules as proposed are in effect, there will be fiscal implications for state government. The new rules as proposed should enhance the department's ability to recover restitution amounts assessed as a result of illegal take of fish and wildlife species. However, the exact amount of restitution collected can not be ascertained.

Mr. Buzan also has determined that for each of the first five years the repeal and new rules as proposed are in effect the public benefit anticipated as a result of enforcing the new rules as proposed will be increased recovery of costs related to loss of fish and wildlife resulting from illegal take of these species.

There may occur economic impacts to small businesses and individuals who engage in illegal activities, intentionally or accidentally, which result in the deaths of fish and wildlife. However, the economic impact is likely to be reduced from the economic impact under the existing rules. The number of fish species for which civil restitution of recreational value will be sought is reduced. Additionally, the equation for calculating the recreational value of fish has been modified to eliminate the use of Catch Per Unit Effort data from the equation for recreational value for a species unless representative Catch Per Unit Effort data are available.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed repeal and new rules may be submitted to Dave Buzan, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4634 or 1-800-792-1112, ext. 4634.

Fish and Wildlife Values

• 31 TAC §§69.20-69.31

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

The repeals are proposed under Parks and Wildlife Code, §12.302 and Water Code §26.124 which provide Parks and Wildlife Commission authority to promulgate rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds and animals.

The proposed repeals affect Parks and Wildlife Code, §12.302 and Water Code, §26.124.

§69.20. Application.

§69.21. Definitions.

§69.22. Wildlife and Endangered or Threatened Aquatic Life-Recovery Value.

§69.23. Aquatic Life-Sport, Commercial, or Forage.

§69.24. Sport Species-Recovery Value.

§69.25. Forage Species-Recovery Value.

§69.26. Commercial Species-Recovery Value.

§69.27. Addition for Lost Productivity.

§69.28. Updating Existing Recovery Values.

§69.29. Proposed Recovery Guidelines.

§69.30. Savings Clause.

§69.31. Computed Values for Selected Species.

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

Issued in Austin, Texas, on March 26, 1996.

TRD-9604251 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 389-4642

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• 31 TAC §§69.20-69.29

The new rules are proposed under Parks and Wildlife Code, §12.302 and Water Code, §26.124, which provide Parks and Wildlife Commission authority to promulgate rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds and animals.

The proposed new rule affects Parks and Wildlife Code, §12.302 and Water Code, §26.124.

§69.20. Application.

(a) Rules under this subchapter establish guidelines for measuring the monetary value of each individual of any species of aquatic life or wildlife:

(1) unlawfully killed, caught, taken, possessed or injured in violation of the Parks and Wildlife Code or in violation of any regulation adopted under authority of the Parks and Wildlife Code; or

(2) normally taken for commercial or recreational purposes, or any species on which aquatic life or wildlife is directly dependent for food, where a violation of the Texas Water Code is determined to be a proximate cause of injury to such species.

(b) The values assigned to wildlife species or aquatic species, including any value added for endangered or threatened species, and values of other species not listed but derived by application of these guidelines are prima facie evidence of damages recoverable for the unlawful catching, killing, possession, injury or taking of such species.

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

Basic value–The cost required to grow a fish to a particular size.

Commercial species–These species of fish, shellfish, and wildlife normally taken for sale rather than for recreational purposes.

Department–The Texas Parks and Wildlife Department.

Endangered species–All species listed at §§65.181-65. 184 of this title (relating to Endangered Species).

Forage species–Those species upon which other aquatic life or wildlife directly depend for food.

Minimum hookable total length–The minimum total length of a fish that is normally caught and released or caught and landed for recreation. The minimum hookable total length is six inches for all species except sunfish which shall have a minimum hookable total length of five inches.

Threatened species–All species listed at §§65.171-65. 177 of this title (relating to Regulations for Taking Possessing, and Transporting Protected Nongame Species).

Recovery value–The total value of an individual of a particular size and species. The recovery value is the value of a species at the time it was illegally killed, caught, taken, possessed, or injured.

§69.22. Wildlife-Recovery Values.

(a) Each species of bird, reptile, amphibian, or animal shall be assigned a score of 0-3 for each of eight scoring criteria. The sum of the scores for the eight criteria (subsection (b) of this section) shall be multiplied by a weighting factor (subsection (c) of this section), and the resulting adjusted criteria score is compared to the monetary scale (subsection (d) of this section) to obtain a monetary value.

(b) For scoring criteria listed in paragraphs (1)-(8) of this subsection, a species which is not sought at all shall be scored as 0, while a highly sought species shall be scored 3.

(1) Recreation. The extent to which a species is actively sought by users with wildlife interests. Scoring considers both harvest and nonharvest use of a species.

(2) Aesthetic. The social value of wildlife species. These values represent wildlife species' beauty or unique natural history. Aesthetic values for these species exist whether or not a person ever would encounter one in its natural habitat.

(3) Educational. The educational value of a species arising from, for example, published materials and other audio-visual media about the species, displays in zoos, or the relative frequency with which the species is used to exemplify important curricula principles.

(4) Scarcity. The relative population of a species within the range of its habitat, from abundant to scarce.

(5) Environmental Tolerance. The ability of a species to tolerate normal changes in climate, topography, water regimes or other ecological factors which may limit range and population.

(6) Economics. The direct or indirect economic benefit attributable to the species as a result of recreational or legal transactions.

(7) Recruitment. Reproductive and survival potential of a species as it relates to the capability for replacement of its population following decrease or loss.

(8) Ecological role. A species' relationships with other life forms--and the species contribution to a healthful and stable balance of nature. Widely-consumed forage species score high, as do predators which control prey species populations. Forage species that are not widely consumed score low, as do predators which contribute little to regulation of prey populations.

(c) The individual scores for the criteria are summed to derive a total criteria score. The total criteria score is multiplied by a weighting factor which adjusts the summed criteria score for variance in public demand and/or perception of value for a species. The weighting factor relates the overall demand for a species to its existing supply and to future opportunity for public use. The weighting factors are:

(1) 1.0–Abundant. No additional public demand or perception of value exists beyond that reflected by the eight criteria in subsection (b) of this section;

(2) 1.1–Frequent. Minor disparity exists between resource availability and public interest and the public demand fluctuates periodically around an equilibrium point;

(3) 1.3–Rare. Substantial disparity exists between available supply and identified public interest in species that are subject to ongoing management programs;

(4) 1.5–Scarce. The species populations are never expected to meet identified demands or needs, or management programs for a limited species are not fully developed with respect to planned recreational opportunity and economic contribution.

(d) The total criteria score multiplied by the weighting factor in subsections (a)-(c) of this section, provides an adjusted criteria score and corresponding recovery value for each species. Figure: 37 TAC §69.22(d)

§69.23. Endangered and Threatened Species

(a) The recovery value for each individual of an endangered species equals $1,000 plus the value derived in §69.22 of this title (relating to Wildlife–Recovery Value) for wildlife species and §69.25 of this title (relating to Aquatic Life–Recovery Value) for aquatic life.

(b) The recovery value for each individual of an threatened species equals $500 plus the value derived in §69.22 of this title for wildlife species and §69.25 of this title for aquatic life.

§69.24. Basic Value.

(a) Basic value shall be obtained from the most recent edition of the American Fisheries Society's special publication describing investigation and valuation of fish kills, except;

(1) the basic value for freshwater fish which do not have a basic value published in the most recent edition of the American Fisheries Society's special publication shall be the basic value of a taxonomically or ecologically related species for which a basic value is available.

(2) the basic value for saltwater fish not listed in the publication shall be the basic value of a taxonomically or ecologically related species for which a basic value is available, or on the commercial value of red drum produced in aquaculture facilities, whichever is most applicable.

(b) The basic value for shellfish without commercial value is equal to the basic value for freshwater or saltwater forage fish.

§69.25. Aquatic Life–Recovery Value.

(a) The recovery value for an individual fish of a species which does not have recreational value shall be equal to its basic value.

(b) The recovery value of an individual fish shall be determined by adding the fish's basic and recreational value for species which the Commission has designated as having recreational value. for the purpose of civil restitution.

(c) Recreational value for an individual fish is calculated by dividing the average value of an hour of fishing by the difference in total length between the state record fish and minimum hookable total length for that species and then multiplying that quotient by the total length in inches of the individual fish being valued, minus the minimum hookable total length for that species. This product is then adjusted for inflation by multiplying it by the quotient of the most recent Consumer Price Index at the time the fish were killed, divided by the Consumer Price Index at the time data were collected to determine the average value of an hour of fishing.

(d) Recreational value of fish for which substantial and adequate Catch Per Unit Effort data are available will be calculated by multiplying the recreational value derived using subsection (c) of this section by the reciprocal of the Catch Per Unit Effort for that species in Texas.

(e) When legal means and methods were used to catch the fish, but the number of individuals taken exceeds legal daily bag, catch, or possession limits, recovery values will be applied to the number of fish in excess of the legal limit.

§69.26. Commercial Species–Recovery Value.

(a) Recovery of value for commercial species is based on ex-vessel or dockside price (by weight or individual as normally determined), or for alligators, current per-foot market value.

(b) Ex-vessel or dockside price is determined by;

(1) the most recent department data on commercial harvest data; or

(2) average annual ex-vessel price for fish landed in the Gulf of Mexico as obtained from the National Marine Fisheries Service for the most recent calendar year.

(c) When commercial species can not be processed according to the provisions of Parks and Wildlife Code §12.109 and/or §77.027, ex-vessel or dockside price of a commercial species is multiplied by three to derive the recovery value of a species. The economic multiplier used is based on data from the latest revision of Structure of the Texas Economy developed by H. W. Grubb.

(d) Full recovery value will be applied to all fish and shellfish taken by illegal means, methods or manners and from closed areas, during closed seasons or prohibited periods.

§69.27. Updating Existing Recovery Values. All recovery values obtained by the application of rules under this subchapter shall be updated by the department on August 31 of each year.

§69.28. Savings Clause. If any word, phrase, sentence, paragraph, section, subsection, or any other part of this subchapter is invalidated or held inapplicable for any reason, the balance of this subchapter shall not be affected thereby, but shall remain in full force and effect to the greatest extent permitted by law.

§69.29. Computed Values for Selected Species. The Tables for Computed Values for Selected Species and the list of those fish species designated as having recreational value are incorporated by reference. These may be obtained by contacting Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.

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

Issued in Austin, Texas, on March 26, 1996.

TRD-9604252 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 389-4642

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes the repeal of §19. 1929, concerning staff development; amendments to §§19.204, concerning applicant disclosure requirements, 19.1921, general requirements for a nursing facility, and 19.2112, concerning administrative penalties; and new §19.1929, concerning staff development, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments is to implement Senate Bill 436 which requires a disclosure statement from nursing facilities which advertise, market, or otherwise promote that they provide special services for residents with Alzheimer's disease or a related disorder and provides an administrative penalty for noncompliance. The amendment to §19.1921(j) corrects a reference to the chapter concerning criminal history checks. The purpose of the new section is to implement Senate Bill 1059 which requires that staff development rules address the need for staff training in geriatric care.

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

Mr. Raiford also has determined that for each year of the first five years the amendments, and new section are in effect the public benefit anticipated as a result of enforcing the sections will be that department rules will be in compliance with Texas law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-165, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714- 9030, within 30 days of publication in the *Texas Register.*

Subchapter C. Nursing Facility Licensure Application Process

- **40 TAC §19.204**

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.204. Applicant Disclosure Requirements.

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

(c) General information required. An applicant must file with DHS an application which contains:

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

(8) for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

(i) **the facility's philosophy of care for residents with Alzheimer's disease and related disorders;**

(ii) **the preadmission, admission, and discharge process;**

(iii) **resident assessment, care planning, and implementation of the care plan;**

(iv) **staffing patterns, such as resident to staff ratios, and staff training;**

(v) **the physical environment of the facility;**

(vi) **resident activities;**

(vii) **program costs;**

(viii) **systems for evaluation of the facility's program;**

(ix) **family involvement in resident care; and**

(x) **the telephone number for DHS's toll-free complaint line.**

(C) The disclosure statement must be updated and submitted to DHS as needed to reflect changes in special services for residents with Alzheimer's disease or a related condition.

(d)-(f) (No change.)

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604508 Glenn Scott
General Counsel
Texas Department of Human Services

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 438-3765

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Subchapter T. Administration

• 40 TAC §19.1929

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1929. Staff Development.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604509 Glenn Scott
General Counsel
Texas Department of Human Services

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 438-3765

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• 40 TAC §19.1921, §19.1929

The amendment and new section are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new section implement the Human Resources Code, §§22. 001-22.030 and §§32.001-32.042.

§19.1921. General Requirements for a Nursing Facility.

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

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs **(1)-(6)** [(1)-(5)] of this subsection in an area of the facility that is readily and customarily available to the public. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading thereto. Any exceptions must be approved by the Texas Department of Human Services (DHS). The following items must be posted:

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

(3) a notice in a form prescribed by DHS that inspection [reports] and related reports are available at the facility for public inspection **and providing the department's toll-free telephone number to obtain information concerning the facility;**

(4)-(5) (No change.)

(6) for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(c)(8) (relating to Applicant Disclosure Requirements) .

(f) (No change.)

(g) A copy of the Health and Safety Code, Chapter 242, [referred to in subsection (j)(5)(C) of this section,] must be available for public reference at the facility business office or administrator's office during normal office hours.

(h)-(i) (No change.)

(j) [Criminal History Checks of Certain Employees.] Persons convicted of certain crimes may not be employed in nursing facilities. As required by Chapter 250 of the Health and Safety Code and as found in **§§76.101-76. 106 of this title (relating to Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities)** [40 TAC §§76.101-76.108], the facility must, prior to an offer of employment, conduct criminal

history checks on persons whose positions involve direct contact with residents, unless they are licensed under another law.

§19.1929. Staff Development. Each facility must implement and maintain programs of orientation, training, and continuing in-service education to develop the skills of its staff, as described in §19.1903 of this title (relating to Required Training of Nurse Aides).

(1) As part of orientation and annually, each employee must receive instruction regarding Human Immunodeficiency Virus (HIV), as outlined in the educational information provided by the Texas Department of Health Model Workplace Guidelines. At a minimum the HIV curriculum must include:

(A) modes of transmission;

(B) methods of prevention;

(C) behaviors related to substance abuse;

(D) occupational precautions;

(E) current laws and regulations concerning the rights of an acquired immune deficiency syndrome/HIV-infected individual; and

(F) behaviors associated with HIV transmission which are in violation of Texas law.

(2) Nursing staff, licensed nurses, and nurse aides must receive annual in-service training which includes components, appropriate to their job responsibilities, from one or more of the following categories:

(A) communication techniques and skills useful when providing geriatric care, such as skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; and recognizing communication that indicates psychological abuse;

(B) assessment and nursing interventions related to the common physical and psychological changes of aging for each body system;

(C) geriatric pharmacology, including treatment for pain management and sleep disorders;

(D) common emergencies of geriatric residents and how to prevent them, for example, falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, and acute glaucoma; and obtaining emergency treatment;

(E) common mental disorders with related nursing implications; and

(F) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(3) Facilities with pediatric residents must comply with the following:

(A) Facility staff must be trained in the use of pediatric equipment and supplies, including emergency equipment and supplies.

(B) Facility staff should receive annual continuing education dealing with pediatric issues, including child growth and development and pediatric assessment.

(4) Minimum continuing in-service education requirements are listed in subparagraphs (A)-(B) of this paragraph. Attendance at relevant outside training may be used to satisfy the in-service education requirement. The facility must keep in-service records for each employee listed. The minimum requirements are:

(A) licensed personnel-two hours per quarter; and

(B) nurse aides-12 hours annually. For the purpose of this paragraph, a medication aide is considered a nurse aide and must receive the same continuing in-service education. This in-service education does not qualify as continuing education units required for renewal of a medication aide permit.

(5) A rural hospital participating in the Medicaid Swing Bed Program as specified in §19.2006 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) is not required to meet the requirements of this section, if the swing beds are used for no more than one 30-day length of stay per year, per resident.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604510 Glenn Scott
General Counsel
Texas Department of Human Services

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 438-3765

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Subchapter V. Enforcement

Licensing Remedies

• 40 TAC §19.2112

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.2112. Administrative Penalties.

(a)-(g) (No change.)

(h) Conditions and assessments for violations warranting administrative penalties for licensed facilities are as follows:
Figure: 40 TAC 19.2112(h)

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604511 Glenn Scott
General Counsel
Texas Department of Human Services

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 438-3765

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Part II. Texas Rehabilitation Commission

Chapter 101. General Rules

- **40 TAC §101.11**

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

The Texas Rehabilitation Commission (TRC) proposes to repeal §101.11, concerning Protest and Appeal. This action is taken because the Protest and Appeal rules have been moved to §106.34 and §106.35 of Chapter 106. Contract Administration, Subchapter A, Acquisition of Client Goods and Services.

Charles E. Harrison, Jr., Deputy Commissioner for Financial and Planning Services, has determined that for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated to place these rules on protest and appeal into the chapter of Contract Administration. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed repeal may be submitted to Charles Schiesser, General Counsel, Office of the General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The repeal is proposed under Texas Human Resources Code, Title 7, §111. 018, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Recources Code.

The Texas Human Resources Code, Chapter 111, Title 7, §111.052, is affected by this proposed repeal.

§101.11. Protest and Appeal.

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

Issued in Austin, Texas, on March 27, 1996.

TRD-9604336 Charles W. Schiesser
General Counsel
Texas Rehabilitation Commission

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-4051

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Chapter 106. Contract Administration

Subchapter B. Acquisition of Goods and Services for Adjudication of Claims by Disability Determination Services

- **40 TAC §106.37**

The Texas Rehabilitation Commission (TRC) proposes new §106.37, concerning Chapter 106, Contract Administration, Subchapter B-Acquisition of Goods and Services for Adjudication of Claims by Disability Determination Services. This action is taken to implement the Commission's contracting authority contained in Title 7, §l11.052, Texas Human Resources Code, and to formalize by rule that Disability Determination Services purchases must comply with the laws, rules, regulations, and guidelines of the Social Security Administration.

Charles E. Harrison, Jr., Deputy Commissioner for Financial and Planning Services, has determined that for the first five-year period the proposed rule will be in effect, there will be no material financial implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison also has determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing the new rule will be to make the public and providers aware of rules which apply to contracting or the purchase of goods and services by the Texas Rehabilitation Commission. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Charles Schiesser, General Counsel, Office of the General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new rule is proposed under Texas Human Resources Code, Title 7, §111. 018, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code,

The Texas Human Resources Code, Chapter 111, Title 7, §111.052, is affected by this proposed new rule.

§106.37. Adjudications by Disability Determination Services. The Disability Determination Services will comply with the laws, rules, regulations, and guidelines of the Social Security Administration.

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

Issued in Austin, Texas, on March 27, 1996.

TRD-9604338 Charles W. Schiesser
General Counsel
Texas Rehabilitation Commission

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-4051

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Subchapter D. Debarment

- **40 TAC §§106.41-106.44**

The Texas Rehabilitation Commission (TRC) proposes new §§106.41-106.44, concerning Chapter 106, Contract Administration, Subchapter D-Debarment. This action is taken to implement the Commission's contracting authority contained in Title 7, §l11.052, Texas Human Resources Code, and to formalize by rule and make available to the public the Commission's Debarment procedures.

Charles E. Harrison, Jr., Deputy Commissioner for Financial and Planning Services, has determined that for the first five-year period the proposed rules will be in effect, there will be no material financial implications for state or local government as a result of enforcing or administering the rules.

Mr. Harrison also has determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing the new rules will be to make the public and providers aware of rules which apply to contracting or the purchase of goods and services by the Texas Rehabilitation Commission. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed new rule may be submitted to Charles Schiesser, General Counsel, Office of the General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new rules are proposed under Texas Human Resources Code, Title 7, §111.018, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Tex. Hum. Res. Code.

The Texas Human Resources Code, Chapter 111, Title 7, §111.052, is affected by these proposed new rules.

§106.41. Debarment and Suspension of Current and Potential Contractor's Rights.

(a) Requirements in this section are applicable to all types of contracts with the Commission.

(b) Termination of rights to continue an existing contract, to receive a new contract, to participate as a provider or manager, or to make a bid, offer, application, or proposal for a Commission contract. The debarment is for a specified time commensurate with the seriousness of the violation, the extent of the violation, prior impositions of sanctions or penalties, willingness to comply with program rules and directives, and other pertinent information. The maximum period of debarment is six years, unless a longer time is mandated by requirements other than those in this chapter.

(c) Temporary suspension of a contractor's or potential contractor's rights to conduct business with the Commission. A suspension is in effect until an investigation, hearing, or trial is concluded and the Commission can make a determination about:

(1) the contractor's future right to contract or subcontract; or

(2) a potential contractor's future right to have the Commission consider its offer, bid, proposal, or application.

(d) For purposes of both debarment and suspension of contractual rights, the Commission may impute the conduct of an individual, corporation, partnership, or other association to the contractor, potential contractor, or the responsible entity of the contractor or potential contractor with whom the individual, corporation, partnership, or other association is employed or otherwise associated. Even though the underlying conduct may have occurred while an individual, corporation, partnership, or other association was not associated with the contractor or potential contractor, suspension of contractual rights or debarment may be imposed. Remedial actions taken by the responsible officials of the contractor or potential contractor will be considered in determining whether either suspension of contractual rights or debarment is warranted.

§106.42. Causes for and Conditions of Debarment.

(a) The Commission may remove contractual rights from an individual or legal entity for causes including, but not limited to, the following:

(1) being found guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court, relating to

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) embezzlement, theft, forgery, bribery, falsification or destruction of records, any form of fraud, receipt of stolen property, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) dangerous drugs, controlled substances, or other drug-related offense;

(D) federal antitrust statutes arising from the submission of bids or proposals;

(E) any physical or sexual abuse or neglect offense;

(2) being debarred from contracting by any unit of the federal government or any unit of a state government;

(3) violating Commission contract provisions including failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in the Commission contract, including, but not limited to, the following:

(A) failing to abide by applicable federal and state statutes, such as those regarding persons with disabilities and those regarding civil rights;

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. Application of this subsection will be made only for actions occurring after the effective date of these rules. Failure to perform and unsatisfactory performance includes, but is not limited to, the following:

(i) failing to correct contract performance deficiencies after receiving written notice about them from the Commission or its authorized agents;

(ii) failing to repay or make and follow through with arrangements satisfactory to the Commission to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;

(iii) failing to meet standards that are required for licensure or certification, or that are required by state or federal law, Commission rules, or Commission policy concerning Commission contractors;

(iv) failing to execute amendments required by the Commission;

(v) billing for services or merchandise not provided to the client by the Commission;

(vi) submitting cost reports containing costs not associated with and/or not covered by the contract or Commission rules and instructions. Intent to increase individual or statewide rates or fees by submission of unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown;

(vii) submitting a false report or misrepresentation which, if used, may increase individual or statewide rates or fees;

(viii) charging client or patient fees contrary to Commission rules or policy;

(ix) failing to notify and reimburse the Commission or its agents for services the Commission paid for when the contractor received reimbursement from a liable third party;

(x) failing to disclose or make available, upon demand, to the Commission or its representatives (including appropriate federal and state agencies) any records the contractor is required to maintain;

(xi) failing to provide and maintain services within standards required by statute, regulation, or contract; or

(xii) violating the Human Resources Code provisions applicable to the contract or any rule or regulation issued under the Code;

(4) submitting an offer, bid, proposal, or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;

(5) engaging in any abusive or neglectful practice that results in or could result in death or injury to the clients served by the contractor; or

(6) knowingly and willfully using a debarred person or legal entity as an employee, independent contractor, or agent to perform a contract with the Commission;

(b) Individuals, parts of entities, and entities that have been debarred may not:

(1) receive a contract;

(2) be allowed to retain a contract which has been awarded before debarment;

(3) bid or otherwise make offers to receive a contract or subcontract;

(4) participate in Commission programs which do not require the provider to sign a contract or agreement; or

(5) either personally or through a clinic, group, corporation, or other association bill to or receive payment from the Commission for any services or supplies provided by the debarred entity on or after the effective date of the debarment. Additionally, the Commission will not pay for any services ordered, prescribed, or delivered by the debarred entity for Commission recipients after the date of debarment. No costs associated with a debarred entity, including the salary, fringe, overhead, payments to, or any other costs associated with an employee, owner, officer, director, board member, independent contractor, manager, or agent who was debarred may be included in a Commission cost report or any other document which will be used to determine an individual payment rate, a statewide payment rate, or a fee.

(c) Debarment may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§106.43. Causes for and Conditions of Suspension.

(a) The Commission may place a contractor's or potential contractor's contractual rights in suspension whenever the Commission finds that there is a reasonable basis to believe that grounds for debarment exists. Suspension may be imposed immediately following the Commission's notification to a contractor or potential contractor. In addition, suspension may be imposed on a potential contractor if he has an outstanding indictment or the Commission has information about an offense that is grounds for indictment.

(b) Conditions of Suspension.

(1) The Commission may withhold payments, in whole or in part, to the affected contractor during the period of suspension.

(2) The Commission may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected potential contractor during the period of suspension.

(3) The Commission may cease referrals or additional clients to the suspended entity.

(4) If the Commission determines that the underlying reasons for suspension have been resolved in favor of the contractor, the Commission must, if applicable:

(A) pay the withheld payments for any services that may have been provided during the suspension and which meet the terms of an existing contract; and

(B) resume contract payments.

(5) If the Commission determines that underlying reasons for the suspension have not been resolved in favor of the contractor, the Commission will institute debarment proceedings.

(6) Individuals and entities whose contractual rights have been placed in suspension may not:

(A) receive a contract; or

(B) submit an offer, bid, application, or proposal for a contract.

(c) A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§106.44. Proof Required for Debarment or Suspension.

(a) Causes identified in this title are established by proof of pleading guilty or nolo contendere, or of the issuance of a deferred adjudication of guilt. If an appeal results in a reversal, contractual rights must be restored upon written request, unless another cause for their removal exists.

(b) Causes identified in this title are based entirely upon the other state or federal agency's official notice that the contractor's or potential contractor's rights have been removed.

(c) The existence of all other causes for debarment or suspension must be established by a preponderance of the evidence.

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

Issued in Austin, Texas, on March 27, 1996.

TRD-9604340 Charles W. Schiesser
General Counsel
Texas Rehabilitation Commission

Earliest possible date of adoption: May 13, 1996

For further information, please call: (512) 483-4051

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Claim Procedure

- **43 TAC §1.68**

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

The Texas Department of Transportation proposes the repeal of §1.68, concerning contract claim procedure.

Existing §1.68 sets forth the procedures to resolve disputes between the department and a contractor working under a highway improvement, professional services, or consulting contracts.

The section is proposed for repeal to provide ease of access to all rules relating to contract management. Repeal of this section is necessary because the subject matter of this section falls within Chapter 9, Contract Management. The subject matter will be reenacted in an amended form in new §9.2, which is being contemporaneously proposed for adoption.

David Fulton, Director of Aviation, 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. Fulton has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeal.

Mr. Fulton also has determined that for each year of the first five years the repeal is in effect the public benefits anticipated as a result of enforcing the repeal will be easier access to all rules concerning contract management. There will be no effect on small businesses.

There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new section. The public hearing will be held at 9:00 a.m., on Monday, April 29, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Written comments on the proposal may be submitted to David Fulton, Director of Aviation, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on May 12, 1996.

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

No statutes, articles, or codes are affected by the proposed repeal.

§1.68. Contract Claim Procedure.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604574 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: May 13, 1996

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

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Chapter 9. Contract Management

Subchapter A. General

• 43 TAC §9.2

The Texas Department of Transportation proposes new §9.2, concerning contract claim procedure.

Section 9.2 sets forth the procedures to resolve disputes between the department and a contractor working under a highway improvement, professional services, consulting, or aviation contract.

Adoption of this section is necessary to replace, in an amended form, the provisions of §1.68, concerning contract claim procedure. Section 1.68 is being contemporaneously proposed for repeal because the subject matter of this section falls within Chapter 9, Contract Management. Section 9.2 also adds aviation contractors to the claim procedure.

Section 9.2 establishes definitions for the section and a contract claim committee or committees. This section provides that: if resolution of a contract claim is not reached with the department, the contractor should file a detailed report and request to be heard by the committee; the committee will secure detailed reports and recommendations from the department, and afford the contractor an opportunity for a meeting to informally discuss the disputed matter; and the committee will give written notice of the committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the committee chairman in writing within 20 days of the date such notice is received, and the chairman will forward the agreed disposition to the executive director for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the committee, the contractor may petition the executive director for a formal administrative hearing to litigate the claim pursuant to the provisions of §§1.21-1.61 of this title (relating to Contested Case Procedure). This section explains that the committee proceedings are not admissible for any purpose in a formal administrative hearing and requires the contractor to submit the petition within 20 days after notice of the committee's recommendation is received to prevent the recommendation from becoming final and barring further appeal.

David Fulton, Director of Aviation, has determined that for the first five-year period the new 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. Fulton has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed new section.

Mr. Fulton also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the new section will be to provide better access to a claim procedure for aviation contractors by including aviation contractors in a procedure already established by the department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new section. The public hearing will be held at 9:00 a.m., on Monday, April 29, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Written comments on the proposal may be submitted to David Fulton, Director of Aviation, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on May 12, 1996.

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

No statutes, articles, or codes are affected by the proposed new section.

§9.2. Contract Claim Procedure.

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

(1) Commission–The three member body appointed by the governor to compose the Texas Transportation Commission.

(2) Committee–The Contract Claim Committee.

(3) Contract claim–A claim for additional compensation, time extension, or any other reason, arising out of a contract between the State of Texas, acting in its own capacity or as an agent of a local government, and a contractor, which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Chapter 21, 22, or 223, or Government Code, Chapter 2254, Subchapters A and B.

(4) Contractor–An individual, partnership, corporation, or other business entity that is a party to a written contract with the State of Texas which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Chapter 21, 22, or 223, or Government Code, Chapter 2254, Subchapters A and B.

(5) Department–The Texas Department of Transportation.

(6) Department office–The department district, division, or special office responsible for the administration of the contract.

(7) Department office director–The chief administrative officer of the responsible department office, such officer to be a district engineer, division director, or special office director.

(8) District–One of the 25 districts of the department.

(9) Executive director–The executive director of the Texas Department of Transportation.

(b) Contract claim committee.

(1) The executive director will name the members and chairman of a contract claim committee or committees to serve at his or her pleasure. It will be the responsibility of a committee to gather information, study, and meet informally with contractors, if requested, to resolve any disputes that may exist between the department office and the contractor, and which result in one or more contract claims.

(2) The commission stresses that, to every extent possible, disputes between a contractor and the engineer or other department employee in charge of a project should be resolved during the course of the contract. If, however, after completion of a contract, or when required for orderly performance prior to completion, resolution of a contract claim is not reached with the department office, the contractor should file a detailed report and request with the department office director under whose administration the contract was or is being performed. The filed documents will be transmitted to the committee.

(3) The committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee.

(4) The committee will then afford the contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the contractor an opportunity to present relevant information and respond to information the committee has received from the department office.

(5) The committee chairman will give written notice of the committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the committee chairman in writing within 20 days of the date such notice is received, and the chairman will forward the agreed disposition to the executive director for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the committee, the contractor may petition the executive director for a formal administrative hearing to litigate the claim pursuant to the provisions of §§1.21-1.61 of this title (relating to Contested Case Procedure).

(6) Proceedings before the department office director or the committee are in nature an attempt to mutually resolve a contract claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in paragraph (5) of this subsection.

(7) If the contractor fails to submit the petition within 20 days after notice of the committee's recommendation is received, that recommendation will be final, and all further appeal by the contractor shall be barred.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604575 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: May 13, 1996

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

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Chapter 21. Right of Way

Utility Accommodation

• 43 TAC §21.56

The Texas Department of Transportation proposes new §21.56, concerning metric equivalents.

The Omnibus Trade and Competitiveness Act of 1988, Title 15, United States Code, §205(a) and (b) designate the metric system of measurement as the preferred system of weights and measures.

New §21.56 will enable the department to utilize the metric system in its business process and project development. Section 21.56 provides that prior to October 1, 1996, all English units of measurement referenced in §§21.31-21. 55 of this title (relating to Utility Accommodations) may be converted to metric, and that on or after October 1, 1996, a utility company must submit its request for accommodation using the metric system of measurement provided in §21.56.

Gary Bernethy, P.E., Director, Right of Way Division, has determined that while the new section is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Mr. Bernethy also has determined there will be no fiscal implications for local governments as a result of enforcing or administering the proposed section.

Mr. Bernethy has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed section.

Mr. Bernethy has also determined that the public benefit anticipated as a result of implementing the new section will be a conversion to the metric system.

There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the new section as proposed.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new section. A public hearing will be held at 9:00 a.m. on Tuesday, April 23, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. The hearing will be conducted in accordance with the procedures specified in 43 TAC

§1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new section may be submitted to Gary Bernethy, P.E., Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on May 12, 1996.

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The new section does not affect other statutes, articles, or codes.

§21.56. Metric Equivalents. Prior to October 1, 1996, all English units of measurement referenced in §§21.31-21.55 of this title (relating to Utility Accommodations) may be converted to metric equivalents as shown in Appendix A. On or after October 1, 1996, a utility company must submit its request for accommodation using the metric system of measurement.
Figure: 43 TAC §21.56

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604577 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: May 13, 1996

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

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Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter A. General Provisions

• 43 TAC §28.2

The Texas Department of Transportation proposes an amendment to §28.2, concerning definitions. The amended section is necessary to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads.

House Bill 2754, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6701a-2, to include a definition for "portable building unit." Senate Bill 971, 74th Legislature, 1995, re-codifies the statutes relating to transportation to the Transportation Code.

Amended §28.2 establishes the definitions as used in this subchapter. The amendment to this section includes a new definition for "portable building unit," and the replacement of references to Texas Civil Statutes with the appropriate Transportation Code citations.

Lawrance R. Smith, Director of Motor Carrier Division, has determined that for the first five years the section is in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment.

Mr. Smith also has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased public understanding of, and compliance with, policies and procedures regarding the issuance of permits for oversize and overweight vehicles. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Written comments on the proposal may be submitted to Lawrence R. Smith, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on May 12, 1996.

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

No statutes, articles, or codes are affected by the proposed amendment.

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

Closeout–The procedure used by the CPO to terminate a permit, issued under **Transportation Code, §623.142 or §623.192** [Texas Civil Statutes, Articles 6701d-16 or 6701d-19b] that will not be renewed by the applicant. Foreign commercial vehicle annual registration–An annual registration permit issued by the department to foreign commercial vehicles under authority of **Transportation Code, §502,353** [Texas Civil Statutes, Article 6675a-6c].

Highway maintenance fee–A fee established by **Transportation Code, §623.077** [Texas Civil Statutes, Article 6701a], based on gross weight, and paid by the permittee when the permit is issued.

Highway use factor–A mileage reduction figure used in the calculation of a permit fee for a permit issued under **Transportation Code,§623.142 and §623.192** [Texas Civil Statutes, Articles 6701d-16 and 6701d-19b].

Load-restricted bridge–A bridge that is restricted by the commission, under the provisions of **Transportation Code, §621. 301** [Texas Civil Statutes, Article 6701d-11, §5, to a weight limit less than the maximum amount allowed by **Transportation Code, §621.101** [Texas Civil Statutes, Article 6701d-11, §5].

Load-restricted road–A road that is restricted by the commission, under the provisions of **Transportation Code, §621.301** [Texas Civil Statutes, Article 6701d-11, §5, to a weight limit less than the maximum amount allowed by **Transportation Code, §621.101** [Texas Civil Statutes, Article 6701d-11, §5].

Machinery plate–A license plate issued under **Transportation Code, §502.276** [Texas Civil Statutes, Article 6675a-2], to a crane or oil well servicing unit.

One-trip registration–Temporary registration issued by the CPO on Form 1700, under **Transportation Code, §502.354** [Texas Civil Statutes, Article 6675a-6e, §3], to an unladen vehicle authorizing its operation on a state highway from a specific origin to a specific destination, along such intermediate points as may be set forth on Form 1700, for a period not longer than 15 days.

Overdimension load–A crane, oil well servicing unit, vehicle, a combination of vehicles, vehicle and its load, or combination of vehicles and load that exceeds maximum legal width, height, length, or weight as set forth by **Transportation Code, §622.951** [Texas Civil Statutes, Article 6701d-11, §3 and §5].

Overheight–An overdimension load that exceeds the maximum height specified in **Transportation Code, §621.207** [Texas Civil Statutes, Article 6701d-11, §3].

Overlength–An overdimension load that exceeds the maximum length specified in **Transportation Code, §621.203** [Texas Civil Statutes, Article 6701d-11, §3].

Overweight–An overdimension load that exceeds the maximum weight specified in **Transportation Code, §621.101** [Texas Civil Statutes, Article 6701d-11, §5].

Overwidth–An overdimension load that exceeds the maximum width specified in **Transportation Code, §621.201** [Texas Civil Statutes, Article 6701d-11, §3].

Permit plate–A license plate issued under **Transportation Code, §623.149** [Texas Civil Statutes, Article 6675a-2], to a crane or an oil well servicing vehicle.

Portable building unit–The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled or kit (unassembled) configuration when loaded for transport.

Renewal application form–A form, supplied by the CPO to each permittee receiving a time permit issued under **Transportation Code, §623.142 or §623.192** [Texas Civil Statutes, Articles 6701d-16 and 6701d-19b], which must be completed and returned to the CPO whenever the permit is to be renewed or closed out. State highway system–A network of roads and highways as defined by **Transportation Code, §221.001** [Texas Civil Statutes, Article 6674b].

Vehicle supervision fee–A fee required by **Transportation Code, §623.078** [Texas Civil Statutes, Article 6701a], paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604576 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: May 13, 1996

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

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of 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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 24. Texas Agricultural Finance Authority: Farm and Ranch Finance Program

- **4 TAC §§24.3, 24.6, 24.8-24.10, 24.12, 24.16**

The Texas Department of Agriculture has withdrawn from consideration for permanent adoption the proposed amendments to §§24.3, 24.6, 24.8-24.10, 24. 12, and 24.16, which appeared in the March 1, 1996, issue of the *Texas Register* (21 TexReg 1645).

Issued in Austin, Texas, on April 3, 1996.

TRD-9604633 Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

Effective date: March 3, 1996

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter T. Administration

- **40 TAC §19.1921**

The Texas Department of Human Services has withdrawn from consideration for permanent adoption the proposed amendment to §19.1921, which appeared in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1066).

Issued in Austin, Texas, on April 1, 1996.

TRD-9604507 Glenn Scott
General Counsel
Texas Department of Human Services

Effective date: April 1, 1996

For further information, please call: (512) 438-3765

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ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

Part XVI. State Council on Competitive Government

Chapter 401. Administration

Subchapter F. Monitoring of Services

- **1 TAC §401.104**

The Council on Competitive Government ("Council") adopts an amendment to §401.104, concerning Historically Underutilized Businesses (HUBs) without changes to the proposed text published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9237).

The amendment is adopted to conform with the Legislative direction set forth in the General Appropriations Bill, House Bill 1, Article IX, §111, Acts, 74th Legislature (1995) by making a good faith effort to increase purchases and contract awards to historically underutilized businesses.

The amendment provides that the Council assist Historically Underutilized Businesses (HUB) in contracts to be awarded by the Council to meet or exceed the procurement utilization goals set forth in the Texas Administrative Code (1 TAC Chapter 111)

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, Title 10, Subtitle D, §2162.101 (formerly Texas Civil Statutes, Article 601b, Article 15, subsection 15.06(1)), which invests the Council on Competitive Government with the authority to promulgate rules necessary to administer its functions.

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

Issued in Austin, Texas, on March 20, 1996.

TRD-9604542 David Ross Brown
Assistant General Counsel
State Council on Competitive Government

Effective date: April 22, 1996

Proposal publication date: November 7, 1995

For further information, please call: (512) 463-3960

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Certification

- **16 TAC§ 23.32**

The Public Utility Commission of Texas adopts an amendment to §23.32, without changes to the text as published in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9627). The amendment creates an additional circumstance when the operation of an automatic dial announcing device (ADAD) will be considered in compliance with the requirement that certain information be included in an ADAD message. The amendment also requires that an ADAD, when used for solicitation purposes, has a message shorter than one minute or the capability of terminating the call within one minute when the call is answered by a telephone answering device.

The primary public benefit anticipated as a result of enforcing the section will be the less intrusive use of ADADs, particularly eliminating those situations where an ADAD message of extreme duration causes a person's line to remain off-hook, preventing other incoming calls or disabling the recipient's answering machine by using up the machine's message storage capacity.

The Commission conducted a public hearing on this rulemaking under Texas Government Code, §2001.029 on November 30, 1995 at the Commission offices. Ms. Phyllis Cowgill with Southwestern Bell Telephone, and Ms. Barbara McWhirter with AT&T Communications, Inc. appeared to monitor the proceedings. No oral comments were presented.

The Commission received written comments from the Texas Telephone Association (TTA) in response to the November 21, 1995 *Texas Register* publication. TTA stated that the amendment conforms the existing rule to the provisions of the Public Utility Regulatory Act of 1995, §3.653, which regulates the operation of an ADAD. TTA recommended no changes to the rule as published.

This amendment is adopted under Public Utility Regulatory Act, §1.101, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §3.051, which provides that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive market place; and specifically, §3.653, which establishes the requirements for operation of automatic dial announcing devices.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604364 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Effective date: April 18, 1996

Proposal publication date: November 21, 1995

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

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Part IX. Texas Lottery Commission

Chapter 402. Bingo Regulation and Tax

- **16 TAC §402.541**

The Texas Lottery Commission adopts the repeal of §402.541, concerning notification to the Commission, without changes to the pro-

posed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 563).

This section is being repealed because it expired by operation of law on April 1, 1995. Pursuant to House Bill 2771, 73rd Legislature, Acts 1993, the administration and regulation of bingo transferred from the Texas Alcoholic Beverage Commission to the Texas Lottery Commission, effective April 1, 1994. Further, pursuant to House Bill 2771, §29(d), before the first anniversary of the effective date of the transfer of functions, the Texas Lottery Commission shall review each rule adopted by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act and may specifically adopt any rule. A rule that is not specifically adopted expires on the first anniversary of the effective date of a transfer of functions. Since the effective date of the transfer of functions was April 1, 1994, the first anniversary of such date was April 1, 1995. This rule was not adopted by April 1, 1995, and, therefore, expired on April 1, 1995.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt new rules for the enforcement and administration of the Bingo Enabling Act.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604535 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.541

The Texas Lottery Commission adopts new §402.541, relating to definitions with changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 563). Specifically, the definitions of bingo premises, location, and place are changed to reflect that only one bingo premise, location, or place be allowed under a common roof or over a common foundation. Also, the definition of card-minding device is changed to reflect that a card-minding device is not a video lottery machine, as defined by House Bill 3021, §10.

The new section sets out concise definitions of words contained, but not otherwise explained, in the Bingo Enabling Act ("Act"). The Texas Lottery Commission believes it is important that terms be defined so that persons affected by the bingo rules and the Act understand such terms. For example, the agency believes it is imperative to know at any given moment, the location of an organization's primary business office so the agency will know the physical location of the records for audit and investigative purposes.

The new section defines material terms used throughout the bingo rules and Act.

The agency received 17 written comments during the comment period and received eight oral comments during the February 6, 1996 public comment hearing. Generally, the commenters are opposed to the definition of "bingo premises", "location", and "place" because they do not contain language prohibiting more than one "bingo premise", "location", or "place" under a common roof. These commenters believe that by not including such restriction in these definitions the effect of the rule will be to eliminate smaller halls and encourage the commercialization of bingo in Texas. One commenter believed the definition of "primary business office" conflicts with the Texas Non-Profit Corporations Act, and, as such, exceeds the agency's statutory authority. This same commenter believes the rule should include a definition of "symbols" that can appear on an instant bingo ticket so that organizations will know beforehand what type of symbols appearing on an instant bingo ticket will be approved by the agency. One commenter wants the term "occasion" defined so that it is clear when an occasion begins and when an occasion ends. One commenter wants the definition of card-minding device to include the word "purchase". The commenter indicated that this word was in staff's draft rule and should be included in the adopted rule. Several commenters did not testify at the February 6, 1996 public comment hearing but did indicate support for or opposition to the rule.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

The names of groups and associations making comments for and against the section.

In favor of: Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., Family and Bluebonnet Bingo, and VFW Post 6008. Against: Fort Worth Bookkeeping, Improved Order of Red Men, Boys and Girls Club of Pharr, Thompson Allstate Bingo Supply, Inc., Wigwam Council #8, Commanche Tribe #18, Kiva Tribe #26, American G.I. Forum, Cochise Council #9, Air Force Sergeants Association Chapter #1056, Merkel Chamber of Commerce, St. Andrews Episcopal Church, Huaco Tribe #48, I.O.R. White Mountain #12, Brownsville Jaycees, Zonta Club of Brownsville, I.O.R. Omaha #25, Boys and Girls Club of Brownsville, I.O.R. Ramona #5, I.O.R. War Eagle #5, I.O.R. Buffalo #13, I.O.R. Cheyenne #14, I.O.R. Blackcrow #16, and Bingo Advisory Committee.

The agency agrees with the commenters who believe that only one "bingo premises", "location", or "place" be allowed under a common roof. Therefore, language was added to these terms which prohibits more than one bingo premises, location, or place under a common roof or foundation. The agency disagrees with the commenter who believes the definition "primary business office" conflicts with language in the Texas Non-Profit Corporations Act for the reason that no such definition exists in the Texas Non-Profit Corporations Act. The Texas Non-Profit Corporations Act does reference a "principal office" where the entity's records are located and such language is not inconsistent with this rule's definition of "primary business office". The agency believes it is imperative that a primary business office be designated so the agency knows, at any given moment, exactly where the organization's records are located for audit and investigative purposes. Finally, the agency disagrees with the commenter who wants to include the word "purchase" in the definition of card-minding device because such language conflicts with the Bingo Enabling Act, §11v. Pursuant to §11v, the device may not be used in payment for playing the bingo card.

The agency disagrees with the commenter who wants the definition of "occasion" clarified to state when an occasion begins and ends because the definition of occasion in the Bingo Enabling Act needs no further clarification by rule. The agency disagrees with the commenter who wants the rule to include a definition of "symbols" so organizations will know beforehand the type of symbols the agency will approve for use on an instant bingo card. Organizations are not involved in the approval process of instant bingo cards, manufacturers are. The licensed manufacturers are familiar with the type of symbols which may appear on a instant bingo card because general guidelines are set out in 16 TAC §402.554.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. As a result of the dialogue between the Bingo Advisory Committee and agency staff, language was revised in the draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language. Aspects of the dialogue and comment relate to provisions that may no longer exist or may have been revised.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

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

Bingo premises–The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo. Only one bingo premise shall be under a common roof or over a common foundation. The enactment of this definition shall not affect bingo premises in existence under a common roof before March 30, 1996.

Break-open bingo ticket–An instant bingo card commonly known as an instant bingo ticket, pull-tab bingo game or instant bingo card as defined by 16 TAC §402.554 (relating to instant bingo).

Calendar week–A period of seven consecutive days commencing with Sunday and ending with Saturday.

Calendar year–A period of twelve consecutive months commencing with January 1 and ending with December 31.

Conductor–A licensed authorized organization.

Card-minding device–Any mechanical, electronic, electromechanical or computerized device, and including related hardware and software, that is interfaced with or connected to equipment used to conduct a game of bingo and which allows a player to store, display, and mark a bingo card face five spaces wide by five spaces long, the center space free, and the other spaces containing pre-printed numbers between 1 and 75, inclusive. A card-minding device shall not be a video lottery machine as defined by House Bill 3021, §10, 74th Legislature, Acts 1995.

Commission–The Texas Lottery Commission, the agency created by House Bill 54, 72nd Legislature, 1st called session, as amended by House Bill 1587 and House Bill 1013, 73rd Legislature, Regular Session.

Director–The director of the charitable bingo operations division, commonly known as the bingo division, of the Texas Lottery Commission.

Executive Director–The Executive Director of the Texas Lottery Commission.

Instant bingo card–An instant bingo ticket, pull-tab bingo game, break-open bingo ticket or instant bingo card as defined by 16 TAC §402.554 (relating to instant bingo).

Instant bingo card–An instant bingo ticket, pull-tab bingo game, break-open bingo ticket or instant bingo card as defined by 16 TAC §402.554 (relating to instant bingo).

Instant bingo ticket–An instant bingo card commonly known as a break-open bingo ticket, a pull-tab bingo game or an instant bingo card as defined by 16 TAC §402.554 (relating to instant bingo).

Location–The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo. Only one location shall be under a common roof or over a common foundation. The enactment of this definition shall not affect locations in existence under a common roof before March 30, 1996.

Operator–A natural person designated pursuant to authority of the Bingo Enabling Act, Texas Civil Statutes, Article 179d, §12(a)(7).

Place–The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo. Only one place shall be under a common roof or over a common foundation. The enactment of this definition shall not affect places in existence under a common roof before March 30, 1996.

Primary business office–The physical location at which all records relating to the primary purpose(s) of a licensed authorized organization are maintained in the ordinary course of business.

Pull-tab bingo game–An instant bingo card commonly known as a break-open bingo ticket, an instant bingo ticket or an instant bingo card as defined by 16 TAC §402.554 (relating to instant bingo).

24-hour period–A period of 24 consecutive hours commencing at 12:00 midnight.

Working day–Other than a Saturday, Sunday or holiday authorized by law, a period of nine consecutive hours commencing at 8:00 a.m. and ending at 5:00 p.m.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604526 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.546

The Texas Lottery Commission adopts the repeal of §402.546, concerning exemptions from licensing requirements, without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 566).

This section is being repealed because it expired by operation of law on April 1, 1995. Pursuant to House Bill 2771, 73rd Legislature, Acts 1993, the administration and regulation of bingo transferred from the Texas Alcoholic Beverage Commission to the Texas Lottery Commission, effective April 1, 1994. Further, pursuant to House Bill 2771, §29(d), before the first anniversary of the effective date of the transfer of functions, the Texas Lottery Commission shall review each rule adopted by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act and may specifically adopt any rule. A rule that is not specifically adopted expires on the first anniversary of the effective date of a transfer of functions. Since the effective date of the transfer of functions was April 1, 1994, the first anniversary of such date was April 1, 1995. This rule was not adopted by April 1, 1995, and, therefore, expired on April 1, 1995.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt new rules for the enforcement and administration of the Bingo Enabling Act.

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

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TRD-9604536 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.547

The Texas Lottery Commission adopts the repeal of §402.547, concerning books and records-bingo licenses, without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 566).

This section is being repealed because it expired by operation of law on April 1, 1995. Pursuant to House Bill 2771, 73rd Legislature, Acts 1993, the administration and regulation of bingo transferred from the Texas Alcoholic Beverage Commission to the Texas Lottery Commission, effective April 1, 1994. Further, pursuant to House Bill 2771, §29(d), before the first anniversary of the effective date of the transfer of functions, the Texas Lottery Commission shall review each rule adopted by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act and may specifically adopt any rule. A rule that is not specifically adopted expires on the first anniversary of the effective date of a transfer of functions. Since the effective date of the transfer of functions was April 1, 1994, the first anniversary of such date was April 1, 1995. This rule was not adopted by April 1, 1995, and, therefore, expired on April 1, 1995.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt new rules for the enforcement and administration of the Bingo Enabling Act.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604537 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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For further information, please call: (512) 323-3791

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• 16 TAC §402.548

The Texas Lottery Commission adopts the repeal of §402.548, concerning general restrictions on the conduct of bingo, without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 567).

This section is being repealed because it expired by operation of law on April 1, 1995. Pursuant to House Bill 2771, 73rd Legislature, Acts 1993, the administration and regulation of bingo transferred from the Texas Alcoholic Beverage Commission to the Texas Lottery Commission, effective April 1, 1994. Further, pursuant to House Bill 2771, §29(d), before the first anniversary of the effective date of the transfer of functions, the Texas Lottery Commission shall review each rule adopted by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act and may specifically adopt any rule. A rule that is not specifically adopted expires on the first anniversary of the effective date of a transfer of functions. Since the effective date of the transfer of functions was April 1, 1994, the first anniversary of such date was April 1, 1995. This rule was not adopted by April 1, 1995, and, therefore, expired on April 1, 1995.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt new rules for the enforcement and administration of the Bingo Enabling Act.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604538 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.549

The Texas Lottery Commission adopts the repeal of §402.549, concerning allowable expenditures of receipts from bingo, without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 567).

This section is being repealed because it expired by operation of law on April 1, 1995. Pursuant to House Bill 2771, 73rd Legislature, Acts 1993, the administration and regulation of bingo transferred from the Texas Alcoholic Beverage Commission to the Texas Lottery Commission, effective April 1, 1994. Further, pursuant to House Bill 2771, §29(d), before the first anniversary of the effective date of the transfer of functions, the Texas Lottery Commission shall review each rule adopted by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act and may specifically adopt any rule. A rule that is not specifically adopted expires on the first anniversary of the effective date of a transfer of functions. Since the effective date of the transfer of functions was April 1, 1994, the first anniversary of such date was April 1, 1995. This rule was not adopted by April 1, 1995, and, therefore, expired on April 1, 1995.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 179d, §16(a) and (d), and under Texas Government Code, §467.102, which provide the Texas Lottery Commission with the authority to adopt new rules for the enforcement and administration of the Bingo Enabling Act.

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

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TRD-9604539 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.546

The Texas Lottery Commission adopts new §402.546, relating to temporary authorization, without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 566).

The rule will clarify the provisions of the Bingo Enabling Act, §13, which relate to temporary authorizations The rule is necessary because it will put people on notice of the specific requirements for issuance of a temporary authorization, and also maintaining and/or extending a temporary authorization to conduct bingo.

The section sets out who is eligible to obtain a temporary authorization, what information is required to be filed, what specific activities are authorized under a temporary authorization, and under what circumstances a temporary authorization may be extended.

The Texas Lottery Commission received two written comments during the comment period and one oral comment during the February 6, 1996 public comment hearing. The commenters are opposed to the rule language that provides that temporary authorizations may not be amended. The commenters believe that circumstances may occur which make it imperative that a temporary authorization be amended to change the time or day of the conduct of bingo. One commenter believes language should be added to the rule which requires the agency issue a temporary authorization if a license is not issued or denied before the 31st day after the date of the filing of an application for a license.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings, at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

At the February 6, 1996 public comment hearing, some persons did not provide comment but simply indicated opposition to or support for the rule.

The names of groups and associations making comments for and against the section.

In favor of: Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., and VFW Post 6008. Against: Fort Worth Bookkeeping, Family and Bluebonnet Bingo, Bingo Advisory Committee, and Thompson Allstate Bingo Supply, Inc.

The agency disagrees with comments indicating that, under certain circumstances, a temporary authorization should be allowed to be amended. The agency believes the Bingo Enabling Act recognizes that only licenses may be amended. A temporary authorization is not a license, and, therefore, should not be subject to an amendment. Further, the agency believes that by allowing temporary authorizations to be amended additional delay in issuing a license for bingo-related activities based on a completed and accurate application will occur. The agency believes amending temporary authorizations creates a disincentive for an applicant to persevere in filing a complete and correct application since the person will simply undertake to operate under the temporary authorization. The agency disagrees with the comment to add language to the rule requiring the agency issue a temporary authorization if a license is not issued or denied before the 31st day after the date of the filing of an application for a license. The agency believes adding this language is not an accurate restatement of the Bingo Enabling Act, §13(b). Further, even if such language was an accurate restatement, there is no reason to restate the statute in this rule.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

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

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TRD-9604528 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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For further information, please call: (512) 323-3791

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• 16 TAC §402.547

The Texas Lottery Commission adopts new §402.547, relating to prohibited bingo occasion without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 568).

The rule is needed to clarify that the authorized organization is the entity responsible for the conduct of bingo and that an active member of such organization must be physically present and actively supervising and directing the bingo occasion. The Texas Lottery Commission believes that without such person being present and actively supervising and directing the bingo occasion the integrity and security of the bingo games could be jeopardized.

The section clearly states that an active member of the organization must be physically present and actively supervising and directing the bingo occasion. The section further states that the organization may not commence or continue a bingo occasion unless such an active member is physically present and to do so, is in violation of the Bingo Enabling Act, Texas Civil Statutes, Article 179d ("Act").

The Texas Lottery Commission received one written comment during the comment period and one oral comment at the February 6, 1996 public comment hearing. At the hearing, some people did not comment but did indicate either their support for or opposition to the rule. One commenter at the public comment hearing indicated that the term "active member" is not defined in the rule and it should be. Another commenter wanted the entire rule deleted because the provisions of the Bingo Enabling Act, §§11(g), 12(a)(7), and 19(a) address the language of the rule.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

The names of groups and associations making comments for and against the section.

In favor of: Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., and Family and Bluebonnet Bingo. Against: VFW Post 2348 and Bingo Advisory Committee.

The agency disagrees with the commenter who believes the term "active member" should be defined because the Bingo Enabling Act, §§11(g), 12(a) (7), and 19(a) clearly sets out who can be designated as an active member and any language in the rule regarding this issue is surplusage. The agency disagrees with the commenter who wants the rule deleted because the matters addressed by the rule are already addressed by provisions of the Bingo Enabling Act. The agency believes the provisions of the Act require that only a member may conduct, promote, or administer a bingo game. The agency believes such requirement can be fulfilled only if the member is physically present and actively supervising and directing the bingo occasion.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. As a result of the dialogue between the Bingo Advisory Committee and agency staff, language was revised in the draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language. Aspects of the dialogue and comment relate to provisions that may no longer exist or may have been revised.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604529 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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For further information, please call: (512) 323-3791

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• 16 TAC §402.548

The Texas Lottery Commission adopts new §402.548, relating to general restrictions on the conduct of bingo without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register> (21 TegReg 568).*

The section is necessary to put people on notice of general restrictions on bingo. While the provisions of the Bingo Enabling Act ("Act"), Texas Civil Statutes, Article 179d, address the matters set out in this rule, this rule outlines the requirements in greater detail. Pursuant to the Act, §16(i), the commission or its officers and agents may enter and inspect the contents of premises where a game of bingo is being conducted or where it is intended that a game is to be conducted, or where any equipment used or intended for use in the conduct of a game is found. Further, pursuant to the Act, §16(a), the commission has broad authority and shall exercise strict control and close supervision over bingo games. Also, the commission may adopt rules for the enforcement and administration of the Act. With the foregoing statutory provisions in mind, the commission believes it is important to set out in a rule the requirement that the name of the conductor appear on an advertisement of a bingo game. The commission desires to clarify, for security, integrity and fairness purposes, that bingo equipment is subject to inspection and that no licensee may tamper with such equipment so as to affect a person's chances of winning. The commission wants to ensure that persons know where bingo may be conducted. The commission wants to ensure that the statutory maximum amount of a bingo prize is not circumvented by awarding merchandise at a reduced value in lieu of cash. The commission believes players should know the name of the operator conducting the occasion, and, as such, has required in this rule that a sign with the name of the operator in no less than one inch type be prominently displayed at the bingo premise. The commission believes that, from a security, integrity, and fairness perspective, workers and employees should not be allowed to participate as a player in the bingo games. Finally, the commission wants to ensure that, in the event of a request for verification of a winning card or numbers drawn, standard procedures are utilized. The commission believes such procedures are important to maintain the integrity and fairness of the bingo games.

The section sets out provisions on advertising, inspection of equipment, location of bingo occasion, merchandise prizes, notice of law and regulation, notification of name of operator, reservation of bingo cards, workers and employees prohibited from playing, and verification of winning cards and numbers drawn.

The agency received 12 written comments during the comment period and six oral comments at the February 6, 1996 public comment hearing. One commenter wants subsection (b)(1) and (2) and subsection (c) of the rule deleted because the commenter believes the Bingo Enabling Act addresses the issues included in these provisions. This same commenter wants subsection (g) of the rule deleted because the commenter believes signs containing the Gamblers Anonymous 1-800 number are already posted on the premises where bingo is conducted, and, therefore, this provision is unnecessary.

Many commenters believe that the caller should be able to verify the numbers in lieu of the operator. Several commenters are opposed to the provision in subsection (f) of the rule that requires the name of the operator be posted on a sign because the commenters believe that such a requirement is cost prohibitive and also because it would be difficult for people to maintain the signs if the primary operator is unable to do so since sometimes there are last minute changes. Some commenters do not oppose the posting requirement of the name of the organization and operator but believe the other information required by the rule is unnecessary. Finally, several commenters agree with subsection (i)(1). One commenter believes requiring posting the name of the operator is not a problem because this information can be posted on a chalkboard. One commenter believes the rule should not require a lease when the lease arrangement is "rent free". This commenter believes this particular provision was intended for commercial lessors, not "benevolent" lessors. This commenter believes such a requirement triggers unnecessary annual reporting requirements and annual license renewals.

One commenter believes the rule is not clear regarding the location within the bingo premises where the Bingo Enabling Act and rules should be maintained, believes the restriction of the size of the letters required on the "notification of operator" sign should be deleted, and believes the prohibition of "workers and employees" playing bingo is too broad. One commenter believes the rule is unclear as to whether the operator must terminate the game if a worker is playing a game.

One commenter believes that the provisions relating to the requirements for advertising are too restrictive and a waste of advertising space.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

At the February 6, 1996 public comment hearing, some people did not testify but did indicate support for or opposition to the rule.

The names of groups and associations making comments for and against the section.

In favor of: Dallas County REACT, Inc., Bingo Advisory Committee, River City Bingo and North Austin Foundation, Inc. Against: Youth Benefit, Inc., Clements Boys and Girls Club, Lions Club of Killeen, Fort Worth Bookkeeping, Military Order of the Cooties Pup Tent #3, National Italian American Sports Hall of Fame, LULAC Council #616, Knights of Columbus Council 3253, Family and Bluebonnet Bingo, VFW Post 6008 and Bingo Advisory Committee.

The agency disagrees with the commenter who believes that subsection (b)(1) and (2) should be deleted since the rule does not contain such paragraphs; and, therefore, there is nothing to delete. The agency disagrees with the commenter who wants subsection (c) deleted because it is redundant to the Act, §16. The agency does not believe the rule language is redundant and further, believes the rule language places the responsibility on the organization to maintain bingo equipment in proper working condition.

The agency disagrees with the commenters who believe the rule language requiring the Gamblers Anonymous 1-800 telephone number is redundant because there is no reference in the rule language for such a 1-800 telephone number and therefore, there is nothing to delete.

The agency disagrees with the commenters who want the rule to allow callers to verify the number drawn instead of the operator. The agency believes the operator is the person responsible for the conduct of the game and should conduct the verification. Further, the integrity and security of the game may be jeopardized if the caller is able to verify the numbers drawn since the caller is the person who actually calls the numbers during the bingo game. Finally, the verification only occurs if a person requests such verification, most likely due to a dispute.

The agency disagrees with the commenters who do not want the rule to require the name of the operator and organization be posted on a sign. The agency does not believe the posting of the sign is cost prohibitive since the rule does not mandate the type of sign to be posted. For example, if the sign was constructed of paper or the names were written on a chalkboard, the cost would be minimal. The agency does not believe writing the names on paper, chalkboard, or similar medium creates an undue hardship which prevents "last minute changes". In addition, the agency believes it is important, in the interest of the integrity and fairness of the game, that the players know who is responsible for the conduct of the game. Further, the agency disagrees with the commenters who do not believe the other language is necessary. The agency believes this "other language" is one of the reasons for the rule, i.e., to inform players of the proper recourse for complaint resolution.

The agency disagrees with the commenter who believes the rule should not require a lease when the lease agreement is "rent free" because the current language in the rule does not require a lease.

The agency disagrees with the commenter who believes the rule is not clear regarding the location where the Act and rules should be maintained because the rule simply requires the Act and rules be maintained, kept current, and made available to any person. The agency disagrees with the commenter who is opposed to the letter size restriction on the "notification of operator" because the agency wants the information to be visible and believes less than one inch tall letters will not be visible.

The agency disagrees with the commenter who believes the phrase "workers and employees" is too broad because the agency believes it is specific and the agency does not want workers and employees playing bingo during the occasion they are working. The agency also disagrees with the commenter who believes the rule is unclear as to whether the operator must terminate the game if a worker is playing a game. The rule provides that the game may not continue if a worker is a player. The operator must either cease the game or have the worker stop playing. Since the operator is responsible for the worker, the agency fails to understand why the operator would allow the worker to play.

The agency disagrees with the commenter who believes the provisions relating to advertising requirements are too restrictive. Previous regulatory language required the license number to appear on the advertising. This requirement has been removed. Therefore, the agency believes the rule language is less restrictive.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. As a result of the dialogue between the Bingo Advisory Committee and agency staff, language was revised in the draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language. Aspects of the dialogue and comment relate to provisions that may no longer exist or may have been revised.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604530 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.549

The Texas Lottery Commission adopts new §402.549, relating to exemptions from licensing requirements, without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 569).

The rule is needed because it clarifies the particular exemptions from the licensing requirements of the Bingo Enabling Act, Texas Civil Statutes, Article 179d ("Act"). The Texas Lottery Commission believes it is important to make clear that an organization intending to conduct a game of bingo under the Act, §39 must submit to the agency the facts supporting its exemption from the licensing requirements. If the organization is exempt, the agency will issue a letter of exemption to the organization. The purpose of the rule is to make it easy for persons to know what type of organizations are exempt from the licensing requirements of the Bingo Enabling Act and to allow distributors to know which organizations can receive bingo equipment.

The rule sets out the type of allowable exemptions and provides that an exemption is valid for two years from the date of issuance.

The agency did not receive written comment during the comment period. At the February 6, 1996 public comment hearing, while there was no testimony, some people indicated support for or opposition to the rule.

The names of groups and associations making comments for and against the section.

In favor of: Forth Worth Bookkeeping, Military Order of the Cooties Pup Tent #3, Dallas County REACT, Inc., Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., Family & Bluebonnet Bingo, and VFW Post 6008. Against: LULAC Council #616.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604531 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.554

The Texas Lottery Commission adopts an amendment to §402.554, relating to instant bingo, with changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register (21 TexReg 570).* In response to comments regarding the requirement of the language "Authorized by the Texas Lottery Commission" in subsection (a)(2)(C) of this section, such subparagraph is deleted and the remaining subparagraphs of this subsection are relettered to correspond with such deletion. Also, subsection (a)(2)(A) of this section is revised to reflect that the "Texas Lottery Commission" seal must appear in no less than 26-point diameter circle. In response to comments received regarding the prohibition of pull-tab sales during intermission, the agency will not delete subsection (d)(3)(A),(B), and (C) of this section, such subparagraphs were proposed to be deleted. However, subsection (d)(3)(C) is revised to reflect the statutory required intermission and the first sentence of subsection (d)(3) of this section is deleted for the same reason.

As a result of House Bill (HB) 3021, 74th Legislature, Acts 1995, ("HB 3021") the Bingo Enabling Act ("Act"), Texas Civil Statutes, Article 179d was amended. These amendments provide, in part, that bingo may be played using a pull-tab bingo game, a break-open bingo ticket, or an instant bingo card subject to the rules of the commission. The Act, §16 provides that the commission may adopt rules for the enforcement and administration of the Act. The Act, §16 also provides that the commission has broad authority and shall exercise strict control and close supervision over all games of bingo conducted in this state to the end that the games are fairly conducted and the proceeds derived from

the games are used for the purposes authorized in the Act. Therefore, while the rule is an existing rule, the commission believes amendments to the rule are necessary to achieve the statutory goals of strict control and close supervision of bingo games, including pull-tab bingo games. The rule, as amended, puts persons on notice of definitions of significant terms used in the rule and what each individual card must contain and how it must be constructed, the price of an individual card, the times in which instant bingo cards may be sold, and the information that must be recorded on the cash register and the information that must be shown on the daily cash report.

The amendments to the rule set out provisions for definitions, requirements for construction of the instant bingo card, the maximum cost to purchase an instant bingo card, the times in which instant bingo cards may be sold, and the types of records that must be kept concerning the sale of instant bingo tickets.

The agency received 29 written comments during the comment period and 12 oral comments during the February 6, 1996 public comment hearing. Many of the commenters are opposed to the language in the rule prohibiting the sale of pull-tabs during the 10 minute intermission between bingo occasions. These commenters believe that the 1995 revisions to the Bingo Enabling Act, by virtue of HB 3021, were made to clarify that pull-tabs are a game of bingo, not to change the ongoing industry practice of selling pull-tabs during intermission. Many of these commenters believe that prohibiting the sale of pull-tabs during intermission will greatly reduce the amount of revenue generated from the sale of pull-tabs. Some of these commenters, while still opposed to the language in the rule prohibiting pull-tabs sales during intermission, believe a legislative change is required to allow the sale of pull-tabs during intermission. Other commenters believe the legislative intent was not to repeal the industry practice of selling pull-tabs during intermission but to satisfy a concern raised by the Internal Revenue Service that instant bingo is not bingo and therefore, is subject to taxation. Several of these commenters believe the legislature would have expressly prohibited the sale of pull-tabs during intermission if such a prohibition was the intent of the legislature. One commenter believes the language of the rule is unclear as to whether the sale of bingo paper during intermission is also prohibited. One commenter believes that bingo can not survive without the sale of pull-tabs because of competition by the lottery. This commenter believes the Texas Attorney General should render an opinion on the interpretation of the statutory language added to the Bingo Enabling Act, by virtue of HB 3021. This commenter believes the agency should segregate the bingo occasions and let the organizations decide when they want to take an intermission. Ultimately, this commenter wants the requirement of an intermission between bingo occasions deleted. Several commenters believe the statutory definition of bingo, found in the Bingo Enabling Act, §2 does not include instant bingo. These commenters believe instant bingo is a form of bingo activity, not a bingo game and therefore, the statutory requirement of an intermission between bingo games does not prohibit the sale of pull-tabs during intermission. One commenter believes language in the Bingo Enabling Act provides the agency with the authority to adopt rules to allow the sale of pull-tabs during intermission. One commenter believes the agency is interpreting the word "game" in the Bingo Enabling Act, §11(u) too strictly.

Many commenters believe prohibiting the sale of pull-tabs by deleting the language "prior to its licensed times" would severely damage the sale of pull-tabs for the organization. These commenters believe 80% of all pull-tab sales for the second session occur during the 30 minute intermission, with about 10% of sales occurring while the games end. These commenters also oppose the deletion of subsection (d)(3)(B) and (C).

Several commenters want the requirement that the word "B-I-N-G-O" be printed in no less than 29-point type removed. Another commenter wants subsection (a)(2)(B) revised so that "B-I-N-G-O" is not required to be in 29-point type but instead, is printed in a conspicuous location. One of these same commenters wants the requirement that the card contain no other symbols, emblems, or characters removed because this requirement infringes on free enterprise and removing the restriction would enable different types of pull-tabs. One of the commenters indicates that Texas is the only state requiring instant bingo tickets be printed with the "B-I-N-G-O" format. The commenter believes other states have realized there is no substantive difference between "B-I-N-G-O" on a ticket and some other configuration of numbers or symbols. Another of these commenters believes removing this requirement will allow charities to make more profits. This commenter wants pull-tabs to be able to look like lottery instant tickets.

Several commenters want the provisions in the rule setting out the size of type deleted because it limits new ideas for pull-tabs.

One commenter wants subsection (a)(2)(H), (I), (J), and (K) deleted, and subsection (c)(4) deleted and replaced with the following language added: "each individual ticket or tab must be constructed so that it is substantially impossible, in the opinion of the Commission to determine a concealed number or symbol until it has been sold."

One commenter generally supports the rule as proposed. This commenter suggests retaining all parts of the definition of an instant bingo card except subsection (a)(2)(A), (B), and (C). The commenter wants to remove the requirement that a Texas Lottery Commission seal appear on the card. The commenter believes there is no legitimate regulatory or accountability purpose served in requiring a Texas Lottery Commission seal. The commenter believes removal of the seal will eliminate the need to separately produce and store Texas products. The commenter believes segregated inventories reduce the variety of games available in Texas, thereby limiting the variety available to players at bingo games. One commenter believes that if the "Texas Lottery Commission" seal is printed on the ticket, additional words showing approval by the Commission are unnecessary. This commenter also wants language added to the rule allowing information contained in the packing slip to be included on the flare card or on a packing slip because the commenter believes there is no legitimate regulatory reason why the packing slip is the exclusive repository of this information. This commenter wants flare card information currently required to be printed on each card deleted and replaced with the requirement that the flare card be prominently displayed for all players. This commenter wants subsection (a)(2)(G), (H), (I), and (K) deleted. The commenter believes the requirements contained in these provisions conflicts with industry and North American Gaming Regulators Association ("NAGRA") standards. This commenter suggested language for subsection (a)(2)(H), (I), and (K). The language is as follows: "Subsection (a)(2)(H) be constructed of paper or paper products and glued or otherwise security sealed along all edges and between any break-open tabs. Subsection (a)(2)(I) have numbers or symbols that are concealed behind the tab covering. Subsection (a)(2)(K) prevent the determination of a winning or losing pull-tab or instant ticket by any means other than the physical removal of the tab covering prior to purchase. Notwithstanding the above, encrypted markings shall not be prohibited."

This commenter believes that the language in subsection (a)(2)(K) ignores new technology which enhances security, integrity, accountability while enhancing entertainment values. This commenter also wants subsection (a)(3) revised to be consistent with the commenter's suggested language allowing the use of a flare card. The commenter also wants subsection (c)(1) and (4) modified to be consisted with the comments regarding subsection (a)(2)(K). The commenter wants subsection (d)(3) modified to add language allowing the licensed organization to sell instant bingo cards on the premises specified in its license and where regular or paper special bingo cards are sold, during the organization's licensed times.

One commenter wants the definition section amended to include pull-tab games in addition to instant bingo. This commenter also believes subsection (a) (2)(H), (I), and (J) should be broadened to allow any type of material or construction which preserves secrecy and prevents reading before purchase. The commenter also believes this language should allow for deals in rolls. This commenter provided rule language to substitute for the agency's rule or, in the alternative, that pertinent parts be added as amendments to the agency rule. This commenter's language is designed to carry out the aforementioned comments.

Two commenters want the rule to require the agency to limit breaks to 10 minutes and allow 20 minutes for preparation time before games.

One commenter wants different subsections of the rule amended to allow electronic instant bingo tickets, specifically subsection (a)(2)(H), (I), (J), and (K). This commenter wants the language in subsection (c) amended to remove the requirement that instant bingo tickets be constructed of glued cardboard. This commenter believes the plain language of HB 3021 allows for new technology offered by the commenter's company, including electronic tickets.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

Several people submitted written comments which only expressed opposition to the rule. Also, at the February 6, 1996 public comment hearing, some people did not testify but did indicate support for or opposition to the rule.

The names of groups and associations making comments for and against the section.

In favor of: Dallas County REACT, Inc., Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., Hewitt VFW Post 6008, and National Association of Fundraising Ticket Manufacturers. Against: American Legion Auxiliary, 626, Youth Benefit, Inc., Clements Boys and Girls Club, Lions Club of Killeen, Fort Worth Bookkeeping, Military Order of the Cooties Pup Tent #3, Amvets Post 89, Celina Volunteer Fire Department, VFW Plano 4380, LULAC Council #616, West Texas Bingo, Redmen Caddo #19, Amvets Post #5, Holiday Lake Volunteer Fire Department, Family and Bluebonnet Bingo, VFW Post 6008, Bingo Advisory Committee, Unicorn Centers, Inc., Caring and Sharing Foundation, Improved Order of Red Men, Riding Unlimited, International Gamco, Inc., Jollyville Sertoma Club, Creative Schools, Inc., Knights of Columbus #8156, Juan Diego Missionary Society, AIDS Care and Assistance/Rites of Passage, Northwest Sertoma Club, Thompson Allstate Bingo Supply, Inc., Wigwam Council #8, Comanche Tribe #18, Kiva Tribe #26, American GI Forum, Cochise Council #9, Air Force Sergeants Association Chapter #1056, Merkel Chamber of Commerce, Trend Gaming Systems, LLC, I.O.R. White Mountain #12, Brownsville Jaycees, Zonta Club of Brownsville, I.O.R. Omaha #25, Boys and Girls Club of Brownsville, I.O.R. Romona #5, I.O.R. War Eagle #5, I.O.R. Buffalo #13, I.O.R. Cheyenne #14, I.O.R. Blackcrow #16, Huace Tribe #48, Lake Worth Lions Club, and Manor Volunteer Fire Department, Inc.

The agency agrees with the commenters who believe the amendments to the Bingo Enabling Act ("Act") which prohibit the conduct of bingo during an intermission between occasions do not prohibit the sale of pull-tab during such intermission. The agency agrees with the commenters who believe the amendments added by virtue of HB 3021 were to satisfy a concern raised that pull-tabs were not a form of bingo, and, as such, subject to federal taxation. The agency agrees that if the legislative intent was to prohibit pull-tab sales during intermission, such intent would have been expressly stated in HB 3021, especially in light of the industry practice of selling pull-tabs during intermission.

The agency disagrees with the commenters who want the requirement that the word "B-I-N-G-O" be printed in no less than 29-point type removed. The agency believes the purpose of this requirement was to ensure identification of a standard pull-tab being used in Texas. The agency disagrees with the commenters who want the requirement that the card contain no other symbols, emblems, or characters removed because the agency believes such a removal would be inconsistent with the traditional definition of bingo contained not only in the Act, §2(2) but also in the promulgated standards of the North American Gaming Regulators Association ("NAGRA"). NAGRA Standards on Bingo provides that bingo is a specific form of gambling played for prizes with cards having five rows of five squares bearing numbers, except for the center square which is a free space. The traditional form of bingo also includes the requirement that the letters B-I-N-G-O appear in order above the five columns. Players holding cards cover numbers, as objects similarly numbered are drawn at random, and the game is won by a player who first covers a predetermined arrangement of numbers on such card. Also, the NAGRA Standards on Bingo provide that "Bingo" means the traditional game of chance played for a prize determined prior to the start of the game, using cards containing five rows of five squares, each imprinted with randomly placed numbers, one through seventy-five, except for the center square which may be a free space, and a set of designators, similarly numbered, which are contained in a selection device. The letters "B-I-N-G-O" must also be imprinted on the card, in order above each of the five columns. Players who have paid consideration for the cards they are holding compete for prizes by covering numbers imprinted on their cards when similarly numbered designators are randomly drawn and called. A winner is the first player to cover a predetermined arrangement of numbers on such cards. The game begins when the first number is called and ends when a player has covered the previously designated arrangement and declares bingo and the winning card is independently verified. The agency believes the provisions contained in this rule setting out the requirements of the instant bingo card conform to the game of bingo.

Further, the agency disagrees with the commenters who believe removal of such restrictions will increase profits to charities. The commenters did not provide factual or statistical data to support this contention. In fact, the Commission has received data that suggests removal of such restrictions will decrease profits.

The agency disagrees with the commenters who want subsection (a)(2)(H), (J), and (K) deleted. The agency believes subsection (a)(2)(H), (J), and (K) are NAGRA standards. The purpose of such standards is to ensure fairness, integrity, and security of the bingo game. The agency disagrees with the suggestion that the rule allow for electronic pull-tabs. To allow for this type of pull-tab would conflict with NAGRA standards. Further, use of electronic pull-tabs may involve a video display dispenser, which is a prohibited gambling device, as defined by HB 3021, §10.

The agency disagrees with the commenters who want the requirement that a "Texas Lottery Commission" seal appear on the card removed. The agency believes such a requirement puts people on notice that the pull-tab has been approved by the Texas Lottery Commission for use in Texas and, therefore, the pull-tab has met the requirements to ensure fairness, integrity, and security of the bingo game. Further, requiring the "Texas Lottery Commission" seal on instant bingo cards will prevent instant bingo cards from other jurisdictions from being used or in sold in Texas. However, the agency agrees with the commenter who wants the words "Authorized by the Texas Lottery Commission" deleted since the "Texas Lottery Commission" seal must appear on the instant bingo card. Therefore the subsection (a)(2)(C) is deleted. However, to ensure that the seal is conspicuous to persons, the rule will require the seal to appear in no less than 26-point type diameter circle of the seal. Such size restriction is already in use by licensed manufacturers.

The agency disagrees with the commenters who do not want the packing slip to be the exclusive repository of information regarding the deal of instant bingo cards because the agency believes the information contained on the package slip is essential for accounting and investigative purposes.

The agency disagrees with the commenter who wants flare card information required to be printed on each card deleted because the agency believes such information must be on each card to ensure that every player has knowledge of the odds of winning and prizes to be awarded for each pull-tab game. The agency believes that allowing the flare card to be prominently displayed will not achieve, to the same extent, the goal of putting players on notice.

The agency disagrees with the commenter who wants the rule to authorize deals in rolls because such product does not meet NAGRA standards. The agency believes that deals of pull-tabs which are in rolls can only be used in conjunction with a video display pull-tab dispenser, which is a prohibited gambling device by virtue of HB 3021, §10. Additionally, the deals in rolls can only be used in conjunction with a particular type of pull-tab dispenser, thereby restricting free enterprise.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. As a result of the dialogue between the Bingo Advisory Committee and agency staff, language was revised in the draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language. Aspects of the dialogue and

comment relate to provisions that may no longer exist or may have been revised.

The amendment is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code, Chapter 467 and the laws under the Commission's jurisdiction.

§402.554. Instant Bingo.

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

(1) Deal of series–Each separate, serialized package of instant bingo cards.

(2) Instant Bingo Card–A device used to play a specific game of chance consisting of an individual card, the face of which is initially hidden from view to conceal numbers. Each individual card must:

(A) bear in no less than 26-point diameter circle an impression of the commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the letters B-I-N-G-O on its face in a conspicuous location in no less than 29-point type;

(C) contain the series number assigned by the manufacturer;

(D) contain the manufacturer's name or trademark;

(E) disclose the amount and number of prize winners, the number of individual cards contained in a deal, and the cost per card;

(F) contain no other symbols, emblems, or characters;

(G) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the card and between the individual break-open tabs on the card;

(H) have numbers or symbols that are concealed behind perforated window tabs;

(I) allow such numbers or symbols to be revealed only after the player has physically removed the perforated window tabs; and

(J) prevent the determination of a winning or losing instant bingo ticket by any means other than the physical removal of the perforated window tabs by the player.

(3) Instant bingo game. A game of chance played by the random selection of one or more individually prepackaged instant bingo cards from a series of instant bingo cards. Prize winners are determined by the preprinted appearance of numbers in a prescribed order, according to winning arrangements indicated on the reverse side of the card.

(b) (No change.)

(c) (No change.)

(4) Each individual card must be constructed so that it is substantially impossible, in the opinion of the commission, to determine a concealed number or numbers until it has been opened by a player. Without limiting the requirements of the previous sentence of this paragraph, for all instant bingo cards offered for sale by a licensed organization on or after February 1, 1988, such cards shall be required to be constructed of cardboard and in such a manner so that cardboard gluing occurs on all four edges of the card and between the individual break-open tabs on the card. The glue must be of sufficient strength and type so as to prevent the undetectable separation of the card.

(5)-(6) (No change.)

(d) Prizes, costs, sales, percentages.

(1) The cost to purchase an individual instant bingo card may not exceed $1.00 and must be clearly posted in the vicinity of the location where cards are sold.

(2) (No change.)

(3) A licensed organization may sell instant bingo cards on the premises specified in its license and where regular or paper special bingo cards are sold. They may be sold for cash or redeemed for cash or other cards only:

(A) during the times that bingo cards are being sold;

(B) during the organization's licensed times where regular or paper special bingo games are being conducted; or

(C) during the required intermission between the bingo occasions of two organizations.

(4)-(7) (No change.)

(e)-(f) (No change.)

(g) Records.

(1) (No change.)

(2) The sales of and prizes paid for instant bingo cards, including the series number, shall be shown on the daily cash report and aggregate total sales for the organization must be recorded on the cash register.

(3)-(5) (No change.)

(h)-(i) (No change.)

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604532 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.555

The Texas Lottery Commission adopts new §402.555, relating to card-minding devices with changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 571). Subsection (d)(4) of this section is revised to provide that the price for a cardface played through a card-minding device shall be no less than the price as that of a disposable paper cardface or bingo hard card, sold separately or in combination.

As a result of House Bill 3021, 74th Legislature, Acts 1995, ("HB 3021") the Bingo Enabling Act ("Act"), Texas Civil Statutes, Article 179d, was amended. These amendments provide, in part, for a card-minding device. Pursuant to the Act, §11(v), "a person may not use a card-minding device:

(1)to generate or determine the random letters, numbers, or other symbols used in playing the bingo card played with the device's assistance;

(2)as a receptacle for the deposit of tokens or money, including coins or paper currency, in payment for playing the bingo card played with the device's assistance; or,

(3)as a dispenser for the payment of a bingo prize, including coins, paper, currency, or anything of value for the bingo card played with the device's assistance. No more than 30% of gross bingo game sales at each bingo occasion can be on electronic or mechanical card-minding devices. This provision does not include pull-tabs, instant bingo tickets, or break-open bingo games." In addition, House Bill 3021, §10 provides that "nothing in this Act shall be construed as authorizing any game using a video lottery machine or machines. In this section, 'video lottery machine' or 'machine' means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and microprocessor in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens or that directly dispenses cash, coins, or tokens." Pursuant to the Act, §16, the Commission may adopt rules for the enforcement and the administration of the Act.

In reconciling the previously-referenced statutory provisions, the Commission believes card-minding devices are authorized by the Act but such devices may not be video lottery machines. Further, the Commission believes the statute is clear that no more than 30% of gross bingo game sales at each bingo occasion can be on card-minding devices. The rule puts persons on notice of what steps are required for approval of card-minding devices in Texas, manufacturing requirements, conductor requirements, commission inspection of devices, records requirements, restrictions on the manner in which a device is used and requirements for verification of the winning cardface and/or the numbers drawn.

The rule sets out provisions for approval of card-minding devices in Texas, manufacturing requirements, conductor requirements, commission inspection of devices, records requirements, restrictions on the use of a device and requirements for verification of the winning cardface and/or the numbers drawn.

The agency received five written comments during the comment period and five oral comments during the February 6, 1996 public comment hearing. One commenter wanted the policy statement set out in subsection (a) deleted and replaced with the following language: "All card-minding devices must be operated in accordance with subsection (g)(2) of this section." This same commenter wants the language set out in subsection (c) deleted, subsection (c) (2) revised to read as follows: "Manufacturers of card-minding devices must manufacture each card-minding device to insure that the internal accounting system records and retains the serial number of each bingo card sold for cardminder use, the price of each card sold, the total amount of the cardminder sales for each game and the total amount of cardminder card faces sold for each game. This information must be secure before the game begins and shall not be accessible for alteration during the game. The device must have a security check system to detect any entry or alteration at any time. The accounting system must be able to verify winning cards and to print them for posting. The capabilities and information must not be lost through power failure or other disruption during the game period." This same commenter wants subsection (c)(4) deleted because the commenter believes the Bingo Enabling Act already outlines this requirement. This same commenter wants to delete the language referencing "dial-up telephone number of the card-minding device" in subsection (c)(1).

One commenter objects to the requirement of continuous monitoring of all bingo disposable cards because:

(1)the Bingo Enabling Act ("Act") doesn't require cardminding devices to monitor and account for disposable bingo card sales,

(2)the accounting is to be done by the use of the cash register under the Act,

(3)the Act requires the accounting system to be handled by a systems service provider,

(4)such a requirement will add great expense to the cost of the device and would be cost prohibitive for some charities,

(5)some manufacturers can not comply with such a requirement, thereby decreasing competition, and

(6)the same information is now provided by charities in their daily reports. This commenter suggests the total receipts of paper disposable bingo cards from the cash register be entered into the cardminding system at the close of the occasion and the agency, by use of a dial-up modem, could obtain these figures to ensure compliance with the 30% maximum cardminder sale, at any time after the occasion is completed. This commenter believes the sales ratio is easily controlled by the organizations by limiting the number of devices in use in relation to the attendance. The commenter believes such method has proven to be successful in other states that have a statutory ratio limit. While the commenter objects to continuous monitoring, the commenter does not object to a dial-up capability so the Commission can download the retained information between playing times. This commenter also believes the restriction of no more than 66 faces played through a device because the commenter believes such a restriction is contrary to the provisions of the Act since the Act sets a limit on sales of faces to a maximum of 30% of total bingo sales. The commenter believes the limitation of 66 faces is arbitrary. Finally, the commenter submitted a proposed rule to be substituted for the agency rule and published by the Commission.

Another commenter believes that the language in subsection (c)(1) requiring dial-up capability is expensive because it requires a complete point of sale system to be provided by the manufacturer. This commenter further believes that conductor staffing levels and training would be increased, resulting in a higher level of expense. This commenter suggested the following language in lieu of the existing language in subsection (c)(1): "Manufacturers of card-minding devices must manufacture each card-minding device in such a manner to ensure that the internal accounting system of the card-minding device is capable of continuously monitoring all cardminder sales. The card-minding device must have the capability to accept data input of the total disposable bingo cards sales for any bingo occasion." Several commenters believe the dial-up capability will be cost prohibitive, will restrict free enterprise, and is unnecessary from a "security and integrity" focus. This same commenter believes that the language in subsection (c)(2) should clarify that any remote monitoring take place outside of any bingo occasion time periods. The commenter believes that outside communication during a bingo occasion would tie up system resources and possibly disrupt the game. This commenter suggests the following language in lieu of the existing language in subsection (c)(2): "The card-minding device must have a dial-up capability so that the commission may remotely monitor the operation and internal accounting systems of the card-minding device, at any time other than during any bingo occasion." This commenter also suggested the following language for subsection (d)(5): "No more than 30% of gross bingo game sales at each bingo occasion can be on electronic or mechanical card-minding devices. This provision does not include, pull-tabs, instant bingo tickets, or break-open bingo games." This commenter wants paragraph (2)(A)(i) deleted because the commenter believes that the purpose of paragraph (2)(A)(i) is unclear because the commenter believes that automatic marking is not related to security and integrity issues and also, because automatic marking does not provide any material advantage. This commenter believes that automatic marking is important to players with physical disabilities. Finally, this commenter wants paragraph (2) (B) deleted because the commenter believes this provision creates an additional sales limitation that conflicts with the statutory limit of card-minding device sales of thirty percent of sales.

Two commenters want the language in paragraph (5)(g)(A)(i) deleted because the provisions prohibits automatic marking of bingo numbers. One of the commenters believes this language conflicts with the most recent statutory revisions to the Bingo Enabling Act because such revisions do not contain a prohibition of this kind. Also, both commenters believe the prohibition discriminates against persons with disabilities and may violate the federal Americans with Disabilities Act. Finally, one of the commenters believes such prohibition results in discrimination of the manufacturers of the advanced communication technology.

At the public comment hearing, one commenter wanted subsection (d)(4) deleted, the word "immediate" deleted from subsection (e), and subsection (h) revised to allow the caller to verify the numbers in lieu of the operator. Several commenters at the public comment hearing are opposed to the requirement of setting prices on cardfaces played using a card-minding device because the commenters believe that this requirement restricts free enterprise and because charities will have to charge more since the cost of the device will have to be covered.

One commenter at the public comment hearing believes the requirement of notification to the agency of the removal of a device is excessive and may create unnecessary paperwork. This same commenter is opposed to the prohibition of reservation of a device because it prevents an organization from reserving a device for its best customers. Also, this commenter wants the language restricting the number of cardfaces played through a card-minding device deleted.

One commenter believes that if the rule sets prices, it should require that faces played through a card-minding device and faces played through disposable paper or hard cards be sold for the same price, or that paper will not be sold at a greater price.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

Some people at the public comment hearing did not testify but did indicate support for or opposition to the rule.

The names of groups and associations making comments for and against the section.

In favor of: Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., and VFW Post 6008. Against: Bingo Advisory Committee, Fort Worth Bookkeeping, Military Order of the Cooties Pup Tent #3, Celina Volunteer Fire Department, VFW Plano 4380, LULAC Council #616, West Texas Bingo, Family and Bluebonnet Bingo, Trend Gaming Systems, LLC, St. Andrews Episcopal Church and Fortunet.

The agency disagrees with the commenter who wants the policy statement set out in subsection (a) deleted and replaced with suggested language because the suggested language is already in the rule.

The agency disagrees with the commenters who want subsection (c) deleted and replaced with different versions of suggested language. Each version of the suggested language does not ensure a satisfactory level of security, integrity, and fairness of the game through use of a card-minding device. For example, the versions of the suggested language eliminate the requirement of continuous monitoring of all disposable bingo cards. The agency believes it is imperative that the card-minding device be capable of continuously monitoring sales of disposable bingo cards so that the agency knows that the statutory maximum limit of 30% of gross sales of bingo at each bingo occasion is not exceeded by an organization. Without monitoring the sales of disposable bingo cards, the agency will not be able to determine whether sales of card-minding devices have exceeded the 30% maximum set out in the Bingo Enabling Act ("Act") , §11(v).

Further, the Act, §16(a) provides the commission has broad authority and shall exercise strict control and close supervision over all games of bingo conducted in this state to the end that the games are fairly conducted and the proceeds derived from the games are used for the purpose authorized in this Act. The agency believes that to ensure the 30% maximum of sales on a card-minding device is not exceeded, the device, if an organization elects to use such a device, must account for sales of disposable bingo cards. Moreover, the agency disagrees with the commenter who believes the Act requires the use of a cash register for accounting. The Act, §11(l) simply provides that sales be recorded on a cash register, not that the cash register perform accounting functions. Further, the point-of-sale module of a card-minding device system functions as a cash register. The agency disagrees with the commenter who believes the Act requires the accounting system to be handled by a system service provider because the provisions of the Act referencing the activities of a system service provider encompass more activities than just accounting-related activities of bingo sales. The agency also disagrees with the commenter who believes the requirement of continuous monitoring will add great expense to the cost of the device and would be cost prohibitive and some manufacturers can not comply with such a requirement, thereby decreasing competition. In July 1995, the agency invited manufacturers of card-minding devices to participate in a fact-finding conference. As a part of the fact-finding conference, the agency requested information regarding whether card-minding devices had continuous monitoring capabilities. The overwhelming response from the manufacturers was that the card-minding devices did have such capabilities. For those manufacturers who indicated their devices did not currently have such capabilities, these manufacturers indicated their devices could have continuous monitoring capabilities at a minimal expense. Therefore, the requirement of continuous monitoring will not add great expense since the majority of the devices already contain such capabilities. Moreover, the agency does not believe competition will be decreased because manufactures can not comply with such a requirement for the same reasons. The agency disagrees with the commenter who believes sales information is now provided by charities in their daily reports since there is no requirement that daily reports include card-minding device sales on daily reports and there is no capability of continuous monitoring of a daily report. Further, the agency believes that organizations who elect to use a card-minding system could experience a reduction in paperwork, thereby reducing their costs to maintain such records.

The agency disagrees with the commenter who suggests that total receipts of paper disposable bingo card cards from the cash register be entered into the card-minding system at the close of the occasion because this method does not provide the organization with real time feedback of the 30% maximum of card-minding sales. The goal of which is to ensure that the 30% maximum is not exceeded. Further, the agency disagrees with the commenter who wants to use a limitation of devices to ensure the 30% maximum is not exceeded because the agency does not believe that limiting the number of devices in use will ensure that the 30% maximum is not exceeded.

The agency disagrees with the commenter who wants the restriction of 66 faces played through a card-minding device deleted. The agency disagrees that the 66 faces limitation is designed to ensure that the 30% maximum is not exceeded. The purpose of the 66 faces limitation is to ensure fairness and the integrity of the game by ensuring that a player using a card-minding device does not have a material advantage over a player using a disposable paper card. The agency disagrees with the commenter who believes the 66 faces limitation is arbitrary. In a survey conducted by the agency, the agency determined that this limitation is consistent with the same type of limitation in other states.

The agency disagrees with the commenters who are opposed to the requirement of dial-up capabilities. The commenters believe such capability would be costly to organizations, disruptive to the game, require organization staffing levels to increase, restrict free enterprise and is unnecessary from a security and integrity standpoint. At the previously mentioned fact-finding conference, the agency requested information from manufacturers regarding dial-up capability. The overwhelming response was that the devices had dial-up capabilities. The manufacturers who indicated that their devices did not currently have such a capability, could have such capability in the near future at a reasonable cost. Since a large number of these devices already have dial-up capabilities, the agency disagrees with the commenter who believes such a requirement infringes on free enterprise. In addition, since some of these manufacturers in some lease agreements with organizations, are paid based on a percent of sales, these manufacturers' devices have dial-up capabilities for their own monitoring and control purposes. Further, the agency is not aware that the use of a dial-up capability will cause a disruption to the game or that it will increase staffing levels. The purpose of the dial-up capability is to allow the agency to dial-up the device to monitor bingo sales. The agency does not envision an increase in staffing levels for an organization.

Finally, the agency disagrees with the commenter who believes the dial-up capability requirement is unnecessary from a security and integrity standpoint. The agency desires to ensure that the statutory 30% maximum of bingo sales is not exceeded. If an organization's sales were exceeded, the organization would violate the Act, §11(v). The dial-up capability allows the agency to detect, upon the agency's inquiry, such a violation of the Act.

The agency disagrees with the commenters who want the provision prohibiting automatic marking deleted. The agency believes automatic marking gives a player using a card-minding device a material advan-

tage over a player using a disposable bingo card. The agency disagrees with the commenters who believe automatic marking is important to players with disabilities because the agency is aware of no complaints from persons with disabilities regarding an inability to play bingo even in its current form, disposable paper bingo. Therefore, allowing automatic marking by players will give such players a material advantage and doesn't assist players with disabilities who can not otherwise play bingo. Additionally, allowing automatic marking may allow a player to play bingo while not being physically present. The agency believes a player must be physically present to play bingo; otherwise, the device is what is playing bingo, not the player. Therefore, from a security, integrity, and fairness of the game perspective, the agency believes automatic marking should be prohibited.

The agency disagrees with the commenter who wants the word "immediate" deleted in subsection (e) because the agency believes under certain circumstances immediate access to the card-minding device is appropriate. Further, under the Act, §16, the commission has clear authority to inspect bingo premises and bingo games at anytime. Finally, the rule as adopted will enable the commission to fulfill its statutory requirements of preserving the security and integrity of the bingo game.

The agency agrees with the commenters who are opposed to the rule requiring that prices on cardfaces played using a card-minding device be the same price as that of disposable bingo paper faces. Therefore, the agency has revised the language in subsection (d)(4) of this section to accommodate these comments.

The agency disagrees with the commenter who believes notification to the agency of the removal of a device is excessive and may create unnecessary paperwork. The agency believes it is important from a security, integrity, and fairness of the game perspective, when there is a malfunction of a device to the extent such device must need to be removed.

The agency disagrees with the commenter who wants the rule to allow for reservation of a device because it creates an appearance of an unfair advantage to a player and compromises the integrity and fairness of the game.

The agency believes it must have the discretion to retain the device to ensure that the ("EPROM") erasable programmable read only memory modules or any other part of the device has not been altered or tampered with to ensure the security, integrity, and fairness of the game.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. As a result of the dialogue between the Bingo Advisory Committee and agency staff, language was revised in the draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language. Aspects of the dialogue and comment relate to provisions that may no longer exist or may have been revised.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

§402.555. Card-minding Device.

(a) Policy Statement. All card-minding devices must be operated in accordance with subsection (g)(2) of this section.

(b) Approval of Card-minding Devices.

(1) No card-minding device may be sold, leased, or otherwise furnished to any person in this state or used in the conduct of bingo for public play unless and until a card-minding device which is identical to the card-minding device intended to be sold, leased, or otherwise furnished has first been presented to the commission by its manufacturer, at the manufacturer's expense, and has been approved by the commission for use within the state.

(2) An identical card-minding device to the card-minding device intended to be sold, leased, or otherwise furnished must be presented to the commission in Austin for review. If granted, approval extends only to the specific card-minding device approved. Any modification must be approved by the commission.

(3) Once a card-minding device has been approved, the commission may keep the card-minding device for further testing and evaluation for as long as the commission deems necessary.

(c) Manufacturing Requirements.

(1) Manufacturers of card-minding devices must manufacture each card-minding device in such a manner to ensure that the internal accounting system of the card-minding device is capable of continuously monitoring all disposable bingo cards and cardminders sales so that at any bingo occasion sales of cardminders do not exceed thirty percent of gross bingo receipts.

(2) The card-minding device must have a dial-up capability so that the commission may remotely monitor the operation and internal accounting systems of the card-minding device at any time.

(3) Manufacturers of card-minding devices incorporating erasable programmable read only memory modules ("EPROM") and EPROM receptacle or similar logic storage and/or retrieval components must seal these modules and their associated circuitry to secure against unauthorized removal, additions, changes or other alterations by utilizing commission-approved protective seal tape. No security seal shall be broken except when authorized by the commission.

(4) Manufacturers of card-minding devices must manufacture each card-minding device to insure that the internal accounting system records and retains for a period of not less than twelve months, the serial number of each bingo card sold for cardminder use, the price of each card sold, the total amount of the cardminder sales for each occasion and the total amount of cardminder card faces sold for each occasion. This information must be secure and shall not be accessible for alteration during the occasion. The cardminder system must be able to verify winning cards and to print them for posting. The capabilities and information must not be lost through power failure or other disruption during the occasion.

(5) If the commission detects or discovers any problem with the card-minding device that affects the security and/or integrity of the bingo game or card-minding device, the commission may direct the manufacturer, distributor, or conductor to cease the sale, lease, or use of the card-minding device, as applicable. The commission may require the manufacturer to correct the problem or recall the card-minding device immediately upon notification by the commission to the manufacturer. If the manufacturer, distributor, or conductor detects or discovers any defect, malfunction, or problem with the card-minding device, the manufacturer, distributor, or conductor, as applicable, shall immediately remove the card-minding device from use or play and immediately notify the commission of such action.

(6) The toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling must be displayed on each card-minding device in such a manner that it is conspicuous and clearly visible to a player using the card-minding device.

(d) Conductor requirements.

(1) Before initial use by a licensed authorized organization, each licensed authorized organization that leases or purchases a card-minding device must notify the commission in writing of the make, model, serial number and dial-up telephone number of the card-minding device.

(2) No conductor shall require a player to use a card-minding device in playing bingo.

(3) Prior to the start of the bingo occasion, no card-minding device may be reserved for use by any player, with the exception of a player who is disabled in accordance with the provisions of the American with Disabilities Act, or, a player who is playing more than one consecutive bingo occasion.

(4) The price for a cardface played through a card-minding device shall be no less than the price as that of a disposable paper cardface or bingo hardcard, sold separately or in combination.

(e) Inspection. The commission or the commission's authorized representative(s) may examine and inspect any individual card-minding device and related systems. Such examination and inspection includes immediate access to the card-minding device and unlimited inspection of all parts of the card-minding device.

(f) Records.

(1) Each manufacturer selling card-minding devices must maintain a log showing the date, and serial number of the purchased card-minding device and to whom the card-minding device was sold.

(2) Each distributor selling, leasing, or otherwise furnishing card-minding devices must maintain a log showing the following information:

(A) the date, model and serial number of the card-minding device;

(B) the name and Texas taxpayer identification number of the licensed organization to whom the card-minding device was furnished;

(C) name, address, and Texas taxpayer identification number of the manufacturer or distributor from whom the card-minding device was purchased; and

(D) name, address and Texas taxpayer identification number of the distributor to whom the card-minding device was sold, leased or otherwise furnished.

(3) Each conductor purchasing, leasing, or otherwise utilizing a card-minding device must maintain a record showing the date, model, and serial number of the card-minding device and, the name, address, and Texas taxpayer identification number of the distributor from whom the card-minding device was purchased, leased, or otherwise furnished. If multiple conductors hold an interest in a card-minding device, each must maintain a separate record.

(4) All records, reports and receipts relating to the card-minding device's sales, maintenance, and repairs must be retained by the conductor on the premises where the conductor is licensed to conduct bingo or at a location designated in writing by conductor for a period of four years for examination by the commission. Any change in the designated location must be submitted to the commission in writing at least ten days prior to the change.

(5) Manufacturers and distributors must provide and maintain for four years the following information on each invoice or other document used in connection with a sale or lease, as applicable:

(A) date of sale or lease;

(B) quantity sold or leased;

(C) cost per card-minding device;

(D) model and serial number of each card-minding device;

(E) name and address of the purchaser or lessee; and

(F) Texas taxpayer identification number of the purchaser or lessee.

(g) Restrictions.

(1) No licensee may display, use or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(2) A card-minding device may be used by a bingo player only when operated in the following manner:

(A) The bingo player must perform at least the following functions:

(i) Input each number or symbol called by the conductor into the memory of the card-minding device by use of a separate input function. Automatic marking of numbers or symbols is prohibited;

(ii) Notify the conductor when a winning pattern or "bingo" occurs by means that do not utilize the card-minding device or the associated system; and

(iii) Identify the winning cardface and display the cardface to the conductor.

(B) Each player using a card-minding device is limited to playing a maximum of sixty-six cardfaces during any game.

(C) The bingo player must be physically present on the premises where the game is actually conducted.

(h) Verification.

(1) Verification of winning cardface. The numbers appearing on the winning cardface must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the cardface in fact have been drawn from the receptacle. This verification shall be done in the immediate presence of one or more players at a table other than the winner's. Alternatively, each winning cardface played on a card-minding device shall be displayed on any television monitors in use. Each winning cardface played on a card-minding device shall also be printed by the conductor through use of the card-minding system and posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) Verification of numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn. Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and the player requesting the verification.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604533 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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• 16 TAC §402.556

The Texas Lottery Commission adopts new §402.556, relating to pull-tab or instant bingo dispensers without changes to the proposed text as published in the January 23, 1996, issue of the *Texas Register* (21 TexReg 573).

As a result of House Bill (HB) 3021, 74th Legislature, the Bingo Enabling Act ("Act"), Texas Civil Statutes, Article 179d, was amended. These amendments provide, in part, for a ticket or pull-tab dispenser ("dispenser"). Under the Act, §2(24), a dispenser means "an electronic or mechanical device that dispenses a break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game after a person inserts money into the device. A bingo game representation or combination of bingo games must be shown on the ticket dispensed." Pursuant to the Act, §11(w), a dispenser "may not be used: (1) to generate or determine the random letters, numbers, or other symbols used in playing a bingo game; (2) to affect the chances of winning at a bingo game; and, (3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or anything of value for the bingo game played." In addition, HB 3021, §10, provides that "nothing in this Act shall be construed as authorizing any game using a video lottery machine or machines. In this section, 'video lottery machine' or 'machine' means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and microprocessor in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens or that directly dispenses cash, coins, or tokens." Pursuant to the Act, §16, the commission may adopt rules for the enforcement and the administration of the Act. The Act, §16 also provides that the commission has broad authority and shall exercise strict control and close supervision over all games of bingo conducted in this state to the end that the games are fairly conducted and the proceeds derived from the games are used for the purposes authorized in the Act. Therefore, the commission believes the rule is necessary to achieve the statutory goals of strict control and close supervision of bingo games, including the use of pull-tab dispensers.

In reconciling the previously-referenced statutory provisions, the commission believes dispensers are authorized under the Act but such dispensers may not be video lottery machines. The Commission believes the adoption of a rule regulating dispensers is necessary for the enforcement and administration of the Act. Further, the rule will assist the commission in ensuring that pull-tab dispensers are not prohibited gambling devices. It is clear that Texas, through the Texas legislature, has rejected forms of land based and riverboat casino gaming and off track betting for horse and dog racing in Texas. The purpose of the rule is to put persons on notice as to what type of dispensers will be approved from a manufacturing focus, what is required of bingo conductors, and what is required of distributors.

The rule sets out provisions for: approval of pull-tab or instant bingo dispensers; manufacturing requirements; conductor requirements; inspection of a dispenser by the commission; records requirements; and, prohibition of using the dispenser in such a manner which may deceive the public or affect a person's chance of winning.

The agency received 14 written comments during the public comment period and four oral comments at the February 6, 1996 public comment hearing. Several commenters want subsection (b)(2) and (3) deleted. These commenters want subsection (b)(2) language replaced with language which allows the dispenser to be able to determine whether a ticket or tab is an apparent winning or non-winning ticket after the insertion of money into the dispenser and which provides that the device where the money is inserted is considered part of the dispenser. These commenters want subsection (b)(3) language replaced with language that provides that manufacturers must manufacture each dispenser so the device is not a class 3 gambling device that is prohibited by state and federal laws. These commenters believe the rule infringes on free enterprise. One of these commenters wants subsection (c)(1) and (2) deleted because the commenter doesn't understand how new organizations can share a dispenser. Also, one of these commenters wants the language in subsection (c)(4) deleted which requires the deal or package of instant bingo cards to be mixed and shuffled prior to sale. These commenters also want the word "immediate" deleted in subsection (d). One of these commenters wants the language in subsection (e)(3) requiring multiple conductors holding an interest in a dispenser to maintain separate records deleted. One of these commenters believes the language to be included in the rule should be from a view of protecting the security and integrity of the game and maximizing benefits to the charity.

One commenter supports the rule because the rule creates a reasonable balance between regulation and market place flexibility. The commenter believes the rule ensures the integrity of the dispensers by requiring Commission inspection and approval while providing accessibility to a variety of dispensers by charitable organizations at affordable prices. The commenter believes there are six or seven separate companies that manufacture dispensers that fit the criteria of the rule. Each of the dispensers dispenses a conventional instant bingo/pull-tab ticket–the same type of ticket already approved in Texas. This commenter further indicated that these dispensers will dispense instant bingo/pull-tab tickets produced by every instant bingo ticket manufacturer licensed in Texas. The commenter believes the organizations will have a variety of tickets from which to choose and a variety of suppliers from which to purchase them. The commenter believes subsection (b)(2) and (3) are essential to maintain the purpose for and character of charitable bingo in Texas. The commenter also believes that removal of one or both of these provisions will permit a form of slot machine gambling in Texas. In addition, the commenter believes any machine that contains a video screen that displays the winning or losing symbols so the player need not open the ticket to determine if it is a winner or a loser is not an instant bingo dispenser. Instead, it is a video gambling device that issues a win receipt. The commenter believes inclusion of such a dispenser in the rule seems contrary to the language prohibiting slot machines and video gambling devices included in the 1995 legislation authorizing instant bingo/pull-tab dispensers. The commenter further indicated the language precluding the video display of winning or non-winning symbols is consistent with every other state that has addressed the issue by rule.

Another commenter believes the requirements of subsection (a) are essential to good regulation and should be adopted. However, the commenter wants subsection (a) to clarify that break-open bingo tickets include tickets in an electronic format, bar coded paper receipts to be redeemed for cash are permitted, and a dispenser may display a break-open bingo ticket. The commenter wants subsection (b) to take into account new technology whereby break-open bingo tickets are electronically dispensed to a screen and played by the purchaser on the screen. The commenter indicates that the electronic games and tickets retain all of the fundamental characteristics of the paper product. Further, winning tickets are evidenced by a bar coded paper receipt issued by the dispenser which is redeemed for cash. The commenter believes this technology offers many security and accounting features that benefit not only the organizations but also Texas. The commenter strongly supports subsection (b)(3) which prohibits rolling or spinning symbols because such dispensers replicate slot machines rather than instant bingo tickets. The commenter also supports subsection (e).

Many commenters want the dispenser to be like the dispensers used in Texas to sell lottery tickets. These commenters believe the use of "slot-machine-like electronic pull-tab dispensers" will actually lose money for the organizations.

Several commenters believe the language in subsection (b)(2) eliminates any visual technology which provides an aid to the player. These commenters do not believe the visual display jeopardizes security, accountability, or integrity of the dispenser. These commenters believe the legislature considered visual display issues and the language in HB

3021 does not prohibit visual animation or displays. The commenter suggested language which would allow visual display. The commenters believe the language in subsection (b)(3) prohibits a certain type of visual animation and such prohibition is not authorized by and is contrary to the Bingo Enabling Act ("Act"). One of these commenters suggested language which would allow visual animation but prohibit an EPROM allowing random number generation ability.

One commenter believes the rule is an attempt to bring further misfortune to one of the lottery's main competitions–bingo.

One commenter indicated it had reviewed the rule and would have no difficulty complying with its provisions and, therefore, supports the rule as drafted.

One commenter wants to use "the new pull-tab dispensers" because the commenter believes that without such dispensers, organizations can not compete with the Indian Casino in El Paso and the other casinos in adjacent states, and the activities of the Texas Lottery. This commenter wants to be allowed to compete on a level playing field. Another commenter believes that since the Tiguas are using video display pull-tab dispensers and are operating gaming under the Restoration Act, authority already exists to allow charities to use video display pull-tab dispensers. The commenter believes that a prohibition of such dispensers in Texas while the dispensers are allowed on the Tigua reservation would avoid the 5th Circuit U.S. Court of Appeals decision, *Ysleta Del Sur v. State of Texas*. This commenter wants the rule broadened to allow any dispenser that passes the necessary tests for the security and the integrity of the games and provides acceptable audit capabilities. The commenter also wants the rule to allow for a type of pull-tabs to be sold only through dispensers. The commenter believes this type of dispensing provides for better security as no tickets can be handled, stolen or examined without discovery. The commenter provided suggested language to achieve the goals covered by the comments.

Two commenters requested the transcripts of the Bingo Advisory Committee meetings at which comments relating to one or more of the various versions of the staff's draft rule were received be incorporated into this rulemaking record. These particular Bingo Advisory Committee meetings occurred prior to the time the agency proposed the rule.

Some people at the public comment hearing did not testify but did indicate support for or opposition to the rule.

The names of groups and associations making comments for and against the section.

In favor of: Bingo Advisory Committee, River City Bingo, North Austin Foundation, Inc., Civil Air Patrol-Odessa, Composite Squadron 42136, VFW Post 6008, National Association of Fundraising Ticket Manufacturers, Jollyville Sertoma Club, Creative Schools, Inc., Juan Diego Missionary Society, Knights of Columbus #8156, AIDS Care and Assistance/Rites of Passage, Northwest Sertoma Club and Technik Manufacturing, Inc. Against: Fort Worth Bookkeeping, Military Order of the Cooties Pup Tent #3, Celina Volunteer Fire Department, VFW Plano 4380, LULAC Council #616, Family and Bluebonnet Bingo, International Gamco, Inc., Geodesic's Living and Odessa East Rotary.

The agency disagrees with the commenters who want subsection (b)(2) and (3) of the rule deleted. The agency believes a device which can, through the use of a video display and microprocessor, determine whether a ticket is a winning or non-winning ticket without the player having to open the pull-tab is not a dispenser and is in violation of the Bingo Enabling Act ("Act"). Further, the agency believes a device containing visual animation simulating or displaying rolling or spinning reels is not a dispenser and is in violation of the Act. Instead, such a device which issues a credit is a video lottery machine as defined in HB 3021, §10. The agency disagrees with the commenter who wants the language of subsection (b)(3) replaced with language indicating that manufacturers must manufacture each dispenser so the device is not a class 3 gambling device prohibited by state and federal laws. Texas law does not refer to "Class 3 gambling devices". The agency does not believe the rule should refer to federal law since bingo is not regulated by federal law. Instead, bingo is regulated by Texas law. The agency disagrees with the commenters who want to delete subsection (b)(2) and (3) because the commenters believe the language infringes on free enterprise. The agency believes the purpose of the rule is to regulate bingo within the parameters of the Act. The agency believes the purpose of HB 3021, §10, was to prohibit video lottery machines. The agency believes the removal of one or both of these provisions will permit a form of slot machine gambling in Texas. Also, the agency disagrees with the commenter who believes subsection (b)(2) and (3) are contrary to the Act since without such paragraphs, the dispenser could be a prohibited video lottery machine as defined by HB 3021, §10.

The agency disagrees with the commenter who believes that since the Tiguas are using video display pull-tab dispensers and are operating under the Restoration Act, authority already exists to allow charities to use video display pull-tab dispensers in Texas. The commenter cites *Ysleta Del Sur Pueblo v. Texas and Ann Richards, Governor of Texas; Texas, et. al. v. Ysleta Del Sur Pueblo* 36 F.3d 1325 (5th Cir. 1994), *cert. denied*, 115 S. Ct. 1358 (U.S. Mar 20, 1995) (Numbers 94-1161 and 94-1310) to support his position. The agency does not believe this case stands for the proposition that since the Tiguas use video display pull-tab dispensers, authority exists for license authorized organizations in Texas to do the same. In the Pueblo v. Texas case, the Court held that the Restoration Act, 25 U.S. C. §1300g, governs the case and not the Indian Gaming Regulatory Act, 25 U.S. C. §§2701-21. While the Restoration Act, in pertinent part, provides that "all gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe", the Tribe's activities are still regulated by the federal government, not Texas. While the Restoration Act makes Texas law applicable to the Tiguas, the federal government's right to enforce that law is still exclusive. Therefore, simply because the Tiguas are using video display pull-tab dispensers does not indicate that Texas has authorized use of such devices. Quite the contrary, Texas has not authorized use of video display pull-tab dispensers. This rule clarifies this prohibition while at the same time authorizes the use of statutorily recognized pull-tab dispensers. However, referring to the gaming activities on tribal lands to suggest authority exists for gaming activities in Texas is nonsensical. Even though the Restoration Act provides that the Tribe may conduct whatever gaming activities Texas may conduct, Texas does not regulate such tribal gaming activities and has had no input with federal authorities as to the Tribe's use of video display pull-tab dispensers. The agency believes such dispensers are video lottery machines prohibited by Section 10, HB 3021. In *Sycuan Band of Mission Indians v. Roache,* 54 F.3d 535, 541-43 (9th Cir.), *cert. denied*, ____ S. Ct. ____ (1995), the Ninth Circuit Court of Appeals rejected a challenge by the Sycuan Band of Mission Indians to a district court ruling classifying video pull-tab machines as Class III gaming devices that would be illegal without a state compact. Under 25 U.S.C. §2703(7)(A)(i), Class II games, which are legal even without a state compact, include "the game of chance commonly known as bingo... including (if played in the same location) pull-tabs." The Sycuan Band argued that its video pull-tab games could not be classified as Class III gaming devices because the IGRA specifically permits "electronic, computer, or other technological aids" to be used in connection with the Class II game of bingo. Id. The Ninth Circuit held that the video pull-tab machines were Class III gaming devices and could not be operated without a compact. The court rejected the Band's argument that these devices were merely electronic aids reasoning that "an 'electronic aid' to a Class II game can be viewed as a device that offers some sort of communications technology to permit broader participation in the basic game being played, as when a bingo game is televised to several rooms or locations." *Sycuan Band*, 54 F.3d at 542.

The agency disagrees with the commenters who want subsections (a) and (b) to authorize pull-tabs that are electronically dispensed to a screen and played by the purchaser on the screen and bar coded paper receipts to be redeemed for cash. The agency believes such a device is a video lottery machine as set out in HB 3021, §10.

The agency disagrees with the commenters who believe the video dispenser provides for better security, accountability, and integrity because the video display unit itself does not do so because the display unit only displays the individual ticket as it passes the microprocessor. The agency believes the bar code reader in the dispenser can easily be compromised by the use of another bar code reader or similar technology not attached to the dispenser .

The agency disagrees with the commenter who believes the rule is an attempt to bring misfortune to bingo. The agency is empowered to regulate bingo by exercising strict control of the games and believes the rule conforms to the provisions of the Act. The notion that the agency is attempting to bring misfortune to bingo, which creates revenue for the state and charitable organizations, is absurd.

The agency disagrees with the commenter who wants subsection (c)(1) and (2) deleted because the commenter doesn't understand how organizations can share a dispenser. The agency believes organizations can share a dispenser provided the organizations maintain accurate records. Since organizations' occasions are separated by an intermission, an organization can remove its deal of unsold pull-tabs prior to the second organization's use of the dispenser. For the foregoing reasons, the agency also disagrees with the commenter who wants the requirement of multiple conductors holding an interest in a dispenser to maintain separate records deleted. Also, the agency believes each organization must maintain its own records of sales for accounting and auditing purposes. In addition, precedence has already been established for organizations to co-own bingo equipment.

The agency disagrees with the commenter who wants the word "immediate" deleted in subsection (d) because the agency believes under certain circumstances immediate access to the dispenser is appropriate. Further, under the Act, §16 the commission has clear authority to inspect bingo premises and bingo games at anytime. Finally, the rule as adopted will enable the commission to fulfill its statutory requirements of preserving the security and integrity of the bingo game.

The agency disagrees with the commenter who wants the requirement that the deal be shuffled and mixed prior to sale deleted since there is no such requirement in the rule.

The agency disagrees with the commenters who want incorporated into this rulemaking record the transcript of the Bingo Advisory Committee meetings at which comments relating to one or more of the different versions of the staff's draft rule were received. These meetings occurred prior to the time the agency proposed the rule. The meetings were working meetings to discuss the draft language of the rule among the Bingo Advisory Committee members and, also, to negotiate with and/or ask questions of agency staff regarding the various provisions of staff's draft rule. At one Bingo Advisory Committee meeting, the Committee received public comments regarding the various provisions of staff's draft rule. As a result of the dialogue between the Bingo Advisory Committee and agency staff, language was revised in the draft rule. All of these events and actions occurred prior to the time the agency proposed the rule for adoption. The agency does not believe incorporating the transcripts of these meetings into this rulemaking record is appropriate. The discussion and comment related to a draft rule during the process of negotiation of language. Aspects of the dialogue and comment relate to provisions that may no longer exist or may have been revised.

The new section is adopted under the provisions of Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the provisions of Texas Government Code, §467.102, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604534 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: April 22, 1996

Proposal publication date: January 23, 1996

For further information, please call: (512) 323-3791

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 107. Dental Board Procedures

Procedures for Investigating Complaints

• 22 TAC §107.100

The State Board of Dental Examiners adopts new §107.100, concerning receipt, processing, and coordination of complaints, without changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 744).

The new rule enables patients and/or other members of the general public or dental profession to file complaints against Texas dentists and dental hygienists and/or dental laboratory registrants pursuant to the recently amended Dental Practice Act.

The new rule establishes protocol for the receipt and processing of all complaints thereby assuring the public that all complaints are given appropriate consideration.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code, §§2001.021 et seq; Texas Civil Statutes, Article 4551d, which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548h §1, which provides that the State Board of Dental Examiners shall adopt rules concerning filing complaints and prescribe the information to be provided by a complainant.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604447 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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• 22 TAC §107.101

The State Board of Dental Examiners adopts new §107.101, concerning guidelines for the conduct of investigations, with changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 744). Specifically, the change in §107.101(c) is to correct a typographical error. The term "investigate case" is changed to "investigation file" to clarify the meaning of the rule.

The new rule provides for the categorization and prioritization of complaints to protect the public safety pursuant to the recently amended Dental Practice Act.

The new rule ensures complaints are assigned priority classifications for the appropriate conduct of investigative actions.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4551d which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548h §1, which provides that the State Board of Dental Examiners shall adopt rules concerning the investigations of complaints, and that such rules shall distinguish between categories of complaints, and ensure that complaints are not dismissed without appropriate consideration.

§107.101. Guidelines for the Conduct of Investigations.

(a) Upon receipt of a complaint and in order to provide proper statistical and/or a reporting mechanism, the alleged complaint violation(s) shall be classified into one or more of the following 17 categories defined as follows:

(1) Abandonment–Discontinuing treatment of a patient without timely notice whereby the patient is unable to provide for continued treatment.

(2) Advertising–Advertising through false, misleading, and deceptive statements, whether in person and/or via a print or nonprint medium.

(3) Allowing the Auxiliary to Practice Dentistry–Allowing an auxiliary person to perform dental services which are reserved for licensed dentists or dental hygienists.

(4) Dishonorable Conduct–Conduct which brings discredit upon the dental profession.

(5) Failure to Abide with Rules/Regulations–A violation of the day-to-day practice of dentistry, including but not limited to, the failure to use proper protection (e.g., lead apron) while taking radiographs, fair dealing, and/or special knowledge requirements cited in §109.122.

(6) Fee dispute–Unless involved in fraud or other extenuating circumstances, this type of violation usually is outside the jurisdiction of the Board.

(7) Fraud–Attempting or practicing financial gain through deception, misrepresentation, and/or illegal means in the course of providing dental treatment. Fraud also includes the waiving of the insurance co-payment.

(8) Impairment–Impaired due to self-abuse of drugs, alcohol abuse, and/or the use of Nitrous Oxide.

(9) Controlled Substances and Prescriptions–Promoting or furthering addiction, violation of record keeping rules, prescribing for non-dental purposes, and/or over prescribing of controlled substances.

(10) Negligence–Dental treatment considered to be below the standard (parameters) of care based on second opinion evaluations.

(11) Patient Abuse–The mistreatment of a patient–verbally or physically.

(12) Patient Death–As specified in §109.177, a requirement to submit a written report within 30 days after the death of a patient as a result of dental treatment.

(13) Patient Hospitalization–As in "Patient Death," a requirement to submit a written report of a patient's hospitalization as a result of dental treatment whose hospitalization was not in the normal course of dental treatment. This includes any injury (morbidity) or incident in the dental office.

(14) Practicing Dentistry Without a License (PDWOL)–Practicing dentistry without a Texas dental license as defined in Article 4551a, Dental Practice Act.

(15) Operating a Dental Laboratory Without Registration (ODLWOR)–Any dental laboratory (in-state or out-of-state) providing services without being registered with the Board.

(16) Probation Violation/Non Compliance–Violation of a Board Order requirement.

(17) Sanitation–Failure to maintain a sterile, clean dental office environment; failure to follow appropriate infection control procedures.

(b) Upon the Board Secretary's authorization to initiate an investigation of a complaint, the Director of Enforcement shall insure complaints are assigned a priority classification with appropriate investigative action.

(c) Upon the receipt of an investigation file, the assigned investigator shall commence an investigation and provide a preliminary report to the Director of Enforcement who, in coordination with the Board Secretary and Executive Director, shall then evaluate the imminent danger to the public of Texas. A decision for immediate temporary suspension of license shall be made if danger or harm is ongoing.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604448 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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• 22 TAC §107.102

The State Board of Dental Examiners adopts new §107.102, concerning procedures in conduct of investigations, without changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 745).

The new rule provides for a precise and unbiased procedure for the conduct of investigations pursuant to the recently amended Dental Practice Act.

The new rule establishes agency protocol for conducting agency investigations.

No comments were received regarding adoption of the new section.

The new rule is adopted under Texas Government Code, §§2001.021 et seq; Texas Civil Statutes, Article 4551d, which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548h §1, which provides that the State Board of Dental Examiners shall adopt rules concerning procedures to be followed in the investigation of complaints.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604450 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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• 22 TAC §107.103

The State Board of Dental Examiners adopts new §107.103, concerning compliance, without changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 746).

The new rule ensures that a monitoring program is established and maintained for those licensees who have received a Board order pursuant to the recently amended Dental Practice Act.

The new rule provides that individuals sanctioned by the Board will be monitored to assure their compliance with the stipulations of their board orders (i.e., sanctions).

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code, §§2001.021 et seq; Texas Civil Statutes, Article 4551d, which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548h §1, which provides that the State Board of Dental Examiners shall develop a system to monitor license holders' compliance with the Dental Practice Act.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604449 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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Administrative Penalties

• 22 TAC §107.200

The State Board of Dental Examiners adopts new §107.200, concerning administrative penalties, with changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 747). Specifically, the change in §107.200 Sec (d) and (e) is to correct a grammatical error.

The new rule provides for administrative penalties for licensees or registrants who violate the Dental Practice Act and/or the State Board of Dental Examiner's rules and regulations. Not all violations of law and rules are subject to administrative penalties; the more serious violations are included in this rule, e.g. where a patient is harmed. The criteria set forth in the statute for determining the amount of penalty are included in the rule and the maximum amount is increased for each prior violation.

The new rule establishes violation categories, amount of penalty and a standardized penalty schedule for administrative penalties imposed on licensees or registrants for violations of the Dental Practice Act and/or the rules and regulations of the State Board of Dental Examiners.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code, §§2001.021 et seq; Texas Civil Statutes, Article 4551d, which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act and Article 4548j which provides that the State Board of Dental Examiners shall adopt a rule setting forth a penalty schedule for use in assessing administrative penalties.

§107.200. Administrative Penalty

(a) Upon review of the completed investigation file and on the recommendation of the Board Secretary or his/her designee, an administrative penalty may be imposed on a licensee or registrant for violation(s) of the Dental Practice Act and/or Board rules and regulations.

(b) Administrative penalties may be imposed for the following violation categories:

(1) Advertising;

(2) Utilizing an unregistered dental laboratory;

(3) Failure to maintain a centralized inventory ledger for Controlled Substances;

(4) Failure to complete the required continuing education hours;

(5) Violating the terms and conditions of an issued Board Order;

(6) Practicing dentistry or operating a registered dental laboratory with a delinquent license or registration certificate;

(7) Failure to provide timely notice of a change of address;

(8) Failure to maintain the dental office in a sanitary condition;

(9) Failure to make, maintain, and keep adequate records of the diagnosis made and treatment performed for and upon each dental patient;

(10) Failure to post the required consumer information;

(11) Failure to have at least one certified dental technician employed a minimum of 30 hours per week at a specific dental laboratory;

(12) Other technical violations of the Dental Practice Act or the Board's rules and regulations that will not likely cause harm or danger to the public of Texas.

(c) The penalty for a violation may be in the amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for the purposes of imposing a penalty.

(d) The amount of penalty imposed shall be based on the following criteria:

(1) The seriousness of the violation, including but not limited to, the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) The economic damage to property or the environment caused by the violation;

(3) The history of previous violations;

(4) The amount necessary to deter future violations;

(5) Efforts to correct the violation; and

(6) Any other matter that justice may require.

(e) The amount of penalty imposed shall be based on a standardized penalty schedule as described below. Initial offense or repeat offenses shall be based on finalized administrative action.

(1) First offense: $100 to $1,000 per violation for each day the violation continues or occurs;

(2) Second offense: $100 to $2,500 per violation for each day the violation continues or occurs; and

(3) Third offense: $100 to $5,000 per violation for each day the violation continues or occurs.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604451 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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Chapter 109. Conduct

• 22 TAC §109.10

The State Board of Dental Examiners adopts new §109.10, concerning consumer information, without changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 747).

The new rule provides that dental patients shall be notified that complaints concerning dental services can be directed to the Board and the name, mailing address, and telephone number of the Board shall be displayed publically in the office of the Texas dentist pursuant to the recently amended Dental Practice Act. The rule provides that a licensee may use any one or more of the three methods of notification provided in the statute. Further, it provides the minimum size and color or type used in a notification and requires that it be legible. If a posted sign is used, a minimum size is prescribed. These requirements are included to ensure that licensees present the required information in a readable format that is displayed in a location where patients may observe the notice or sign, whichever is used.

The new rule establishes the manner in which a Texas dentist practicing dentistry shall notify dental patients that complaints concerning dental services can be directed to the Board.

No comments were received regarding adoption of the new section.

The new rule is adopted under Texas Government Code, §§2001.021 et seq; Texas Civil Statutes, Article 4551d, which provides the State Board of Dental Examiners with the authority to adopt and promulgate

rules consistent with the Dental Practice Act; and Texas Civil Statutes, Article 4549b which provides that the State Board of Dental Examiners by rule shall provide methods by which consumers are notified where to file complaints with the Board.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604453 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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Anesthesia and Anesthetic Agents

• 22 TAC §109.177

The State Board of Dental Examiners adopts an amendment to §109.177, concerning report of injury (morbidity) or death (mortality) in the dental office or hospital, without changes to the proposed text as published in the February 2, 1996, issue of the *Texas Register* (21 TexReg 748).

The amended rule provides for a technical review by a licensed dentist of the "morbidity" and/or "mortality" for proper placement and prioritization of the event in the complaint process.

The amended rule ensures that a report on mortality or morbidity will be reviewed first by the Secretary to make a preliminary determination whether the licensee is at fault. In cases where it is clear, on a preliminary basis, that the licensee is not at fault, no case number will be assigned. Once a case number is assigned, the licensee has a complaint on record. The Board requires a licensee to report mortality or morbidity no matter what caused such, and when there is no relation to dental services provided, the licensee should not be burdened with a reported complaint on his/her record.

No comments were received regarding adoption of the amended rule.

The amendment is adopted under Texas Government Code, §§2001.021 et seq; Texas Civil Statutes, Article 4551d, which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604452 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Effective date: April 19, 1996

Proposal publication date: February 2, 1996

For further information, please call: (512) 463-6400

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Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

Definitions

• 22 TAC §231.11

The Board of Vocational Nurse Examiners adopts an amendment to §231.11, relative to Headquarters of the Board, without changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 836).

This rule is amended to reflect the new address of the Board of Vocational Nurse Examiners.

No comments were received relative to the adoption of this rule.

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

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604656 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Effective date: April 24, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 305-8100

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Chapter 235. Licensing

Application for Licensure

• 22 TAC §235.3, §235.6

The Board of Vocational Nurse Examiners adopts amendments to §235.3, relative to Qualifications for Licensure by Examination and §235.6, relative to Applications for Licensure by Endorsement, without changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 837).

Section 235.3 is amended to clarify the language, as the Board no longer gives/administers the licensure examination. Section 235.6 is amended to clarify that there may be additional requirements for licensure for the endorsement applicant that reflect new active and current Texas licensure requirements.

No comments were received relative to the adoption of these rules.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604657 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Effective date: April 24, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 305-8100

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Issuance of Licenses

• 22 TAC §235.49

The Board of Vocational Nurse Examiners adopts an amendment to §235.49, relative to Emeritus Licenses, without changes to the proposed text as published in the February 27, 1996, issue of the *Texas Register* (21 TexReg 1474).

The rule is amended to reflect new active and current Texas licensure requirements.

No comments were received relative to the adoption of the rule.

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

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604659 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Effective date: April 24, 1996

Proposal publication date: February 27, 1996

For further information, please call: (512) 305-8100

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Chapter 237. Continuing Education

Continuing Education

- **22 TAC §237.19**

The Board of Vocational Nurse Examiners adopts an amendment to §237.19, relative to Relicensure Process, without changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 837).

The rule is amended to create consistency in the rules and to clarify requirements for continuing education for endorsement applicants.

No comments were received relative to the adoption of the rule.

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

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604658 Marjorie A. Bronk, R.N.
Executive Director
Board of Vocational Nurse Examiners

Effective date: April 24, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 305-8100

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Part XX. Texas Board of Private Investigators and Private Security Agencies

Chapter 435. Training Programs

- **22 TAC §435.3**

The Texas Board of Private Investigators and Private Security Agencies adopts an amendment to §435.3, concerning Certificate of Completion with changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1021).

The Board has determined that the amendment is necessary in order to ensure that sufficient training records are kept on all private security and private investigation registrants. Minor changes have been made to correct grammar and to clarify the language.

The amendment clearly defines the requirements for certificates of completion for Level One, Two and Three training courses which are required for various members of the private security and private investigation industry.

Comments were basically favorable to the amendment.

An individual instructor offered written comment regarding some changes in grammar; he made no other comment either for or against the amendment.

The amendment is adopted under the Texas Government Code, Texas Civil Statutes, Article 4413(29bb), §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

Texas Civil Statutes, Article 4413(29bb), is affected by this amendment.

§435.3. Certificate of Completion.

(a) There shall be four separate Certificates of Completion for the training course, one for each level of training, and one for the firearm requalification course.

(b) All Certificates of Completion shall contain the:

(1) name and approval number of the school;

(2) date of completion;

(3) name, signature and approval number of training instructor;

(4) name and signature of the director; and

(5) full name and social security number of student.

(c) Each certificate of completion shall contain the dates of final completion of the entire course. Additionally, the specific date of firearm qualification shall appear on Level 3 certificates.

(d) The Level One course certificate shall contain the words "has successfully completed the Level One training course approved by the Texas Board of Private Investigators and Private Security Agencies".

(e) The Level Two course certificate shall contain the words "has successfully completed the Level Two training course approved by the Texas Board of Private Investigators and Private Security Agencies".

(f) The Level Three course certificate shall contain the words "has successfully completed the Level Three training course approved by the Texas Board of Private Investigators and Private Security Agencies".

(g) The firearm requalification certificate shall contain the words "has successfully completed the firearms requalification training course approved by the Texas Board of Private Investigators and Private Security Agencies".

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

Issued in Austin, Texas, on March 26, 1996.

TRD-9604332 Clema D. Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Effective date: April 17, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 463-5545

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Chapter 447. Advertisements

- **22 TAC §447.1**

The Texas Board of Private Investigators and Private Security Agencies adopts an amendment to §447.1, concerning Address Shown in Advertisements without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1022).

The Board has determined that the amendment is necessary because many licensees use their homes as their principal place of business. Requiring these licensees to use their home address in advertisements could place them and their families in jeopardy.

The amendment will allow licensees the option of using their mailing address in advertisements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Article 4413(29bb) , §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

Texas Civil Statutes, Article 4413(29bb), is affected by this amendment.

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

Issued in Austin, Texas, on March 26, 1996.

TRD-9604333 Clema D. Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Effective date: April 17, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 463-5545

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Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Client Records

- **22 TAC §501.32**

The Texas State Board of Public Accountancy adopts amendment to §501.32, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1022).

The amendment allows the board to include computer format information in the definition of client records.

The amendment will function to clarify that client records may include computer records.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604643 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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Client Records

- **22 TAC §501.33**

The Texas State Board of Public Accountancy adopts an amendment to §501. 33, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register*(21 TexReg 1023).

The amendment allows the board to recognize that working papers may also include computer format information.

The amendment will function to clarify that working papers may include computer records.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604644 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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Other Responsibilities and Practices

- **22 TAC §501.41**

The Texas State Board of Public Accountancy adopts an amendment to §501. 41, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register*(21 TexReg 1023).

The amendment allows the board to forbid a certificate holder in industry practice from disclosing information from a previous employer to a new employer when the certificate holder was not authorized to do so by the previous employer.

The amendment will function to place the same confidentiality requirements on certificate holders in industry concerning information as that which is currently required of certificate holders in client practice of public accountancy.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604645 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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Chapter 511. Certification as CPA

Experience Requirements

- **22 TAC §511.124**

The Texas State Board of Public Accountancy adopts an amendment to §511. 124, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1023).

The amendment allows someone not physically located in the office of an applicant for the CPA examination to still supervise the applicant.

The amendment will function to ease the current restriction requiring a supervisor of an applicant for the CPA examination to be located in the office of the applicant.

One comment was received concerning adoption of the rule. The comment was in favor of the adoption. The commenter described the circumstances under which he envisions the proposed amendment will be applicable. Board staff neither agrees nor disagrees with the commenter. The comments do not require a change in the language of the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604646 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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Chapter 523. Continuing Professional Education

Continuing Professional Education Standards

- **22 TAC §523.32**

The Texas State Board of Public Accountancy adopts an amendment to §523. 32, with changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1024).

The changes are the replacement of the word "insure" with the word "ensure" in 4A and 4B of the rule. The addition of a period after the words "self interest" and the deletion of the new language in the last half of the last sentence under subsection (b)(2). The deleted language reads "even if it means a loss of job or client." The changes also include the phrase "Effective January 1, 1995," at the beginning of the rule. The word each is no longer capitalized. This phrase was in the original rule but removed in the proposed rule and now returned to the adopted rule.

The amendment allows clarification of the standards and requirements for ethics courses and ethics instructors.

The amendment will function to insure that ethics courses for CPAs will be more focused and that they will address pertinent ethical problems.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

§523.32. Ethics Course.

(a) General. Effective January 1, 1995, each certificate or registration holder, unless granted retired or permanent disability status or other exemption, is required every three years to successfully complete a four-hour course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board-registered provider of continuing professional education.

(b) Course content and board approval. Before a provider of continuing professional education can offer this course, the content of the course must be submitted to the continuing professional education committee of the board for prior approval. Course content shall be approved only after demonstrating, either in a live instructor format or in a self-study format, that the course contains the underlying intent established in the following criteria.

(1) The course shall encourage the certificate or registration holder to educate himself or herself in the ethics of the profession, specifically the Rules of Professional Conduct of the board.

(2) The course shall convey the intent of the board's Rules of Professional Conduct in the certificate or registration holder's performance of professional services, and not mere technical compliance. A certificate or registration holder is expected to apply ethical judgment in interpreting the rules and determining the public interest. The public interest should be placed ahead of self interest.

(3) The primary objectives of a continuing professional education ethics course shall be to:

(A) emphasize the ethical standards of the profession, as described in this section; and

(B) review and discuss the board's Rules of Professional Conduct and their implications for certificate or registration holders in a variety of practices, including:

(i) a certificate or registration holder engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.2 of this title (relating to Definitions);

(ii) a certificate or registration holder employed in industry who provides internal accounting and auditing services; and

(iii) a certificate or registration holder working in education or in government accounting or auditing.

(4) An ethics course shall meet the requirements of the board's continuing professional education rules as described in Chapter 523 of this chapter (relating to Continuing Professional Education). Effective June 1, 1996, prior to offering and scheduling an ethics course, a sponsor shall:

(A) ensure that the instructor has completed the board's ethics training program at least every three years or as required by the board;

(B) ensure that the instructor's professional license has never been suspended or revoked for violation of the Rules of Professional Conduct; and

(C) provide its advertising materials to the board's CPE Committee for approval. Such advertisements shall:

(i) avoid commercial exploitation;

(ii) identify the primary focus of the course; and

(iii) be professionally presented and consistent with the intent of §501.43 of this title (relating to Advertising).

(c) Evaluation. At the conclusion of each course, the sponsor shall administer testing procedures to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604647 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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Chapter 527. Quality Review

• 22 TAC §527.9

The Texas State Board of Public Accountancy adopts new §527.9, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1025).

The new section allows clarification of the requirements for quality reviews and quality review sponsors and reviewers.

The new section will function to improve performances by CPAs and to improve the quality of quality reviews and reviewers.

No comments were received concerning adoption of the rule.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604648 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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• 22 TAC §527.10

The Texas State Board of Public Accountancy adopts new §527.10, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (12 TexReg 1025).

The new section allows the board to create a committee and administrative structure to accept quality review reports.

The new section will function to increase the quality of quality review reports.

No comments were received concerning adoption of the rule.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604649 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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• 22 TAC §527.11

The Texas State Board of Public Accountancy adopts new §527.11, without changes to the proposed text as published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1026).

The new section allows the board to clearly state the responsibilities of the committee charged with accepting quality review reports.

The new section will function to clarify the duties of the committee accepting quality review reports.

No comments were received concerning adoption of the rule.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

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

Issued in Austin, Texas, on March 28, 1996.

TRD-9604650 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: April 24, 1996

Proposal publication date: February 13, 1996

For further information, please call: (512) 505-5566

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 31. Nutrition Services

• 25 TAC §31.1

The Texas Department of Health (department) adopts under federal mandate amendment to §31.1, concerning the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Section 31.1(b) adopts by reference the Fiscal Year 1996 WIC State Plan of Operations. Section 31.1(c) adopts by reference the WIC Policy and Procedure Manual.

Federal regulations at 7 CFR, Part 246, require the United States Department of Agriculture (USDA) to approve an annual update of the WIC State Plan of Operations. The amendment to §31.1(b) covers the annual update for the fiscal year 1996, which was approved by the USDA effective October 1, 1995. The 1996 update covers the state agency's goals and objectives for improving program operations; the affirmative action plan; and local agency identification-WIC project information. The amendments to the WIC Policy and Procedure Manual cover new and revised USDA policies, which became effective when the federal regulations and federal circulars became effective, and are incorporated into policies that were approved by USDA. The latest federal requirements which are being incorporated into the WIC Policy and Procedure Manual by the amendments to §31.1(c) cover the state agency's affirmative action plan; program initiation and expansion; allowable costs for peer counselors; allowable costs for outreach incentive items; allowable costs for laboratory costs; employee uniforms; financial reporting; nutrition education expenditures; breastfeeding promotion expenditures; automation change management; computer environment and platform modifications; system backups; telephone with data communications capabilities; repair of computer equipment; surge protector requirement; requests for new or additional computers and/or peripherals; nondiscrimination statement; collection of racial/ethnic data; certification periods; midpoint screening; time frames for processing applicants; appointment system; inactivation for failure to pick up food vouchers; notification of ineligibility; notification of termination; notification of certification expiration; waiting list for WIC; waiting list recall; identification of WIC applicant; residency as a certification requirement; preventing and detecting dual participation; income screening as a certification requirement; adjunctive income eligibility; economic unit for income; definition of income; Texas WIC income guidelines; collection and use of social security numbers; completion of the family certification form/release list; participant priority risk; criteria for identifying nutritional risk conditions; infant born to high risk or WIC mother; weighing equipment; determination of hematocrit/hemoglobin; assessment of medical history; regression in nutritional status; use of medical data taken prior to the time eligibility is determined; competent professional authority; issuance of WIC family identification cards; issuance of duplicate family identification cards; issuance of verification of certification; enrollment of transferring participants; certification data entry forms; completing the supplemental information form; completion and issuance of food vouchers; double issuance of WIC food vouchers; triple issuance of WIC food vouchers; recipients of food instruments; signing of food voucher by proxy; disposition of voided and destroyed food vouchers; replacement of

voided food vouchers; documenting missing/stolen food vouchers; action to be taken when issued vouchers are reported lost/stolen by participant; liability of local agency for food voucher inventory; mailing food vouchers; WIC food voucher supplies; criteria used for approving grocer/vendor's authorization; food packages; selection of allowable foods; tailoring food packages to meet individual needs; program benefits for homeless individual and those lacking refrigeration; use of contract formula samples; issuance of special formulas; issuance of formula to children and women with special dietary needs; intolerance to all authorized formulas; exception formulas for specialized medical needs; vendor abuse; exchange of formula between issuance dates; exchange of out-of-state food instruments; confidentiality of participant information; provision of food stamp, AFDC, Medicaid, EPSDT, and child support enforcement information to WIC applicants; compliance with the clinical laboratory improvement amendment of 1988 (CLIA); compliance with the national voter registration act (NVRA) of 1993; consent for immunizations; procedure for immunizations; contraindications to immunizations; emergency procedures; telephones for licensed vocational nurses; monitoring storage of vaccines; licensed vocational nurse training; CPR training for licensed vocational nurses; professional support; in service training; quality assurance; self-audits; immunization reporting forms; immunization communications; patient records; immunization tracking; follow up of delinquent clients for immunizations; and state agency monitoring of clinical operations and fiscal/food delivery systems.

The amendments to §31.1(c) also cover deletion of policies and procedures concerning the following: report of program operations; report of card sequences used; report of cards voided; lost/stolen card report; FNS-191 racial ethnic report; location of automated system site of issuing food vouchers; local agency responsibility for automated inventory records; food voucher issuance using the automated food delivery system; copy file/save file; automated certification records "TOSTATE"; diskette/procedure log; WIC numbers for participants; telephone with data communications capabilities; surge protector requirement; diskette supply; use of manual certification and food voucher issue system; repair of computer equipment; automated food voucher issuance; food voucher inventories for automated sites; end of month reconciliation for users of the automated system; frequency of automation tasks system; issuance of formula to breast-feeding mothers; income eligibility of foreign students; daily card and participation log; completion and issuance of food vouchers; and validation errors.

The amendment is adopted under federal mandate for the following reasons. Under federal and state enabling legislation (the Child Nutrition Act of 1966, Title 42, United States Code, §1786; and the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II), the WIC Program is 99% federally funded and governed by federal regulations. Funds are made available to the department by a federal grant. The federal statute (42 United States Code, §1786), federal regulations (7 CFR, Part 246), and the federal grant (Federal-State Special Supplemental Food Program Agreement) authorize the USDA to make the funds available to the department to administer the WIC Program in the State of Texas, provided that the department administers the program in accordance with the federal regulations.

The amendment is adopted under Health and Safety Code, §12.001(b), which provides the Texas Board of Health (board) with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§31.1. Special Supplemental Food Program for Women, Infants, and Children (WIC).

(a) (No change.)

(b) WIC State Plan of Operations.

(1) The department adopts by reference the publication titled "WIC State Plan of Operations", as amended effective October 1, 1995. This plan has been developed by the department's WIC Program and approved by the United States Department of Agriculture.

(2) (No change.)

(c) WIC Policy and Procedure Manual.

(1) The department adopts by reference the publication titled "WIC Policy and Procedure Manual," which the department developed, as amended effective October 1, 1995. This policy and procedure manual has been developed by the department's WIC Program and approved by the United States Department of Agriculture.

(2) (No change.)

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604552 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date: October 1, 1995

Proposal publication date: N/A

For further information, please call: (512) 458-7236)

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter B. Fees, Charges and Costs

- **28 TAC §1.302**

The Commissioner of Insurance adopts new §1.302, concerning the fee to be charged for affixing the official seal of the Texas Department of Insurance and for certifying to the seal, without changes to the proposed text as published in the January 19, 1996, issue of the *Texas Register* (21 TexReg 492).

New §1.302 is necessary to comply with §22.004 of the Civil Practice and Remedies Code, added by the 74th Legislature, 1995, in HOUSE BILL 1943, and to provide a uniform fee for all requests for affixing the official seal and certifying to the seal. The Insurance Code, Article 4.07(A)(2), authorizes the department to charge up to $20 for affixing the official seal and certifying to the seal. Section 7.1301(d) provides for a $10 fee for affixing the official seal and certifying to the seal for certain authorized insurers. The practice of the department has been to charge $10 for all requests for affixing the official seal and certifying to the seal. New §22.004 of the Civil Practice and Remedies Code requires an additional $1.00 for a request for production or certification of a record under a subpoena, a request for production, or other instrument issued under the authority of a tribunal that compels production or certification of a record. The $1 fee is specifically required in addition to any other fee charged. To comply with §22.004 and to establish a uniform fee for all instances in which the official seal is affixed and certified to, new §1.302 will provide for a single $11 fee for each certification, regardless of the authority or intent of the person or entity making the request. Simultaneous to adopting new §1.302, the department is amending §§7.1301 and 7.1404 to delete references to the current fees for certification addressed in those sections.

New §1.302 provides for a single $11 fee for each certification, regardless of the authority or intent of the person or entity making the request.

No comments were received on the proposed section as published.

The new section is adopted under the Insurance Code, Article 1.03A, which provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604544 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: April 23, 1996

Proposal publication date: January 19, 1996

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

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Chapter 7. Corporate and Financial Regulation

Subchapter M. Regulatory Fees

- **28 TAC §7.1301**

The Commissioner of Insurance adopts an amendment to §7.1301, concerning the fee to be charged for affixing the official seal of the Texas Department of Insurance and for certifying to the seal, without changes to the proposed text as published in the January 19, 1996, issue of the *Texas Register* (21 TexReg 493).

Amended §7.1301 is necessary to comply with §22.004 of the Civil Practice and Remedies Code, added by the 74th Legislature, 1995 in HOUSE BILL 1943, to provide a uniform fee for all requests for affixing the official seal and certifying to the seal, and to conform to new §1.302. The Insurance Code, Article 4.07(A)(2), authorizes the department to charge up to $20 for affixing the official seal and certifying to the seal. Section 7.1301(d)(3) provides for a $10 fee for affixing the official seal and certifying to the seal for certain authorized insurers. The practice of the department has been to charge $10 for all requests for affixing the official seal and certifying to the seal. New §22.004 of the Civil Practice and Remedies Code requires an additional $1.00 for a request for production or certification of a record under a subpoena, a request for production, or other instrument issued under the authority of a tribunal that compels production or certification of a record. The $1.00 fee is specifically required in addition to any other fee charged. To comply with §22.004 and to establish a uniform fee for all instances in which the official seal is affixed and certified to, new 28 TAC §1.302, will provide for a single $11 fee for each certification, regardless of the authority or intent of the person or entity making the request. Section 7.1301(d)(3), which references the $10 charge, is deleted and the remainder of said rule is renumbered accordingly. Simultaneous to this amendment of §7. 1301, the department is amending §7.1404 to delete reference to the current fee for certification addressed in that section.

Amended Section 7.1301(d)(3), which references the $10 charge, is deleted and the remainder of said rule is renumbered accordingly. Simultaneous to this amendment of §7.1301, the department is amending §7.1404 to delete reference to the current fee for certification addressed in that section and adding §1.302, to provide for a single $11 fee for each certification, regardless of the authority or intent of the person or entity making the request.

No comments were received on the proposed amendment as published.

The amendment is adopted under the Insurance Code, Article 1.03A, which provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604545 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: April 23, 1996

Proposal publication date: January 19, 1996

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

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Subchapter N. Service of Process

- **28 TAC §7.1404**

The Commissioner of Insurance adopts an amendment to §7.1404, concerning the fee to be charged for affixing the official seal of the Texas Department of Insurance and for certifying to the seal, without changes to the proposed text as published in the January 19, 1996, issue of the *Texas Register* (21 TexReg 494).

Amended §7.1404 is necessary to comply with §22.004 of the Civil Practice and Remedies Code, as added by the 74th Legislature, 1995, in HOUSE BILL 1943, to provide a uniform fee for all requests for affixing the official seal and certifying to the seal, and to conform to new §1.302 and amended §7.1301. The Insurance Code, Article 4.07(A)(2), authorizes the department to charge up to $20 for affixing the official seal and certifying to the seal. Section 7.1301 previously provided for a $10 certification fee for requests from certain insurers. Section 7.1404(g) previously provided for a $10 fee for certificates of service, which involve the affixing of the official seal and certifying to the seal, other than the two certificates of service automatically issued to plaintiffs and court clerks. New §22.004 of the Civil Practice and Remedies Code requires an additional $1.00 for a request for production or certification of a record under a subpoena, a request for production, or other instrument issued under the authority of a tribunal that compels production or certification of a record. The $1.00 fee is specifically required in addition to any other fee charged. To comply with §22.004 and to establish a uniform fee for all instances in which the official seal is affixed and certified to, new 28 TAC §1.302, which is being adopted by the Commissioner simultaneously to this adoption will provide for a single $11 fee for each certification, regardless of the authority or intent of the person or entity making the request. New 28 TAC §7.1301, which is being adopted simultaneously by the Commissioner deletes subsection (d)(3), which refers to the $10 fee. Amended subsection 7.1404(g) states that the fee charged for additional certificates of service will be the same fee normally charged for affixing the official seal and certifying to the seal and that portion which refers to the older fee is deleted.

Section 7.1404(g) provides that the fee charged for additional certificates of service will be the same fee normally charged for affixing the official seal and certifying to the seal and that portion which refers to the older fee is deleted.

No comments were received on the amended section as published.

The amendment is adopted under the Insurance Code, Article 1.03A, which provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604546 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: April 23, 1996

Proposal publication date: January 19, 1996

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

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Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas

- **28 TAC §9.1**

The Commissioner of Insurance adopts an amendment to §9.1, concerning amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual), with changes to the proposed text as published in the January 26, 1996, issue of the *Texas Register* (21TexReg 651).

The amended section concerns amendments to the Basic Manual, which the section adopts by reference. The amendments to the Basic Manual consist of modifications to Administrative Rules L-1, L-2, L-3, D.1, G.1 and G.2 concerning the requirements for licensing title insurance agents under the Insurance Code, Articles 9.36 and 9.37; title insurance escrow officers under the Insurance Code, Articles 9.42, 9.43 and 9.44; and direct operations under the Insurance Code, Article 9.36A. Administrative Rules L-1, L-2 and L-3 establish requirements for issuance, cancellation, renewal, change in operations and additional

appointments for title insurance agents, title insurance escrow officers, and direct operations. In Administrative Rules L-1, L-2 and L-3 the procedure for cancellation of a license requires that the entity requesting cancellation inform the department by letter of the reasons for cancellation as a mandatory requirement for granting the cancellation. This ensures that information regarding malfeasance by a title insurance agent, escrow officer or direct operation as a ground for license cancellation is reported to the department, in accordance with Insurance Code, Article 1.10D. Administrative Rules L-1, L-2 and L-3 have been amended to implement changes to the Insurance Code which provide that a staggered license renewal system may be adopted under the Insurance Code, Article 21.01-2. The current procedure for renewal of title insurance agents' licenses, escrow officers' licenses, and direct operations' licenses has been converted to a staggered renewal system which uniformly distributes the number of license expirations and renewals over a 12-month time period. The adoption of a staggered renewal system, where the processing of renewal applications is spread over a 12-month time period rather than all renewals being processed in a single month, eliminates license processing overloads, allows more efficient use of department staff time and expedites the issuance of licenses to the applicants. Administrative Rule L-1 is also amended to include pertinent language relating to letters of credit issued by a financial institution in this state and insured by an agency of the United States Government. In response to comments, the department has changed portions of L-1, L-2 and L-3, as proposed. The second sentence of L-1. I. was clarified. In L-1 the word "UNDERWRITER" was changed to "TITLE INSURANCE COMPANY" because title insurance company is a defined term and underwriter is not. In L-1. I. B. 2. the language "names of partners" has been deleted because the names of the partners are not typically the name of the partnership. In L-1. I. C. 6. the term "insurance company" was deleted and the term "Title Insurance Company" was inserted for clarification. In L-1. III. A. 3., L-2. IV. C. and L-3. III. 2. the language "including any improprieties involving the" agent, escrow officer or direct operation has been deleted for clarification. In L-1. III. B. the phrase "by the Agent " was added since clarification was needed regarding who should submit the information to whom. In L-1. IV. A. and B., L-2. V. A. and B., and L-3. IV. A. and B. language was deleted and new language was added to clarify that the staggered renewal system will be phased in over a three year period and that all licenses will be renewed with an expiration date that coincides with the expiration date of the initial license issued. In L-1. IV. B. 3. new language was added to eliminate the requirement that corporate title insurance agents must submit a new Certificate of Account Status each time they renew. In L-1. V. B. 1. new language was added to clarify that relicensing would be necessary when a new partner was added to the partnership but relicensing would not be necessary where a partner was deleted. The language in subsections L-1. V. B. 3, 4 and 5 was deleted and moved to the previous section as new L-1. V. A. 4, 5 and 6. Each of these provisions relates to changes in the name of the title agent. This change was made because none of the name changes warrant cancellation of a license and the expense and burden of reissuance of new title agent and escrow officer licenses. These new provisions are similar to requirements for a change in operations of a title agent involving the addition or deletion of a county which can currently be accomplished without the expense, delay, and regulatory requirment of cancellation of existing licenses and issuance of new licenses. The new subsections and current subsection L-1. V. A. 3. were changed to require the title agent, adding or deleting a county or changing its name, to either surrender the current license or submit a sworn statement that such license has been lost. In L-1. V. A. 3. a. iv. and 3. b. iv. the language "signed and dated by the Agent" was added for clarification purposes. In L-1. V. 3. a. iii. and 3. b. iii., concerning the submission of an executed Abstract Plant Information Form when a county is deleted or added by a title insurance agent, new language was added to require such form only in cases where the abstract plant has not been examined within the previous 12 months.

Section 9.1 incorporates by reference certain amendments to the Basic Manual. The amendment consists of proposed modifications to Administrative Rules L-1, L-2, L-3, D.1, G.1 and G.2 concerning the requirements for licensing title insurance agents, escrow officers and direct operations; requirements for ceasing operations by agents and direct operations; procedures pertaining to the policy guarantee fee and audit and review of escrow trust accounts. The amendment converts the current procedure for renewal of title agents' licenses, escrow officers' licenses and direct operations' licenses to a staggered renewal system to uniformly distribute the number of license expirations and renewals over a 24 month time period. A staggered renewal system eliminates license processing overloads allowing more efficient use of department staff time and expedites the issuance of licenses to the applicants. The amendment further imposes a new requirement that an entity requesting license cancellation must send the department a letter indicating the reasons for the request. The amendment also corrects various typographical and grammatical errors that currently exist in these sections of the Basic Manual, and changes references from the State Board of Insurance to the Texas Department of Insurance as consistent with the requirements of House Bill 1461.

Comment: Commenters believe that in L-1. I. "additional licenses" is unclear and recommend clarifying language.

Agency Response: The agency agrees and has added the recommended language.

Comment: Commenters suggest that the reference to the word "UNDERWRITER" in L-1 should be revised to read "TITLE INSURANCE COMPANY" because it is a defined term and "Underwriter" is not.

Agency Response: The department agrees and has made this change.

Comment: Commenters believe that in L-1. I. B. 2., concerning section B of the title agent 's license application, the language requiring the names of all partners should be deleted because the names of the partners are not typically the name of the partnership.

Agency Response: The agency agrees and the language has been deleted.

Comment: Commenters suggest that in L-1. II. 1. the term "insurance company" should be deleted and the term "Title Insurance Company" should be inserted.

Agency Response: The agency agrees and this change was made.

Comment: Commenters believe that the requirement in L-1. III. A., requiring the title insurance company to give the agent 30 days advance notice before canceling the agent's license, and the requirement in L-1.III.B., requiring the title insurance agent to give the title insurance company 30 days advanced notice before surrendering its license, should be amended to allow the required notice period for cancellation or surrender to be a negotiated term of the agent's contract rather than have the 30 day notice requirement mandated by rule.

Agency Response: The agency disagrees and believes that 30 days advance notice for cancellation or surrender of an agent's license is required to adequately protect the public. Immediate cancellation or surrender of an agent's license might cause a loss of jurisdiction over an agent's license that could prevent the department from taking disciplinary action against an agent who had engaged in malfeasance. The agency acknowledges that the 30 day advanced notice requirement does not preclude the right of a title insurance company to take necessary action to cause the title agent to immediately cease issuing policies in cases of title agent malfeasance.

Comment: Commenters believe that in L-1. III. A. 3., L-2. IV. C. and L-3. III. 2. the term "improprieties" is extremely vague, not adequately defined and should be deleted.

Agency Response: The agency agrees and this term has been deleted.

Comment: Commenters believe that in L-1. III. B it is unclear who should submit the information to whom and have recommended clarifying language.

Agency Response: The agency agrees and has adopted the recommended language.

Comment: Commenters state that L-1.IV. A. and B., L-2. V. A. and B., and L-3. IV. A. and B. appear to institute a staggered renewal system that would renew all existing licenses in a single one year period.

Agency Response: The agency added new language to clarify that the staggered renewal system will be implemented over a three year period and that all licenses will be renewed with an expiration date that coincides with the expiration date of the initial license issued.

Comment: Commenters object to the procedure set out in L-1. IV. B. 3. requiring corporate title agents to submit a new Certificate of Account Status each time they renew. The commenters believe that because title agents are exempt from corporate franchise taxes, requiring a new

Certificate of Account Status upon renewal involves unnecessary expense to the renewing title agent, the comptroller and the department.

Agency Response: The agency agrees and has added new language eliminating this requirement.

Comment: Commenters object to the procedure set out in L-1. V. B. 3, 4 and 5 requiring the cancellation of a license and the expense and burden of reissuance of a new license when there are minor changes in the name of the title agent. Commenters believe that none of these changes warrant cancellation and reissuance of a license.

Agency Response: The agency agrees and the changes recommended by the commenters have been adopted.

Comment: Commenters believe that the instructions for the submission of the Title Agent Update Form in L-1. V. 3. a. iv. and 3. b. iv. are unclear and have recommended clarifying language.

Agency Response: The agency agrees and the recommended language has been adopted.

Comment: Commenters object to the procedure set out in L-1. V. 3. a. iii. requiring the title agent upon deletion of a county to submit an executed Abstract Plant Information Form for all other counties unaffected by the deletion. The commenters feel there is no need to examine the abstract plant because the remaining counties entered in the abstract plant are unaffected by the deletion.

Agency Response: The agency disagrees because the abstract plant of many title agents are only examined about every four years and the additional spot tests necessitated by this requirement are considered beneficial from a regulatory stand point. New limiting language was added to require an Abstract Plant Information Form only in cases where the abstract plant has not been examined within the previous 12 months.

Comment: Commenters object to the procedure set out in L-3. III. 2. requiring a letter to be sent to the department upon cancellation of a direct operation license by an underwriter. The commenter argues that this requirement is irrelevant because the underwriter is seeking cancellation of its own direct operation.

Agency Response: The agency disagrees and believes that it is careful regulation to require the underwriter to submit a letter indicating the reasons for cancellation of a direct operation license because if the department fails to receive this information it could prevent the department from pursuing necessary administrative enforcement action.

For with changes: Texas Land Title Association

The amendment is adopted under the Insurance Code, Articles 9.36, 9.42, 9. 43, 9.36A, 21.01-2, and 1.03A and the Government Code, §§2001.004 et seq. Article 9.36 authorizes the department to accept applications, issue, renew, and cancel title insurance agents' licenses and provides for a staggered renewal system to be adopted under Article 21.01-2. Article 9.42 authorizes the department to adopt a system of staggered renewal for escrow officers' licenses under Article 21.01-2. Article 9.43 authorizes the department to accept applications for escrow officers' licenses and to grant such license. Article 9.36A authorizes the department to accept applications, issue, and renew direct operations' licenses and provides for the adoption of a staggered renewal system under Article 21.01-2. Article 21.01-2 authorizes the commissioner by rule to adopt a staggered renewal system under which licenses expire on various dates during a licensing period. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

§9.1 Basic Manual Of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas. The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended effective May 1, 1996. The document is published by and is available from Hart Information Services, 11500 Metric Boulevard, Austin, Texas 78758, and is available from and on file at the Texas Department of Insurance, Title Insurance Section, Mail Code 103-1T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604627 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: April 23, 1996

Proposal publication date: January 26, 1996

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

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

Subchapter F. Standard Permits

- **30 TAC §§116.610, 116.617, 116.620, 116.621**

The commission adopts amendments to §116.610, concerning Applicability and §116.617, concerning Standard Permit List and new §116.620, concerning Installation and/or Modification of Oil and Gas Facilities and §116.621, concerning Municipal Solid Waste Landfills. Sections 116.610, 116.620, and 116. 621 are adopted with changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8168). Section 116.617 is adopted without changes and will not be republished.

The amendments include the deletion of subsections (d)-(g) of §116.610, eliminating duplicative requirements also contained in paragraphs in §116. 615, concerning General Conditions. In addition, the amendments involve the deletion of §116.617(3), relating to Installation and/or Modification of Oil and Gas Facilities. This paragraph is renumbered as the new §116.620. The renumbering of specific standard permits from paragraphs to sections simplifies future addition or modification of standard permits, since *Texas Register* rules allow a section to be open for only one set of changes at a time. Minor changes to §116.610 and §116.620 have been made to conform these sections to *Texas Register* style conventions.

New §116.621 establishes criteria for obtaining a standard air quality permit for a municipal solid waste landfill (MSWLF). The Texas Clean Air Act (TCAA) states that a permit is required to construct a new facility or to modify an existing facility that may emit air contaminants. The MSWLF standard permit is not a new requirement, but provides an alternative to the New Source Review permit process of Chapter 116, Subchapter B. The standard permit alternative specifies operating and control requirements, but does not require modeling or a health effects review.

The commission staff has reviewed the United States Environmental Protection Agency's (EPA) New Source Performance Standards (NSPS) for MSWLFs, adopted March 1, 1996. As discussed in the preamble to the proposed rulemaking, as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8168), the staff has incorporated the adopted federal standards into the final rulemaking.

Paragraph (1) of §116.621 specifies sections of the standard permit subchapter which must be complied with in order to qualify for the standard permit.

Paragraph (2) of §116.621 lists facilities and operations which do not qualify for the standard permit.

Paragraph (3) of §116.621 requires the inclusion of the initial design capacity report in the standard permit registration.

Paragraph (4) of §116.621 requires compliance with the adopted federal NSPS Subpart WWW, with additions and changes.

Paragraph (5) of §116.621 specifies procedures to control fugitive particulate matter emissions.

Paragraph (6) of §116.621 provides that the executive director may require upwind/downwind air sampling for particulate matter and specifies the procedures to follow for such testing.

Paragraph (7) of §116.621 describes the inspection and maintenance protocols for active gas collection and control systems (GCCS) organic compound leaks from compressor seals, pipeline valves, pressure relief valves in gaseous service, and pump seals.

Paragraph (8) of §116.621 requires the owner or operator of each MSWLF unit to maintain records sufficient to readily determine if compliance with the standard permit has been maintained.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of the amendments and new sections is to eliminate duplicative language, renumber the standard permit for oil and gas facilities, and establish a standard permit for MSWLFs and municipal solid waste (MSW) facilities. The MSW standard permit provides an option for MSWLFs that are required to obtain an air quality permit. The amendments and new sections will substantially advance this specific purpose by changing rule language as appropriate. Promulgation and enforcement of the rules will not affect private real property because no new control requirements are added by this adoption.

A public hearing was held November 6, 1995, in Austin. The following 12 commenters submitted testimony regarding the proposed rules: the City of Arlington (Arlington); Browning-Ferris Industries Southern Region (BFI); the City of Brownwood (Brownwood); the City of Corpus Christi (Corpus Christi); the EPA; the City of Garland (Garland); Galveston Houston Association for Smog Prevention (GHASP); HDR Engineering, Inc. (HDR); Lloyd, Gosselink, Fowler, Blevins and Mathews, P.C., on behalf of USA Waste Services, Inc. (USA Waste); the Texas Lone Star Chapter of the Solid Waste Association of North America (TxSWANA); McElroy & Sullivan, L.L.P., on behalf of Waste Management of Texas, Inc. (WMTX); and the Brazos Valley Solid Waste Management Agency (BVSWMA), on the behalf of the Cities of Bryan and College Station.

Arlington, BFI, Brownwood, Corpus Christi, Garland, HDR, USA Waste, TxSWANA, WMTX, and BVSWMA generally supported the proposed revisions, but suggested changes or clarification. The EPA and GHASP suggested changes without generally supporting or opposing the proposed revisions. Brownwood and BVSWMA supported the comments filed by TxSWANA on the proposed standard air permit for MSWLFs. HDR generally supported TxSWANA's comments.

No comments were received regarding §116.610 or §116.617.

Installation or Modification of Oil and Gas Facilities. GHASP does not support less stringent control under §116.620(a)(8) and (9) than is required for paragraph (7).

With this rulemaking project, no changes were made to the content of the standard permit for the installation and/or modification of oil and gas facilities. Modification to the oil and gas standard permit was limited to the renumbering of subsections. During the negotiations for the final oil and gas standard permit, a tiered approach was devised to allow oil and gas facilities to be constructed or modified within certain distances to off-plant receptors under certain conditions. With the tiered approach, Best Available Control Technology (BACT) as well as protection of public health and welfare are still ensured. For further explanation, see the August 18, 1995, issue of the *Texas Register* (20 TexReg 6324).

GHASP stated that under §116.620(b)(1), the 25,000 gallon cut-off size is not stringent enough and that regulation should occur down to 5,000 gallon tank size to ensure that nuisance situations do not occur or toxic pollution does not threaten people.

This comment was addressed in previous rulemaking in which the agency responded that the 25,000 gallon threshold has been the historical limit for BACT. The commission finds the 25,000 limitation on tank storage size to be consistent with its definition of BACT. Furthermore, there is no provision in this standard permit that prevents a person from claiming that a nuisance violation is alleged to have occurred.

GHASP considers the 80% control under §116.620(b)(2)(A) to be less than adequate.

The commission finds that a tiered approach for control of glycol dehydrators is BACT and this approach ensures the protection of public health and welfare.

GHASP objected to using a 10,000 parts per million (ppm) volatile organic compounds (VOC) leak detection level under §116.620(c)(1)(A). GHASP stated that the leak detection level should be 500 ppm to be consistent with other parts of the rule in order to reduce ozone precursors maximally and further stated that this will result in savings of products and pollution control equipment. GHASP also objected to the phrase "reasonably accessible" under subsection (c)(1)(D) and (2)(D).

A tiered approach for leak detection levels is used to allow oil and gas facilities to be constructed or modified within certain distances to off-plant receptors under certain conditions. With the tiered approach, BACT as well as protection of public health and welfare are ensured. As to the comment regarding what valves and fittings are "reasonably accessible," the commission believes that reasonably accessible valves are those which would not expose monitoring personnel to immediate danger, such as being less than two meters above a support surface. For further explanation, see the August 18, 1995, issue of the *Texas Register* (20 TexReg 6324).

MSWLFs-Comments. Arlington, Brownwood, BVSWMA, Corpus Christi, Garland, TxSWANA, USA Waste, and WMTX supported the adoption of a standard air permit for MSWLF. TxSWANA stated that the use of a standard preconstruction air permit could provide the MSW industry with significant regulatory and economic relief, and at the same time, improve air quality in Texas. Brownwood further stated that for landfills, the standard air permit approach appears to be the best approach, since real reductions in air pollution can be achieved without the unnecessary expense of having to obtain individual permits. USA Waste further noted that the use of standard permits can significantly reduce the red tape and cost associated with obtaining a permit without compromising the benefits obtained.

The commission agrees that the standard air permit will provide equivalent environmental benefit to the Chapter 116, Subchapter B air permit, at less cost to the regulated community and the Texas Natural Resource Conservation Commission (TNRCC).

TxSWANA and USA Waste supported the use of a standard air permit if new and modified landfills are legally required to obtain separate air quality permits.

The TCAA requires any person who plans to construct any new facility or engage in the modification of any existing facility which may emit air contaminants into the air of Texas to obtain an air quality permit. The definitions of MSWLF and MSW facility in 30 TAC Chapter 101 reflect the agency's view that landfills are facilities. This position is consistent with the federal NSPS for MSWLF.

Corpus Christi, TxSWANA, and USA Waste recommended that the TNRCC postpone adoption of the final standard air permit until the EPA adopts the final NSPS. TxSWANA noted that the proposed standard permit includes landfill gas collection and control requirements that are largely based on EPA's proposed NSPS, and that waiting would avoid conflicting and inconsistent state and federal regulations.

The EPA adopted the NSPS on March 1, 1996. The final state rule has been revised to be consistent with the adopted NSPS.

TxSWANA recommended that the TNRCC modify the standard permit to directly incorporate the final NSPS.

The commission agrees with TxSWANA and has directly incorporated the entire final NSPS by reference.

TxSWANA, USA Waste, and Corpus Christi requested an explanation of what physical and operational changes at a MSW facility will trigger the need for a standard permit to authorize the construction of new and modified MSW facilities. Arlington and TxSWANA stated that it is important that the TNRCC make clear that just because a landfill has received a "modification" as defined in 30 TAC §305.70, the landfill does not have to secure a standard air permit. TxSWANA further stated that the standard permit should make it clear that Chapter 116 authorization is only required for landfill expansions beyond currently permitted capacity, and that such authorization is not needed for solid

waste permit modifications required to implement Subtitle D.

The commission agrees that clarification is needed. MSWLFs differ from most types of facilities receiving air permits because construction is an ongoing process as new cells (disposal units within the MSWLF) are added. The commission intended that Chapter 116 authorization be required for MSWLF expansions and that such authorization is not needed for solid waste permit amendments or modifications that do not increase the air emissions associated with the permitted facility.

Arlington, Corpus Christi, Garland, TxSWANA, and USA Waste pointed out the need to explain whether the standard permit applies to all areas of the existing MSW facility or just the modified areas. Garland stated that the standard permit should only apply in new and modified areas of existing landfills. Garland noted that the disposal of waste in existing areas, including the associated air emissions, have previously been authorized by the state. Garland stated that landfill owners should not be required to obtain additional authorization for these areas when seeking to expand the size of the existing landfill. Garland noted that if the standard permit applies to all areas of an existing landfill, the standard permit will discourage expansions of existing landfills and encourage the construction of landfills in greenfields, a goal which appears at odds with the concept behind the TNRCC's "brownfields" initiative. TxSWANA and USA Waste further stated that the standard permit should explain how emissions will be calculated for modifications, and where and when gas collection systems will be required to be installed in existing areas. Arlington, TxSWANA, and USA Waste recommended that the standard permit thresholds be determined based only on the modified areas and that the installation of GCCS be specifically required only in modified areas. Arlington stated that application of the standard permit thresholds to existing landfill areas will unnecessarily complicate compliance. TxSWANA further stated that a permit requirement that tries to include previously deposited waste on previously permitted areas could create significant legal questions regarding the right of permittees to rely on prior authorization as well as create extensive practical difficulties in emission estimation and system retrofitting.

The commission agrees that clarification is needed. The commission refers to the definition of MSW facility within Chapter 101, concerning General Rules. The general rules define a MSW facility so as to encompass the entire landfill: "all contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste." According to Chapter 116, when a facility is modified, the entire facility must obtain a permit. Thus, the area of the MSW facility that is impacted by the standard permit is considered to be the entire facility. This policy is consistent with the adopted NSPS, which requires emissions control over the entire landfill, rather than a portion of it.

GHASP stated that standard permits should require modeling and health effects review. GHASP expressed concern that the TNRCC would permit facilities that would have potential nuisance situations. TxSWANA stated that the use of a standard permit may be the only practical way to satisfy the permit requirements.

The commission believes that meaningful modeling and health effects review cannot be done for a MSWLF before the landfill is operating due to the difficulty in determining the characteristics and distribution of emissions. The control imposed by this standard permit meets all of the requirements of the federal NSPS and is designed to ensure that the air resources of the State of Texas are protected without subjecting permit applicants to unnecessary costs and regulatory burden.

TxSWANA urged the TNRCC to more actively seek input from its MSW Division as part of the consideration of the comments, especially regarding the default value for the generation rate constant (k) and for nonmethane organic compounds (NMOC) Concentration (C_{NMOC}).

The agency has developed the MSWLF standard air permit as a multimedia project. Specific provisions have been coordinated among several divisions, including the MSW Division.

WMTX commented on proposed §116.621(1), which states that facilities complying with the applicable requirements may be issued a standard permit. WMTX stated that the language "...are hereby entitled to the standard permit" in §116.610(a), more appropriately describes the applicability of a standard permit.

The commission agrees with WMTX that paragraph (1) should reflect more certainty of action, and has revised it to read, "qualify for a standard permit," consistent with §116.617. Paragraph (1) continues to reference §116.610. To further clarify, the first sentence of §116.621 has been revised to state, "a person may claim a standard permit," instead of "a standard permit may be issued."

BFI, Corpus Christi, EPA, Garland, TxSWANA, and USA Waste commented on the default values in §116.621(3), which were proposed for use in calculating NMOC emission rates in the absence of site-specific data. BFI supported the proposed default values.

Corpus Christi, TxSWANA and USA Waste suggested changes to the generation rate constant for landfills with drier waste. TxSWANA stated that because of the strict requirements of Subtitle D, the waste that is disposed of in new and modified MSW facilities should be considered as drier waste. Corpus Christi, USA Waste, and TxSWANA recommended that the default value for the generation rate constant (k) be changed to k=0.02 per year. TxSWANA and USA Waste also requested that a determination be made to identify what constitutes "wet" and "drier" and also to determine which category Subtitle D of the Resource Conservation and Recovery Act landfills represent.

TxSWANA and USA Waste noted that the proposed standard permit sets the default value for C_{NMOC} NMOC as 1,170 parts per million by volume (ppmv) for MSW facilities that have not received any industrial waste and 4, 400 ppmv for MSW facilities that have received industrial solid waste. TxSWANA, USA Waste, Garland, and Corpus Christi recommended the use of C_{NMOC}=1,170 ppmv for all MSW facilities except those codisposing organic industrial solid waste. Garland stated that the Tier 2 testing conducted in the Dallas/Fort Worth area demonstrates that actual C_{NMOC} values in pre-Subtitle D landfills are generally less than 1, 170 ppmv. TxSWANA and USA Waste further requested the development of a regulatory method to distinguish between landfills that do and do not accept organic industrial waste in greater than *de minimis* amounts.

The EPA expressed concern regarding paragraph (3), which states that the maximum expected NMOC emission rate will be calculated using the procedures provided in 40 Code of Federal Regulations (CFR), §60.753 of the proposed NSPS for MSWLFs published in the May 30, 1991, issue of the *Federal Register* (56 FR 24468). The EPA noted that the default values for the generation rate constant (k), generation potential (L_0), and the C_{NMOC} differ from the default values in the proposed 40 CFR, §60. 753. The EPA stated that the public record should address the method for deriving the default values in paragraph (3), why they differ from the default values in 40 CFR, §60.753, and demonstrate that the proposed default values are at least as stringent as the proposed NSPS.

The commission has deleted the specific references to default values in the adopted rule. To be consistent with the adopted NSPS, the commission has modified the rule language to directly reference the NSPS, which addresses default values.

BFI stated that if the rule is conformed to the March 1995 draft final NSPS, the commission should authorize the use of representative data from historic landfill operations.

The commission believes that representative data from historic landfill operations is not transferable to other MSWLF sites, because MSWLFs are unique in waste characterization and operation. The use of the default values in calculating the NMOC emission rates followed by testing provides more accurate information. The commission has modified the rule language to directly reference the adopted NSPS, which does not provide for using data from different landfills.

Corpus Christi, EPA, GHASP, and USA Waste commented on the threshold levels in §116.621(4). The EPA expressed concern that for MSWLFs located in an ozone attainment area, the proposed threshold level was the NMOC emission rate specified in the NSPS, or 150 megagrams (Mg) per year. The EPA stated that this should be modified to state that the threshold value shall be the lower of the two emission rates. GHASP stated that the 150 Mg is particularly inappropriate when the EPA has proposed a 50 Mg threshold. GHASP expressed a concern that the TNRCC needs to be as stringent as possible, since in nonattainment areas reduction of ozone precursor emissions needs to occur. USA Waste and Corpus Christi supported the TNRCC's decision to set the NMOC threshold at 150 Mg per year and stated that the level is consistent with existing TNRCC regulations in 30 TAC Chapter 115. Corpus Christi further stated that a more stringent threshold level

in the attainment areas would be economically unreasonable and unsupported by current research data.

The rule as proposed specified that the state rule incorporate the NMOC emission rate (50 Mg per year) specified in the NSPS, provided the federal standard was promulgated prior to the adoption of the state rule, or the agency would incorporate the use of 150 Mg per year as the threshold for requiring the installation of the active GCCS. The standard permit incorporates the 50 Mg per year threshold (emission rate cutoff), since that is the value incorporated by the adopted NSPS.

HDR noted that paragraph (4)(A) requests the determination of the C_{NMOC} and (k) values and does not require a submittal of the recalculated NMOC emission rate utilizing the site-specific values. HDR suggested that a second NMOC emission rate calculation in accordance with the procedures of 40 CFR, §60.753 of the proposed federal rules be required, using the site-specific values, to show emission rates below the threshold level. HDR further noted that the appropriate section of the federal rule is referenced erroneously as 40 CFR, §61.753 when it should be 40 CFR, §60. 753.

The commission has deleted the specific rule language to resolve the deficiencies pointed out in HDR's comment. The commission has modified the rule language to directly reference the adopted NSPS, which addresses the calculation and reporting methodology.

TxSWANA and USA Waste noted that the proposed standard permit sets the NMOC threshold level in ozone nonattainment areas at "the amount constituting the major source as defined for that area in §116.12," but §116.12 does not define major sources with regard to emissions of NMOC. TxSWANA and USA Waste noted that §116.12 defines major source based on VOC emissions. TxSWANA and USA Waste requested that the TNRCC amend the standard air permit to clarify the ambiguity and offered the following suggested language: "... or **a NMOC emission rate equivalent to a VOC emission rate constituting a** [the amount constituting the] major source **for VOC** as defined for that area in §116.12 of this title (relating to Major Source/Major Modification Emission Thresholds)." Garland and Arlington acknowledged support for setting the NMOC threshold at major source levels. However, Garland and Arlington stated that for this provision to be effective, the proposed standard permit needs to explain the relationship between NMOC and VOC emissions because the TNRCC regulations do not define major sources of NMOC emissions. Garland suggested that the threshold trigger for the standard permit should be tied to the specific NMOC threshold for each nonattainment area in the state. Arlington suggested that the standard permit specifically set out the emissions threshold in terms of NMOC emissions in each ozone nonattainment area.

VOC is a subset of NMOC (while all VOCs are NMOC, not all NMOCs are VOC). For landfills, the most predominant NMOCs that are not VOC are ethane, methylene chloride, trichlorofluoromethane, and chlorodifluoromethane. VOC can be determined by subtracting out the non-VOC portion of the NMOC. Section 116. 621(2)(F) has been added to clarify that new major sources or modifications under the federal new source review requirements of the Federal Clean Air Act (FCAA), Part C (Prevention of Significant Deterioration) or Part D (nonattainment review) must obtain a regular air quality permit in accordance with §116.110 (concerning Applicability). The definitions in these federal rules use VOC, not NMOC. When the potential emission rate would otherwise exceed the amount constituting the major source definition for ozone nonattainment areas (e.g., in Houston, 25 tons per year of VOC constitutes a major source), the permit holder may elect to install landfill gas controls to remain below the major source level. Representations to limit the air emissions, made in the registration, become enforceable conditions of the standard air permit.

Arlington, Corpus Christi, Garland, USA Waste, and TxSWANA commented on paragraph (4), concerning the proposed time allowed for submitting site-specific testing. TxSWANA and USA Waste stated that the allotted 90 days to perform Tier 2 and/or Tier 3 testing is an insufficient amount of time, and noted that the proposed NSPS would allow up to one year to perform this testing. TxSWANA, USA Waste, and Corpus Christi recommended that the time period be changed to 180 days rather than 90 days to conduct Tier 2 and Tier 3 testing. Arlington and Garland also suggested that the standard permit allow up to 180 days to perform Tier 2 testing rather than 90 days as proposed. TxSWANA, Arlington, and Garland stated that recent experience conducting Tier 2 testing in the Dallas/Fort Worth area indicated that 90 days will not be sufficient to obtain and analyze Tier 2 data. Arlington noted that the testing is new and few laboratories are capable of performing the test.

The commission has modified the rule language by eliminating specific reference to time frames in the rules, since these time frames are specified in the adopted NSPS. Any MSWLF construction or modification which would otherwise result in a major new source or modification under the FCAA, Part C or Part D would need to install and operate the GCCS prior to becoming a major source, to eliminate the need for federal nonattainment permitting.

HDR stated that language in paragraph (4)(B)(i) and (ii) appears to conflict in its requirements for the submitted design of the active GCCS. HDR stated that clause (i) requires the GCCS to be designed to accommodate gas produced by the entire landfill falling under the proposed standard permit, while clause (ii) requires the designed system to collect gas from areas or cells of the permitted landfill which contain final cover, or where refuse has been in place for over five years. HDR stated that the conflict is that clause (i) requires a GCCS design to address the permitted landfill in total, while clause (ii) implies a phased GCCS design. HDR noted that due to the trend for new and amended landfills to have long operational lives, it is recommended that the required plan for the GCCS be submitted conceptually with the standard permit application to address the entire facility covered by the standard permit, and that the final design and installation of the GCCS take place in phases in accordance with the requirements of clause (ii).

The commission eliminated the specific rule language addressed in HDR's comment to be consistent with the requirements of the adopted NSPS.

BFI proposed that paragraph (4)(B)(iv)(I) should address the routing of total collected gas "to an open flare with a minimum height of 30 feet and that is designed, operated, and inspected in accordance with 40 CFR §60.18" and satisfies the requirements of Standard Exemption 80.

The commission has modified the rule language to incorporate BFI's comment.

BFI proposed that paragraph (4)(B)(iv)(II) be changed to read: "the total collected gas is routed to a control device such as an enclosed flare with a minimum vent release height of 30 feet and that reduces the total collected NMOC gas emissions by 98% or to less than 20 ppmv, as hexane." BFI requested the change in order to address enclosed flares, which are not subject to 40 CFR, §60.18, and to make the means of expressing NMOC reductions consistent with the proposed NSPS for MSWLFs (i.e., 20 ppmv as hexane).

The commission has modified the rule language to incorporate BFI's comment.

WMTX supported the concept of employing reasonable control technologies and methodologies at MSWLFs to limit particulate matter emissions in §116.621(8). WMTX stated that the proposed rule identifies the control technologies which can be most effectively employed to control such emissions. However, WMTX stated that the use of the phrases "minimize any fugitive particulate matter emissions" and "achieve maximum control of dust emissions" could be construed to suggest a constantly escalating, but never satisfied requirement to employ any conceivable means of controlling such emissions. In addition, some of the control technologies identified are obviously not appropriate for use on all of the areas identified (e.g., paving of a cell during excavation). WMTX suggested specific language for paragraph (8).

The adopted NSPS is limited to organic emission control from landfills, while the standard permit additionally covers particulate matter emissions, which may also be associated these facilities. The commission believes that the term "minimize" contains an element of technical practicability and economical reasonableness and disagrees that the term suggests a constantly escalating means of controlling emissions. The commission modified the rule language, now paragraph (5), in response to the comments concerning the maximum control of dust emissions.

BFI stated that it did not support the inclusion of a mandate that high-volume air sampling be "performed upon request of the TNRCC executive director or a designated representative" in §116.621(9). BFI believes that TNRCC authority to require sampling for any criteria or hazardous air pollutant should conform to what the agency has historically required in the terms and conditions specified in individual per-

mits. BFI further stated that specific testing should not be addressed in the requirements of this regulation. In addition, BFI noted that the proposed rule does not specify whether the testing is for total suspended particulate, for which there is no longer a National Ambient Air Quality Standard (NAAQS), or for inhalable particulate matter (PM_{10}), for which a NAAQS does exist. BFI proposed that testing be only for PM_{10}.

High-volume air sampling provides a mechanism for determining compliance in situations where estimating emissions in advance of operational activity is difficult. The commission believes that high-volume air sampling is useful and economically reasonable in measuring emissions. This standard permit is intended to test total suspended particulates, for which state standards exist. If necessary, federal standards may be addressed under 30 TAC §101.8, concerning Sampling, which provides the commission or executive director the authority to request that any person owning or operating a source which emits air contaminants conduct sampling to determine the opacity, rate, composition, and/or concentration of such emissions.

WMTX suggested deleting §116.621(9) from the proposal. Due to the size and nature of operations at MSWLFs, WMTX stated that upwind/downwind high volume air sampling for particulate matter is unlikely to provide data useful to evaluate the control of particulate matter emissions. WMTX stated that requirements to utilize the control methodologies set out in paragraph (8) will adequately limit particulate matter emissions from MSWLFs. WMTX further stated that the lack of identifiable criteria for either triggering a sample event or evaluating the results is further basis for deleting the paragraph.

The commission considers the option to require upwind/downwind high volume air sampling, which establishes compliance status with the standards, necessary in order to ensure the effectiveness of the control criteria. Furthermore, the commission believes that it is difficult to anticipate all the criteria that would necessitate sampling; thus, the commission has not modified the rule to attempt to itemize the various criteria that might trigger a request for monitoring.

GHASP stated that the TNRCC and the local programs should be notified when sampling will occur so that an opportunity to observe the sampling is presented.

The commission agrees, and has revised §116.621(6) accordingly.

WMTX suggested that if the commission adopts §116.621(10), it continue to monitor the status of the proposed federal rules and, if changes are made to them prior to final adoption, that the commission initiate a process to revise the Texas state rules accordingly. BFI suggested defining a leak as methane, rather than as methane, propane, or hexane. BFI opposed the inclusion of specific meteorological conditions as a basis for determining when surface leak testing should be performed, since it would require that either the landfill be located next to a continuously operating National Weather Service station or that it purchase, install, calibrate, and maintain an operating anemometer and recording rain gauge, and to train an individual in the proper operation, calibration, and maintenance of these instruments.

Because the adopted NSPS fully treats surface leaks, adding flexibility that was not included in the proposed version, the commission has eliminated proposed paragraph (10) from the final rule. The adopted NSPS also clarifies that a surface leak is measured as methane. The surface leak requirements are now directly incorporated by reference to the entire final NSPS in §116. 621(4).

GHASP stated that under §116.621(11)(J)(i), allowing ten tons per year (tpy) of fugitives per year seems like a lot.

The commission believes that the ten tpy exemption is appropriate. The commission believes that requiring MSW facilities, often owned by local governments, to implement fugitive emission inspection and maintenance programs at facilities with less than ten tpy of fugitive emissions is not economically reasonable. Since the majority of components in a GCCS are under negative pressure, the fugitive monitoring requirements would not be generally applicable anyway. Only a gas processing facility, which is not a typical control system, will have significant numbers of components and potentially be subject to the component monitoring requirements, now renumbered as paragraph (7).

Also, the commission believes that under certain circumstances, alternative methods to implement fugitive emission inspection and maintenance programs may be reasonable. Therefore, §116.621(7)(E) is added to provide for use of alternative methods of fugitive monitoring if approved by the executive director.

BFI stated that in paragraph (11)(A), leaks should be defined as "escape of gas with a total organic compound concentration greater than or equal to 10, 000 ppmv above background methane," not "methane, propane, or hexane." BFI noted that 10,000 ppmv as methane is not equal to 10,000 ppmv as hexane or as propane.

The commission agrees with BFI, and has added a clarifying definition in §116.621(7)(A).

GHASP stated that in paragraph (11)(A), a 10,000 ppm leak detection level for VOCs is too high for a severe ozone nonattainment area like the Houston area and stated that the leak detection level needs to be lowered to 500 ppm.

The commission believes that the 10,000 ppm detection level is a sufficient leak detection program for reducing VOC emissions from landfill gas collection systems. The fugitive emission and inspection program requires monitoring for total organic compounds, which includes methane. Because the concentration of VOC in landfill gas is low compared to the total organic compound content, actual VOC emissions will be well under 10,000 ppm.

BFI requested that in paragraph (11)(E), valves installed underground solely for the purpose of isolating sections of pipe in order to make repairs be made exempt from inspection and maintenance protocols. BFI stated that these buried valves are left in a permanently open position, unless it becomes necessary to uncover them and close them in order to perform pipeline repairs. BFI stated that requiring these valves to be in a valve box would result in creating an unnecessary confined space, which presents a safety hazard. In addition, BFI stated that this type of design creates a path for gas to escape the landfill and for air to enter, creating the potential for fugitive leaks of NMOC and for fires inside the landfill.

The buried valves referenced in BFI's comments are in continuous vacuum service and therefore exempt under paragraph (7)(D)(i). The commission has also added specific language in §116.621(7)(B) to further clarify this issue.

BFI stated that in paragraph (11)(G), the proposed regulation addresses only new and reworked piping connections that are welded or flanged. BFI further stated that high-density polyethylene piping which has no welded connections should be exempt from leak detection, monitoring, and repair requirements.

The commission has modified the rule language to reflect BFI's comment, in §116.621(7)(C).

BFI stated that in paragraph (11)(J)(i), the proposed regulation should specify the means by which uncontrolled fugitive emissions that leak from components should be quantified, i.e., which emission factors should be used to ensure that emissions are less than ten tpy in order to qualify for the exemption from inspection and maintenance protocols.

The commission believes that addressing the issue of which fugitive emission factors to use is appropriate for inclusion in a guidance document which will be available.

BFI stated that in paragraph (11)(J)(iii), a vacuum of 0.725 pounds per square inch (psi) is equivalent to 20 inches water column and that this amount of vacuum is not acceptable in design and operation of landfill gas extraction systems. BFI further stated that depending upon well location, a vacuum over 20 inches water column would significantly enhance the probability of air infiltration and potential fires in the landfill. BFI proposed that components in vacuum be exempt from the inspection and maintenance protocols.

The commission agrees with BFI, and has added an exemption in §116.621(7) (D)(i) to incorporate BFI's comment.

BFI opposed the sampling and analysis for nitrogen concentrations in the landfill gas at each well in the gas collection header in paragraph (12)(D) (iii). BFI stated that if monitoring is required for oxygen, as a means of determining air infiltration into the landfill resulting from vacuum extraction of landfill gas, it is an unnecessary expense to test for nitrogen concentrations as oxygen.

The adopted NSPS allows an option for monitoring oxygen instead of

nitrogen. Because the NSPS fully treats surface leaks, including recordkeeping, the commission has eliminated proposed paragraph (10), addressing surface leaks, and the associated recordkeeping in proposed paragraph (12). Recordkeeping is now addressed in paragraph (8).

HDR stated that in paragraph (12)(F)(vi), requiring landfills to calculate maximum expected gas generation flow rates using Method 2E as listed in the proposed NSPS and emission guidelines will have a significant economic impact on the owners of MSWLFs. HDR questioned the need for this calculation based on the fact that performance testing will be conducted on the system via the required surface monitoring, along with the verification of negative pressure at all of the well heads. HDR stated that if the TNRCC believes that maximum gas generation flow rates are necessary, a recommended alternative to Method 25 would be to use one of several available gas generation models such as the one referenced in §60.754 of the proposed federal regulations. However, HDR stated that because these models only serve as a theoretical estimate of the gas generation rate for a landfill, HDR stressed that model results should be used for information only, and not to evaluate the adequacy of an installed GCCS.

The adopted NSPS does not require Method 2E sampling. Because the NSPS fully treats the issue of expected gas generation flow rates, including recordkeeping, the commission has eliminated the specification.

HDR stated that in paragraph (12)(F)(vii), the calculated radius of influence (ROI) of extraction wells in accordance with Method 2E will have a significant economic impact on landfill owners with little benefit in return. HDR stated that the required surface monitoring (performance testing) will indicate areas of the landfill surface that require additional control; and if the required repairs fail to resolve the emission point, owners will ultimately install additional wells. HDR further stated that although available as an option for design of the GCCS in place of the 200 meter design default spacing in the proposed NSPS and emission guidelines, the nonhomogeneous characteristics of a landfill renders the use of a uniform calculated ROI to evaluate GCCS performances ineffective. Additionally, HDR stated that the presence of negative pressure within the refuse induced by the already installed GCCS will impact any tests conducted to determine ROI. Based on experience, HDR believed that performance testing through GCCS operation surface monitoring will sufficiently indicate when and where additional extraction wells are needed. HDR recommended that this requirement be removed from the proposed rule.

The adopted NSPS allows more flexibility than the proposed version upon which the standard permit proposal was based. Because the NSPS addresses the design layout of collection wells and related recordkeeping, the commission has eliminated the proposed recordkeeping requirement.

The amendments and new sections are adopted under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purpose of the TCAA.

§116.610. Applicability.

(a) Pursuant to the Texas Clean Air Act (TCAA), §382.051, projects involving the types of facilities or physical or operational changes to facilities which meet the requirements for a standard permit listed in this subchapter are hereby entitled to the standard permit; provided however, that:

(1) (No change.)

(2) construction or operation of the project shall be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit;

(3)-(5) (No change.)

(b) Any project which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) (No change.)

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

(1) Venting or flaring more than 0.3 long tons per day of total sulfur shall not be allowed.

(2) No facility shall be allowed to emit total uncontrolled emissions of sulfur compounds, except sulfur dioxide (SO_2), from all vents (excluding process fugitives emissions) equal to or greater than four pounds per hour unless the vapors are collected and routed to a flare.

(3) Any vent, excluding any safety relief valves that discharge to the atmosphere only as a result of fire or failure of utilities, emitting sulfur compounds other than SO_2 shall be at least 20 feet above ground level.

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of Standard Exemption Number 6, except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §116.211(a)(1) of this title (relating to Standard Exemption List).

(5) Total Volatile Organic Compound (VOC) emissions from a natural gas glycol dehydration unit shall not exceed ten tons per year (tpy) unless the vapors are collected and controlled in accordance with subsection (b)(2) of this section.

(6) Any combustion unit (excluding flares, internal combustion engines, or natural gas turbines), with a design maximum heat input greater than 40 million British thermal units (Btu) per hour (using lower heating values) shall not emit more than 0.06 pounds of nitrogen oxides per million Btu.

(7) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than ten tpy, but less than 25 tpy, unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(8) No facility which is 500 feet or more from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(9) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(10) No facility shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 40 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(11) No facility which is located less than 1/4 mile from the nearest off-plant receptor shall be allowed to emit hydrogen sulfide (H_2S) or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section. No facility which is located at least 1/4 mile from the nearest off-plant receptor shall be allowed to emit H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section or unless the H_2S or SO_2 emissions are monitored with ambient property line monitors according to subsection (e)(1) of this section. Components in sweet crude oil or gas service as defined by Chapter 101 of this title (relating to General Rules) are exempt from these limitations.

(12) Flares shall be designed and operated in accordance with 40 Code of Federal Regulations (CFR), Part 60.18 or equivalent standard approved by the commission, including specifications of minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring. If necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible. An infrared monitor is considered equivalent to a thermocouple for flame monitoring purposes. An automatic ignition system may be used in lieu of a continuous pilot.

(13) Appropriate documentation shall be submitted to demonstrate that compliance with the Prevention of Significant Deterioration (PSD) and nonattainment new source review provisions of the Federal Clean Air Act, Parts C and D, and regulations promulgated thereunder, are being met. The oil and gas facility shall be required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit is required.

(14) Documentation shall be submitted to demonstrate compliance with applicable New Source Performance Standards (NSPS, 40 CFR 60) and National Emission Standards for Hazardous Air Pollution (NESHAP, 40 CFR 61).

(15) New and increased emissions shall not cause or contribute to a violation of any National Ambient Air Quality Standard or regulation property line standards as specified in Chapters 111, 112, and 113 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; and Control of Air Pollution From Toxic Materials). Engineering judgment and/or computerized air dispersion modeling may be used in this demonstration. To show compliance with §116.610(a)(1) of this title (relating to Applicability) for H_2S emissions from process vents, ten milligrams per cubic meter shall be used as the "L" value instead of the value represented by §116.610(a)(1) of this title.

(16) Fuel for all combustion units and flare pilots shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (scdf), or field gas. If field gas contains more than 1.5 grains of H_2S or 30 grains total sulfur compounds per 100 scdf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed the limitations listed in the standard permit registration. If a flare is the only combustion unit on a property, the operator shall not be required to maintain such records on flare pilot gas.

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet Standard Exemption 83, unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

(A) For internal floating roofs, mechanical shoe primary seal or liquid-mounted primary seal or a vapor-mounted primary with rim-mounted secondary seal shall be used.

(B) Mechanical shoe or liquid-mounted primary seals shall include a rim-mounted secondary seal on all external floating roofs tanks. Vapor-mounted primary seals will not be accepted.

(C) All floating roof tanks shall comply with the requirements under §115.112(a)(2)(A)-(F) of this title (relating to Control Requirements).

(D) In lieu of a floating roof, tank emissions may be routed to:

(i) a destruction device such that a minimum VOC destruction efficiency of 98% is achieved; or

(ii) a vapor recovery system such that a minimum VOC recovery efficiency of 95% is achieved.

(E) Independent of the exemptions listed in this paragraph, if the emissions from any fixed roof tank exceed ten tpy of VOC or ten tpy of sulfur compounds, the tank emissions shall be routed to a destruction device, vapor recovery unit, or equivalent method of control that meets the requirements listed in subparagraph (D) of this paragraph.

(2) The VOC emissions from a natural gas glycol dehydration unit shall be controlled as follows.

(A) If total uncontrolled VOC emissions are equal to or greater than ten tpy, but less than 50 tpy, a minimum of 80% by weight minimum control efficiency shall be achieved by either operating a condenser and a separator (or flash tank), vapor recovery unit, destruction device, or equivalent control device.

(B) If total uncontrolled VOC emissions are equal to or greater than 50 tpy, a minimum of:

(i) 98% by weight minimum destruction efficiency shall be achieved by a destruction device or equivalent; or

(ii) 95% by weight minimum control efficiency shall be achieved by a vapor recovery system or equivalent.

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is detected to exceed a VOC concentration greater than 10, 000 parts per million by volume (ppmv) above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound for all components. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.5 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 pounds per square inch (psi) (five kilopascals (Kpa)) below ambient pressure, then these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by the agency representatives, the United States Environmental Protection Agency (EPA), or any other air pollution agency having jurisdiction. All piping and valves two inches nominal size and smaller, unless subject to federal NSPS requiring a fugitive VOC emissions leak detection and repair program or Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non-accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source Review Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is found which exceeds a VOC concentration greater than 500 ppmv for all components except pumps and compressors and greater than 2, 000 ppmv for pumps and compressors above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.044 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 psi (five Kpa) below ambient pressure, these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by agency representatives, the EPA, or any air pollution control agency having jurisdiction. All piping and valves two inches nominal size and smaller are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his or her discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non-accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using

an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source Review Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(K) A directed maintenance program shall be used and consist of the repair and maintenance of VOC fugitive emission components assisted simultaneously by the use of an approved gas analyzer such that a minimum concentration of leaking VOC is obtained for each component being maintained. Replaced components shall be remonitored within 30 days of being placed back into VOC service.

(3) For owners and operators who are subject to the applicable parts of subsection (a)(11) of this section, auditory and visual checks for SO_2 and H_2S leaks within the operating area shall be made every day. Immediately, but no later than eight hours upon detection of a leak, operating personnel shall take the following actions:

(A) isolate the leak; and

(B) commence repair or replacement of the leaking component; or

(C) use a leak collection/containment system to prevent the leak until repair or replacement can be made if immediate repair is not possible.

(d) Approved test methods.

(1) An approved gas analyzer used for the VOC fugitive inspection and repair requirement in subsection (c) of this section, shall conform to requirements listed in 40 CFR 60.485(a) and (b).

(2) Tutweiler analysis or equivalent shall be used to determine the H2S content as required under subsections (a) and (e) of this section.

(3) Proper operation of any condenser used as a VOC emissions control device to comply with subsection (a)(5) of this section shall be tested to demonstrate compliance with the minimum control efficiency. Sampling shall occur within 60 days after start-up of new or modified facilities. The permittee shall contact the Engineering Services Section, Air Quality Enforcement Division 45 days prior to sampling for approval of sampling protocol. The appropriate regional office in the region where the source is located shall also be contacted 45 days prior to sampling to provide them the opportunity to view the sampling. Neither the regional office nor the Engineering Services Section, Air Quality Enforcement Division personnel are required to view the testing. Sampling reports which comply with the provisions of the "TNRCC Sampling Procedures Manual," Chapter 14 ("Contents of Sampling Reports," dated January 1983 and revised July 1985), shall be distributed to the appropriate regional office, any local programs, and the Engineering Services Section, Air Quality Enforcement Division.

(e) Monitoring and recordkeeping requirements.

(1) If the operator elects to install and maintain ambient H_2S property line monitors to comply with subsection (a)(11) of this section, the monitors shall be approved by the Engineering Services Section, Air Quality Enforcement Division office in Austin, and shall be capable of detecting and alarming at H_2S concentrations of ten ppmv. Operations personnel shall perform an initial on-site inspection of the facility within 24 hours of initial alarm and take corrective actions as listed in subsection (c)(3)(A)-(C) of this section within eight hours of detection of a leak.

(2) The results of the VOC leak detection and repair requirements shall be made available to the executive director, his or her designated representative, or any air pollution control agency having jurisdiction upon request. Records, for all components, shall include:

(A) appropriate dates;

(B) test methods;

(C) instrument readings;

(D) repair results; and

(E) corrective actions. Records of flange inspections are not required unless a leak is detected.

(3) Records for repairs and replacements made due to inspections of H_2S and SO_2 components shall be maintained.

(4) Records shall be kept for each production, processing, and pipeline tank battery or for each storage tank if not located at a tank battery, on a monthly basis, as follows:

(A) tank battery identification or storage tank identification, if not located at a tank battery;

(B) compound stored;

(C) monthly throughput in barrels/month; and

(D) cumulative annual throughput, barrels/year.

(5) A plan shall be submitted to show how ongoing compliance will be demonstrated for the efficiency requirements listed in subsection (b)(1)(D) of this section. The demonstration may include, but is not limited to, monitoring flowrates, temperatures, or other operating parameters.

(6) Records shall be kept on at least a monthly basis of all production facility flow rates (in standard cubic feet per day) and total sulfur content of process vents or flares or gas processing streams. Total sulfur shall be calculated in long tons per day.

(7) Records shall be kept of all ambient property line monitor alarms and shall include the date, time, duration, and cause of alarm, date and time of initial on-site inspection, and date and time of corrective actions taken.

(8) All required records shall be made available to representatives of the agency, the EPA, or local air pollution control agencies upon request and be kept for at least two years. All required records shall be kept at the plant site, unless the plant site is unmanned during business hours. For plant sites ordinarily unmanned during business hours, the records shall be maintained at the nearest office in the state having day-to-day operations control of the plant site.

§116.621. Municipal Solid Waste Landfills. A person may claim a standard permit for the construction or modification to a municipal solid waste landfill (MSWLF) or municipal solid waste facility (MSW facility) as defined in §101.1 of this title (relating to Definitions), including, but not limited to, Type I, Type 1-AE, Type II, Type III, Type IV, Type IV-AE, Type VI, and Type IX sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

(1) An MSWLF and associated waste acceptance and handling facilities which comply with §116.610 of this title (relating to Applicability), except §116.610(a)(1) of this title; §116.611 of this title (relating to Registration Requirements); §116.614 of this title (relating to Standard Permit Fees); and §116.615 of this title (relating to General Conditions) qualify for a standard permit.

(2) Separate permit authorization under Subchapter B of this chapter (relating to New Source Review Permits) must be obtained for the following:

(A) industrial solid waste solidification/stabilization facilities;

(B) outdoor burning;

(C) waste incineration other than that used to control landfill gas emissions;

(D) landfill cells in which any regulated quantities of hazardous waste will be placed;

(E) MSWLF and MSW facilities with passive collection systems as defined in 40 Code of Federal Regulations (CFR), §60.751; and

(F) any project which constitutes a new major source, or major modification under the new source review requirements of the Federal Clean Air Act, Part C (Prevention of Significant Deterioration review) or Part D (nonattainment review) and regulations promulgated thereunder shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(3) Registration shall include, in addition to the information required by §116.611 of this title, an initial design capacity report in accordance with 40 CFR, §60.757(a)(2).

(4) The permit holder shall comply with the air emissions standards as specified in 40 CFR Part 60, Subpart WWW, with the following additions and changes.

(A) The gas collection and control system (GCCS) shall conform with specifications for active collection systems as specified in 40 CFR, §60.759.

(B) The GCCS shall be designed to control nonmethane organic compounds (NMOC) gas emissions in one or more of the following ways by routing the total collected gas to:

(i) an open flare with a minimum height of 30 feet and which satisfies all of the requirements of §116.211 of this title (relating to Standard Exemption List), Standard Exemption Number 80, except that registration using Form P1-7 or P1-8 shall not be required;

(ii) a control device (such as an enclosed flare) with a minimum vent release height of 30 feet and which reduces the total collected NMOC gas emissions by 98%, or to less than 20 parts per million by volume (ppmv), as hexane;

(iii) a gas treatment system that processes the collected gas for subsequent use or sale. The sum of all emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of clause (ii) of this subparagraph;

(iv) gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that satisfy all of the requirements of §116.211 of this title, Standard Exemption Number 6, except that registration using Form PI-7 or PI-8 shall not be required; or

(v) boilers, heaters, or other combustion units, but not including stationary internal combustion engines or turbines, that satisfy all of the requirements of §116.211 of this title, Standard Exemption Number 7.

(C) The active GCCS may be capped or removed only if, in addition to the requirements listed in 40 CFR, §60.752(b)(2)(v), the MSWLF is permanently closed pursuant to §§330.250-330.256 of this title (relating to Closure and Post-closure).

(5) MSWLF owners and operators shall monitor and control particulate matter as follows.

(A) All material handling and transport operations shall be conducted in a manner so as to minimize any fugitive particulate matter emissions.

(B) Roads and other areas subject to vehicle traffic shall be paved and cleaned, watered, or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(C) During excavation, MSWLF cells shall be watered or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(6) High volume air sampling for net ground level concentrations of total particulate matter shall be performed upon request of the executive director or a designated representative. Each

test shall consist of at least one upwind and one downwind sample taken simultaneously. The tests shall be performed during normal operations. A monitoring plan for high volume sampling shall be developed in accordance with the Office of Air Quality Management Plan, Appendix I (United States Environmental Protection Agency (EPA) Requirements for Quality Assurance Project Plans, dated February 1995) and the "TNRCC Sampling Procedures Manual," Chapter 11 ("Particulate Matter," dated January 1983 and revised July 1985), and shall require approval by the executive director or a designated representative prior to sampling. The executive director or a designated representative shall be afforded the opportunity to observe all such sampling equipment, operations, and records upon request.

(7) GCCS components (compressor seals, pipeline valves, pressure relief valves in gaseous service, flanges, and pump seals) at an MSWLF or MSW facility, where the total of all estimated uncontrolled fugitive emissions from all components is greater than ten tons per year, shall be inspected and maintained pursuant to the requirements of §116.620(c)(1)(A)-(J) of this title (relating to Installation and/or Modification of Oil and Gas Facilities), with the following changes and additions.

(A) Instead of the definition in §116.620(c)(1)(A) of this title, a leak shall be defined as the escape of gas with a total organic compound concentration greater than or equal to 10,000 ppmv above background as methane; or the dripping or exuding of process fluid based on sight, smell, or sound.

(B) In §116.620(c)(1)(C) of this title, new and reworked underground pipelines containing NMOC that are located within the gas collection area and are in continuous vacuum service may contain buried valves.

(C) In §116.620(c)(1)(E) of this title, high density polyethylene pipe connections may be fused or flanged.

(D) In addition to those components exempted in §116.620(c)(1)(A)-(J) of this title, the following additional components are exempt from the maintenance and inspection protocols:

(i) components which are in a continuous vacuum service;

(ii) valves which are not externally regulated, such as in-line check valves;

(iii) pressure relief valves which are downstream of an intact rupture disc; and

(iv) reciprocating compressors which are equipped with degassing vents and vent control systems.

(E) Alternate methods of fugitive monitoring may be used, subject to the approval of the executive director.

(8) The owner or operator of each MSWLF unit shall maintain complete and up-to-date records sufficient to readily determine continuous compliance with the requirements of this section for the previous five years of operation. All the records shall be maintained in an operating record in accordance with §330.113(b)(11) of this title (relating to Recordkeeping Requirements). The records shall be available for review upon request by representatives or any local air pollution agency having jurisdiction. The following recordkeeping requirements shall apply, in addition to those specified in 40 CFR 60, Subpart WWW.

(A) Permit holders who are subject to a standard exemption specified in paragraph (4) of this section shall maintain any records specified in the exemption.

(B) Permit holders who are subject to paragraph (7) of this section shall maintain a leaking-components log in accordance with §116.620(e)(2) of this title.

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

Issued in Austin, Texas, on March 27, 1996.

TRD-9604377 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: April 19, 1996

Proposal publication date: October 6, 1995

For further information, please call: (512) 239-1966

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Chapter 120. Control of Air Pollution From Hazardous Waste or Solid Waste Management Facilities

Subchapter B. Pollution Prevention Requirements: Source Reduction and Waste Minimization

- **30 TAC §§120.101-120.103, 120.105-120.110**

The Texas Natural Resource Conservation Commission (TNRCC) adopts the repeal of §§120.101-120.103 and §§120.105-120.110, concerning Definitions, Pollutants and Contaminants, Applicability, Source Reduction and Waste Minimization Plans, Reporting and Recordkeeping Requirements, Exemptions, Enforcement, Compliance Schedules, and Confidentiality, without changes to the proposed text as published in the January 2, 1996, issue of the *Texas Register* (21 TexReg 21).

The repeals are part of a rules revision project to identify TNRCC rules and regulations which need clarification for the benefit of the public, appear to be outdated, seem to impose regulatory requirements in excess of their contribution to the commission's mission, or are duplicated, unnecessary, or inconsistent. In this case, the repealed rules are duplicated in 30 TAC Chapter 335, Subchapter Q, concerning Industrial Solid Waste and Municipal Hazardous Waste.

30 TAC Chapter 120, Subchapter B, and 30 TAC Chapter 335, Subchapter Q, were developed to satisfy requirements of Senate Bill 1099, referred to as the Waste Reduction Policy Act of 1991, passed by the 72nd Texas State Legislature. 30 TAC Chapter 120, Subchapter B, became redundant when the Texas Air Control Board and the Texas Water Commission merged to form the TNRCC on September 1, 1993.

A public hearing was held January 23, 1996 in Austin. The public comment period closed February 2, 1996.

One commenter submitted testimony regarding §§120.101-120.103 and 120. 105-120.110. Texas Utilities Services, Inc. (TU) supported the proposed repeals, noting that they will eliminate duplication of existing regulations contained in 30 TAC Chapter 335, Subchapter Q. TU believes that the repeals will reduce potential confusion in the regulated community and supports the agency's efforts to streamline existing regulations where possible. No comments were received from persons who opposed the proposed changes.

The repeals are adopted under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Issued in Austin, Texas, on March 27, 1996.

TRD-9604378 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: April 19, 1996

Proposal publication date: January 2, 1996

For further information, please call: (512) 239-1966

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Chapter 333. Voluntary Cleanup Programs

Subchapter A. Voluntary Cleanup Program Section

- **30 TAC §§333.1-333.11**

The Texas Natural Resource Conservation Commission (TNRCC, commission, or agency) adopts new §§333.1-333.11, concerning the voluntary cleanup program (VCP). Sections 333.1-333.11 are adopted with changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9255).

The statutory basis for the proposed rules is found in House Bill (HB) 2296, 74th Legislature, (the statute) which establishes the existence of a Voluntary Cleanup Program in Subchapter S of the Solid Waste Disposal Act (SWDA), Chapter 361, Health and Safety Code. The commission is developing a guidance document for the VCP concurrent with the development of the VCP rules. Subchapter S and the new rules will be included as attachments to the guidance document.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to implement House Bill (HB) 2296, 74th Legislature, which created the voluntary cleanup program. The VCP was primarily created to provide incentives to encourage the cleanup of thousands of contaminated sites in Texas which require remedial actions in order to complete real estate transactions. The VCP rules will substantially advance this specific purpose by establishing rules where required by statute, clarifying statutory provisions, and providing flexibility in order to promote the redevelopment of contaminated sites. Promulgation and enforcement of these rules could affect private real property which is the subject of the rules.

However, the following exceptions to the application of the Texas Government Code, Chapter 2007 listed in Texas Government Code, §2007.003(b) apply to these rules: the action is taken in response to a real and substantial threat to public health and safety; the action significantly advances the health and safety purpose; and the action imposes no greater burden than is necessary. Sites to be addressed by the VCP represent a real and substantial threat to public health and safety through contaminated soil, groundwater, surface water, and air. Humans may be exposed to these contaminants through many different pathways such as ingestion, dermal contact, and inhalation. The health and safety purpose is significantly advanced because the VCP will promote the expeditious remediation of many contaminated sites in Texas. The rules do not present a greater burden than is necessary to promote the expeditious remediation of contaminated sites because the rules utilize agency risk-based regulatory programs which provide the necessary degree of investigation and remediation while being protective of human health and safety.

The commission accepted public comment on the proposed rules for 30 days following publication on November 7, 1995. A public hearing to accept verbal and written comment on the proposed rule was held at commission offices in Austin, Texas on December 5, 1995. The City of Houston provided oral comment at the public hearing. Written comments were received from the following: Brown McCarroll & Oaks Hartline (Brown McCarroll); Colonial Pipeline Company (Colonial); Cook-Joyce, Inc. (Cook-Joyce); Exxon Chemical Company (Exxon Chemical); City of Houston (COH); Jenkins & Gilchrist; Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C. (Lloyd, Gosselink) on behalf of The Sabine Mining Co., City of Waco, City of Garland, Maxim Technologies, Inc., and Cook-Joyce, Inc.; Locke Purnell Rain Harrell (Locke Purnell) on behalf of itself and JPI Texas Development, Inc.; Railroad Commission of Texas (RRC); Texas Chemical Council (TCC); Texas General Land Office (GLO); Texas Utilities Services, Inc. (TU); the University of Texas System (UT); and Roy F. Weston, Inc (Weston).

In the proposal, the commission defined the term "person" and utilized the term "Texas Natural Resource Conservation" in the rule. The agency is currently attempting to streamline agency rules. Toward that end, definitions of terms that are common across all agency programs are being consolidated into one new chapter, proposed 30 TAC Chapter 3. Chapter 3 is expected to be effective in May, 1996. "Person" is a term that will appear in new Chapter 3; therefore, it is not necessary to define that term in these rules. It does not appear in the final rule. In addition, the commission is attempting to more appropriately utilize the terms "commission" and "agency" while ceasing to use "TNRCC" or "Texas Natural Resource Conservation Commission" in its rules. In line with the philosophy, "Texas Natural Resource Conservation Commission" has been replaced with "commission" in the definition of "site subject to a commission permit or order."

The commission received a number of general comments. TU expressed general support for the voluntary cleanup program, believing it will provide incentives for cleanup of contaminated sites by streamlining the cleanup process and providing important assurance regarding environmental liability for future owners. The commission received requests from TCC to incorporate the statutory requirements found in HB 2296 in order to make the requirements of the VCP more accessible. These comments were submitted as general comments and comments specific to proposed §§333.2-333.7, and §333.10. The commission responds that *Texas Register* guidance does not consider the adoption of statutes to be acceptable rulemaking, and therefore the commission believes it appropriate to keep the statute and the rule separate. As noted earlier the VCP Guidance Document will include copies of both the rule and the statute. This should alleviate concerns that separating the two creates confusion.

GLO requested that any documents subject to the Texas Open Records Act be made easily available upon request for public review. The commission responds that a standard procedure exists for responding to Texas Open Records Act requests. All documents submitted to the VCP are subject to the Texas Open Records Act and will be easily accessible. The commission has added the following language to the proposed §333.1 of the VCP rule to ensure that adequate copies are available: "(b) the applicant shall submit two copies of all documents, one of which the Voluntary Cleanup Program will file in the agency central records." The original proposed language in §333.1 is located in §333.1(a) in the final rule. In this regard, certain applicants must also notify the agency regional office of activity on a site. Persons entering the VCP and utilizing the Risk Reduction Rules must notify the appropriate agency Regional Office as required by §335.8(c) of 30 TAC Chapter 335.

Cook-Joyce and Lloyd, Gosselink suggested the establishment of a certification program similar to the Petroleum Storage Tank (PST) certification program for persons preparing the applications, workplans and remedial actions. The purpose of such a program would be to ensure quality control of materials submitted and work performed under the VCP and the Risk Reduction Rules found in 30 TAC Chapter 335, relating to Industrial Solid Waste and Municipal Hazardous Waste. The commission notes that the VCP will require applicants to meet PST requirements for certification of persons preparing PST work plans and reports. To remain consistent with other remediation programs using the Risk Reduction Rules, the VCP will not require certification of persons preparing work plans and reports under the Risk Reduction Rules; however, a certification program for environmental professionals may be considered in the future.

UT requested the addition of an applicability section to establish eligibility for the VCP to address how liability protection will be afforded to various categories of applicants, assignment of a voluntary cleanup agreement, liability protection for a subsequent buyer while remediation is ongoing, and when liability protection is effective for the original owner and the buyer. The commission responds that eligibility for entering the VCP is defined by statute. Two categories of applicants are of particular importance, Responsible Parties (RPs) and non-RPs. RPs are not eligible for receiving a liability release as defined by statute. Non-RPs are eligible, but the date of the release depends on their actions. The commission would not allow assignment of a VCP agreement due to the statutory provision that applicants must submit an application and an application fee. Section 361.610(a) of the statute differentiates between applicants and future owners and lenders. Specifically, it states that an applicant "at the time the person applies to perform a voluntary cleanup is released, on certification under §361.609...". The commission interprets this language to allow an effective release date for applicants to be the date of application.

However, concerning future owners and lenders, §361.610(c) of the statute states "an owner who acquires the property on which the site is located or a lender who makes a loan secured by the property after the date of issuance of the certificate is released from all liability for cleanup of contamination released before the date of the certificate." The commission believes that this language is clear that the effective date of release for these persons is the date of the certificate of completion. However, those non-RPs who are not original applicants and who wish to gain liability release prior to the certificate of completion must file a new application, pay the fee, and sign an agreement. This can occur even if there is a prior agreement on file. Thus for example, the VCP may accept an application and fee from a prospective purchaser who is not an RP at the time of their application prior to completion of remediation who will then receive a release of liability beginning at the date of their application upon issuance of the certificate of completion. The original owner is only able to receive the liability protection when they are not an RP; the same is true of a buyer.

Lloyd, Gosselink requested clarification on whether and to what extent compliance with the Texas VCP will satisfy the investigation and notice requirements mandated by the National Contingency Plan (NCP) for parties seeking contribution under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Parties may satisfy the requirements of the NCP under the VCP; however, the VCP may not require several actions required under the NCP (e.g. public participation, remedy selection, notification requirements) to preserve cost recovery. It will be the responsibility of parties wishing to preserve future cost recovery to ensure that NCP requirements are met under the terms of the VCP agreement.

Lloyd, Gosselink also supports agency's pursuit of an agreement with the Environmental Protection Agency (EPA) for every certificate of completion in order to prevent federal enforcement action. The commission responds that the VCP is attempting to gain the maximum assurances from EPA with respect to their endorsement of the Texas VCP. Negotiations are ongoing with EPA Region VI to develop a memorandum of agreement (MOA) which describes a partnership with EPA to accomplish the goal of promoting response actions through the VCP. A key point of the draft MOA states that if a certificate of completion is issued for a site, Region VI will not plan or anticipate any federal action under CERCLA unless Region VI determines the site poses an imminent and substantial endangerment or emergency situation. Also, EPA will suspend further action or take no action at sites being investigated or remediated under the VCP.

Lloyd, Gosselink commented that not all responsible persons should be excluded from the release of liability. The rules should only require that to be excluded from the protections afforded by a certificate of completion, the contamination caused by the RP must constitute an imminent and substantial endangerment. The commission notes that the VCP rule does not include any language regarding persons released from liability. All criteria concerning liability release are stated by statute. The VCP statute does not speak to the issue of imminent and substantial endangerment; therefore, the commission is not addressing this issue. It only references the Health and Safety Code, §361.271 and §361.275(g), which discuss RP status. Lloyd, Gosselink also believes that the TNRCC has the authority to delineate situations in which lenders will be exempted from site liability if they are financing VCP activities, and further believes the agency should address in guidance when lender activities and financing of cleanups may expose them as responsible persons. Persons released from liability are defined under of the Texas Health and Safety Code, Chapter 361. Unlike the Federal Superfund Statute (CERCLA), there is no secured creditor exemption in the Texas Health and Safety Code. However, lenders have other legal protection possibilities under the VCP statute. If the lender is concerned about liability due to a loan to a responsible party prior to a cleanup, the lender should become an applicant. The lender can then gain liability protection by becoming an applicant as contemplated in the statute. It should be noted that if the response actions are not completed, the lender may become a responsible party depending on their activities related to the site. If the response actions are successfully completed, the lender gains the liability release from the lender's application date once a certificate of completion is issued. Lenders who make a loan **after** a certificate of completion is issued automatically receive liability protection under the statute, after the date of issuance.

Lloyd, Gosselink requested a clarification of the relationship among the Texas Environmental, Health, and Safety Audit Privilege Act (Texas House Bill 2473, 74th Legislature Regular Session (1995)) (the audit bill), the proposed Spill Rules (30 TAC §327.1-327.5) and the VCP. The audit bill has an exclusion for documents required by law to be submitted to the commission. The VCP statute sets out the documentation required to be submitted to that program; therefore, those documents are not privileged when submitted for that program. Concerning the proposed spill rules, there is nothing in either the VCP rules or the spill rules which would preclude a spill cleanup from entering the VCP, once the emergency response to the spill has been completed according to the applicable rules.

Lloyd, Gosselink also requested that the commission create an internal policy stating that staff members will minimize costs as much as possible and provide free technical assistance to VCP applicants whenever requested. The commission believes the statute prevents VCP staff from reviewing plans and reports submitted to the VCP until the agreement is signed. In addition, §361.603(b)(2) of the statute states that a person participating in the VCP must pay all costs for commission oversight. VCP staff typically provide pre-application assistance through discussions regarding the VCP guidance documents. Staff will provide effective and efficient review of all submittals.

Lloyd, Gosselink requested clarification in the preamble on whether facilities not having a permit for their activities but participating in closure actions, which do not do so under enforcement action or order, are eligible for the VCP. Brown McCarroll requested clarification as to when a Resource Conservation and Recovery Act (RCRA) permitted facility can participate in the VCP. Both commenters believe that interim status hazardous waste facilities at the time interim status is acknowledged by the commission should be allowed into the VCP. This comment regarding interim status was made as a general comment as well as a comment specifically targeting certain sections in the proposed rule. Their concern is that the commission is being more restrictive than statutory authority by including interim status facilities in the definition of the phrase "subject to a permit." The agency wishes to clarify its position that interim status facilities do, in fact, meet that definition and are therefore excluded from the VCP. Interim status is a federal regulatory classification. As cited in §3005(a) and (e) of RCRA (Permit requirements for Hazardous Waste Management (HWM) facilities) and 40 CFR Parts 265.1 and 270, owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the act render the facility subject to the requirement to have a RCRA permit. Facility owners and operators with interim status are treated as having been issued a permit (40 CFR Part 270) until either a permit is issued under 3005 of RCRA or until applicable Part 265 closure and post-closure responsibilities are fulfilled. Owners and operators of such facilities are eligible for interim status on an ongoing basis if the facility is in existence on the effective date of any regulatory changes under RCRA which cause the facility to be subject to RCRA Subtitle C regulation. In addition, RCRA authorization prohibits the state from being less stringent than federal regulation. Because interim status facilities fall under federal definition and regulation, such a facility cannot be allowed to use less stringent state regulations to be relieved of federal regulatory requirements.

The commission understands the commenter's interpretation that the phrase "subject to permit" could be interpreted to mean a permit has been issued; however, the commission defines the phrase to include interim status facilities because existing federal regulatory requirements in RCRA, §3005 (a) and (e) state that such facilities "are required to have a permit" ... and "shall be treated as having been issued such permit". The intent of the VCP statute is that some RCRA regulated facilities, including interim status facilities, are subject to a permit and other applicable federal regulatory requirements and should be omitted from the VCP; RCRA federal requirements must take precedence over state authorized cleanup programs.

Concerning §333.1, the commission received one comment. The RRC would like the section amended to clarify the jurisdiction of the Railroad Commission of Texas over certain cleanups. The commission responds that jurisdiction is already clarified by statute, specifically SWDA, §361.601(3), and the Texas Water Code, §26.131; therefore, the commission does not believe it is necessary to amend the rules. However, persons wishing to enter the VCP should note that Chapter 333 does not apply to the cleanup or removal of any waste, pollutant,

or substance regulated by or that results from exploration, development, and production of oil or gas or geothermal resources under the jurisdiction of the Railroad Commission.

The commission received several comments regarding the proposed definitions in §333.2. Concerning "Initiate an enforcement action," Jenkins & Gilchrist requested that the definition be limited to instances where the executive director's Preliminary Enforcement Report has been issued, believing the Notice of Violation (NOV) stage is too early because the violation is only alleged, and no findings of violation have been made. The commission believes the commenter has confused the term "Initiate an enforcement action" with "Pending enforcement action". "Initiate an enforcement action" under the VCP rule provides clarification of the types of actions which the State is prevented from initiating while a party is complying with the terms of the Voluntary Cleanup (VC) agreement. On the other hand if there is a "Pending enforcement action" and the executive director, for example, finds that it is in the best interest of the agency or it will promote the effective use of agency resources or it will expedite a cleanup, the executive director may, but is not required to, allow applicants to enter the voluntary cleanup program. It should be noted that by the time an NOV has been issued, a great deal of agency effort has been expended. To begin again in the VCP would possibly be a significant duplication of effort. For this reason, the commission believes that this is the appropriate point in time to allow the executive director to determine the appropriate program to handle the cleanup. Specifically, regarding "Pending enforcement action," Brown McCarroll, Lloyd, Gosselink, and Jenkins & Gilchrist requested clarification that cleanups are ineligible for the VCP due to enforcement orders or pending orders only to the extent that such orders actually address the remediations at issue. The commission agrees, and the definition now reads "Concerning the remediation of the hazardous substance or contaminant described in the application, a notice of violation has been issued and further administrative, state, or federal enforcement action is under evaluation or an enforcement action is required by federal grant, or the State has incurred unreimbursed costs under the Texas Health and Safety Code, Chapter 361, Subchapter F."

Regarding the definition of "Exposure Assessment Model," TCC requested that probabilistic models be included in the definition. The commission intends for persons to develop a conceptual model of the site based on site-specific exposures, and considers the term "conceptual model" in the current definition to be sufficiently broad to allow the agency to accept any valid model. GLO requested clarification of the term "reasonably anticipated" in the definition. The VCP guidance documents will provide further clarification how "reasonably anticipated" is used in the VCP. Although no comments were received concerning "Partial response action," the commission believes that the proposed definition can be clarified by adding the statement, "if any" and replacing "site" with "partial response action area" in the definition so that it now reads, "A response action which is limited to an areal portion of the site and off-site areas, if any, contaminated due to releases which have migrated from the partial response action area onto property owned or controlled by others, inclusive of all media." Lloyd, Gosselink suggested the definition of "Site" should address portions of site. The commission responds that the statute separately addresses the terms "site" and "portion of a site;" therefore, they should not be combined in the rule. Consistent with general comments on the issue of interim status hazardous waste facilities, Lloyd, Gosselink commented that the definition of "Site subject to a commission permit or order" is overly restrictive given the statutory language of HB 2296, and interim status hazardous waste facilities should be allowed to enter into the VCP. The commission disagrees with this comment based upon the reasons elaborated earlier in the preamble; however, the language in the definition has been modified to alleviate confusion. The proposal stated that "these also include interim status hazardous waste facilities, at the time interim status is granted." The final rule states, "these also include hazardous waste facilities, which are operating under interim status."

Section 333.3 contains the stated purpose of the VCP rules. Several comments were received addressing this section. Lloyd, Gosselink and Weston requested that the rule be amended to state that the purpose also is intended to provide a timely and efficient process. The commission agrees and the language has been changed by adding the following language to the end of the section, ". . . and to provide a process by which voluntary response actions can be completed in a timely and efficient manner". The GLO commented that the VCP does not remove liability for injuries to natural resources by an unauthorized release of hazardous substances or discharge of petroleum under federal law. UT wanted clarification that the release of liability is only from the State and not from the federal government. The commission emphasizes that the statute only releases liability to the State under State law for cleanup of sites and does not affect federal liabilities. Release of liability by the State does not apply to natural resource damage or restoration under federal law. Finally, UT requested clarification as to whether the program removes liability of only future lenders or all lenders. The commission responds that future lenders who are not RPs will be released from liability, as set out in the statute. Also, lenders who are not RPs and are applicants will be released from liability upon issuance of the certificate of completion (see earlier discussion).

Section 333.4 concerns the application to participate in the VCP. Exxon Chemical suggested including a provision to allow the applicant the right to withdraw an application and cancel an agreement at any time during the review process. The commission does not believe such a change is necessary. The right to withdraw an application is discussed in the Texas Health and Safety Code, §361.606. If the applicant withdraws from the program, all commission costs incurred or obligated before notification of termination must be paid. Termination of an agreement is discussed in the Texas Health and Safety Code, §361.607.

Regarding the 45-day time limit for acceptance or rejection of the application, the commission received two comments. GLO requested that the time period to accept or reject an application should be longer, because 45 days is not adequate to coordinate with other agencies if necessary. UT wanted clarification on what happens if the agency does not respond in 45 days. The commission is statutorily obligated under the Texas Health and Safety Code, §361.605 to notify an applicant if the application is rejected, within 45 days after application submittal. The management of the agency will oversee the timeliness of staff review. In addition, a Writ of Mandamus is available to force the agency to comply with the statutory deadlines.

Lloyd, Gosselink stated that the TNRCC should not initiate enforcement actions during the pendency of the review of VCP applications or immediately following rejection of an application. According to Lloyd, Gosselink's comment, the rule should also recognize that privileged information under the Texas Environmental, Health, and Safety Audit Privilege Act remains protected under the VCP, and the entity does not lose the benefits of any applicable immunities. The commission agrees with the first part of the comment. The section is amended by adding language that the agency shall not initiate enforcement action on a VCP applicant during the pendency of the agency review of an application. The commission does not agree to restrict itself after rejection of an application since there may be circumstances such as fraud where immediate enforcement action is appropriate. For the reasons stated earlier in this preamble, the commission does not believe the audit bill protects those documents required by statute to be submitted to the VCP for the contamination or release that is the subject of the Voluntary Cleanup Agreement.

Section 333.5 sets forth standards for rejecting an application. UT wanted clarification that the executive director may reject the application for only the two stated reasons identified in the proposed rule. The commission disagrees noting that §361.605 of the statute details other reasons for the executive director to reject an application. GLO believes an ongoing natural resource damage assessment (NRDA) or pre-assessment (PA) should be cause for rejecting an application because an ongoing assessment would indicate that significant natural resource injury has occurred or is suspected to have occurred. The commission notes that acceptance into the VCP does not preclude NRDA or PA actions from proceeding or being initiated since the VCP statute only prevents the commission from initiating enforcement action. It does not prohibit actions by other state agencies or actions pursuant to federal law. Therefore, the VCP will not reject applications based upon these reasons. The VCP will utilize the applicable rules and guidance to ensure that natural resources are adequately protected.

Concerning §333.5(1), TCC requested its removal because the paragraph is vague, and §361.603 and §361.605, the SWDA, and §333.5(2) are adequate. The commission agrees and the paragraph is not included in the final rule. Lloyd, Gosselink recommended any changes to the definition of "Pending enforcement action" and "Site" should be

incorporated into this paragraph. The paragraph has been removed, and there is no need to make corresponding changes. Weston requested clarification of the term "Under enforcement." According to the commenter, a property owner may be under enforcement without realizing it because there has been no response from the commission for an extended period of time. Weston further suggested setting up a single "hot line" so that someone may determine if they are under enforcement in any agency program. The commission responds that the term "under enforcement" is not used in the rule. However, "pending enforcement action" is defined in §333.2, and the commission has clarified in this preamble what is meant by the term. Persons may contact the Litigation Support Division to inquire whether or not their site is on the agency's enforcement log.

The commission received two comments regarding §333.5(2). UT wanted to know when all costs are recoverable and when payment must be made to the fund. The commission responds that payment must be made to the fund prior to acceptance of a VCP application. Lloyd, Gosselink suggested elimination of this paragraph as an option for rejecting an application, because it believes the agency's authority under HB 2296 to assess costs retroactively is questionable. The commission disagrees and is retaining proposed paragraph (2) as an option for rejecting a VCP application. The commission further disagrees that it cannot collect past costs, believing that the SWDA provides that authority. Cost recovery is authorized in Health and Safety Code, Chapter 361, Subchapter F. If its costs are not reimbursed voluntarily, the commission would seek to enforce an order compelling reimbursement; therefore, the commission considers that enforcement is "pending." However, the commission is amending the definition of "Pending enforcement action" to clarify its authority to reject an application for failure to pay such costs. The commission retains paragraph (2) as proposed; however, the removal of proposed paragraph (1) eliminates the necessity of a paragraph number.

Section 333.6 concerns the voluntary cleanup agreement. Colonial recommended that a cost schedule be developed to assist the responsible parties in identifying and estimating their potential project costs. In response, the agency can provide rough estimates of its oversight costs on a case-by-case basis per request from the applicant. Factors which may affect these costs include the complexity of the site and the quality and quantity of the work submitted to the VCP. Another comment suggested adding language requiring the agency to complete its technical review of workplans or reports submitted under a voluntary cleanup agreement within 45 days. Colonial suggested that within the 45-day period, the agency must approve the work plan/report, approve portions of the work plan/report, or disapprove the work plan/report. If the work plan/report is approved in whole or in part the applicant can move forward and undertake actions approved. If disapproved, the applicant has 45 days to revise the work plan/report. The commission responds that staff will make every attempt to review a submittal within 45 days, but it does not believe adopting a specific time frame as a rule is appropriate. The VCP must balance the work load and the number of staff in order to provide the most efficient review time and the lowest oversight cost.

Specifically regarding §333.6(a), the commission received two comments. UT recommended changing the term "both parties" to "TNRCC and the applicant." The commission agrees with the concept, and has replaced the term "both parties" with " the applicant and the executive director or his representative. " Brown, McCarroll and Exxon Chemical believe the statement that an agreement must be signed prior to any response action being implemented does not appear to allow owners of sites which have already undergone voluntary remediation to participate in the VCP. The commenters believe the rule should allow sites previously cleaned up under the guidance and direction of other TNRCC programs to enter into the VCP. If cleanup has previously been approved, the applicant should not be required to meet more stringent cleanup standards. The commission responds that parties who have gained agency final approval of the completed remediation prior to the effective date of the VCP rules may apply to enter the VCP. The executive director has the discretion to reject the application. However, if the application is accepted, the VCP will require submission of all information initially submitted for review to receive the prior approval and may require additional information regarding the site if the previously approved response action did not address all contaminants or contaminated media within the proposed site or partial response action area, if contaminant management practices were initiated or changed since the previous approval date, or regulatory requirements have changed since that approval. The proposed rule has been amended to clarify this. Additionally, the applicant shall pay the application fee and oversight costs. A VC agreement must be signed by the agency representative and the applicant prior to agency review. Sites initiating response actions after the effective date of these rules without signed VC agreements will not be allowed into the VCP. The requirement in §333.6(a) that the VC agreement be signed prior to the implementation of any response actions ensures that the response actions are clearly understood and agreed to by both the applicant and the agency representative. Site investigations may begin prior to completion of the application and agreement, although the commission encourages persons to coordinate these activities with the agency after completion of the application and agreement. The commission does agree with the commenters that a language change will clarify this. The following sentences have been added to the rule, "However, for response actions initiated or completed prior to the effective date of these rules, the executive director at his discretion may allow sites to enter the Voluntary Cleanup Program. After the effective date of these rules, persons initiating response actions prior to a signed Voluntary Cleanup agreement may not enter the Voluntary Cleanup Program."

Section 333.7 discusses VCP work plans and reports. Lloyd, Gosselink supports this section as proposed. Exxon Chemical stated that the TNRCC should be required to provide an estimate of oversight costs at the time the commission approves the work plans and reports. In response, the VCP will provide non-binding estimates of oversight costs to the applicant at that time, upon request.

The commission received several comments specific to §333.7(a). UT stated that this section should be modified to state that the exposure assessment model shall examine all currently discovered and reasonably anticipated future exposure pathways for all targeted contaminants and media of concern. The commission responds that in developing a conceptual exposure assessment for a site prior to completing an investigation, it is inappropriate to exclude potential contaminants of concern without proper determination of exposure to human health and the environment. However, the results of a site investigation may provide sufficient information to target the contaminants of concern for remediation purposes. The recommended change is not included in the final rule. UT also requested clarification that "media of concern" refers to soil or groundwater rather than air, except in limited circumstances. The commenter provided no criteria for distinguishing between air, water, and soil. The commission is responsible for protection of human health and the environment including air; therefore, the commission has not changed the proposal.

GLO requested that the agency identify existing guidelines that will be used by the executive director to evaluate and maintain consistency in the evaluation of the **full** nature and extent of contamination at a site. The commission responds that the criteria for determining the nature and extent of contamination are described in the Risk Reduction Rules, PST guidance, and the VCP guidance. It should be noted, though, that the nature and extent of contamination may be determined on a site-by-site basis through the preparation of an exposure assessment model which may not require an investigation of the full nature and extent of contamination. Flexibility in determining the limits of an investigation based on an exposure assessment model is described in the PST and VCP guidance. Additionally, TCC wanted to know if models proposed by parties outside the agency will be accepted. Finally, TCC wanted to know how the agency will handle narrowing down the list of samples and constituents in the VCP to a reasonable number. The agency will determine the acceptability or appropriateness of proposed models based on whether the models provide an accurate assessment of the nature and extent of contamination. Because the second question is fact-specific and can only be answered upon site-specific review, no general comment on an approach to limit numbers of samples or constituents required can be given.

Regarding §333.7(b), COH suggested replacing "migrated onto property owned or controlled by other" with "migrated onto property where an interest is held by another person." In response, the commission believes the inclusion of this language would effectively exclude parties from initiating partial response actions in areas such as cities with pervasive easements. However, we agree that persons who perform their work in easements, rights-of-way, etc. should be alerted to potential exposure to hazardous substances; therefore §333.11 has been modified to provide this notice.

Concerning §333.7(c)(1), Jenkins & Gilchrist requested that the agency

clarify that the only inquiry is whether the person had some responsibility for the active release on the off site property, and that the issue of whether the person had passively allowed the release to migrate under his property is not at issue in this requirement. The commission agrees with this comment. For this reason, the language has been changed to delete the terms "suffer" and "allow" from the rule. Persons should be aware that the certificate of completion will only pertain to contamination that exists before the date of the certificate and will not release persons for contamination which migrates onto the site after the issuance of the certificate. Persons should take all necessary actions to stop off-site contamination from continuing to migrate on-site to avoid future liabilities.

GLO commented on §333.7(c)(2) stating that the approach to cleanup allowed by this paragraph is flawed because the source of contamination may not be addressed. The commenter believes the TNRCC should address a site's entire contamination, including the source area of that contamination if it presents a risk to human health and the environment. In response, the commission believes the partial response action provides incentives to remediate properties which would not otherwise be remediated. The VCP agreement which precludes initiating an enforcement action will only pertain to the partial response action area, thus preserving the commission's enforcement authority for remaining contaminated areas including sources. Applicants wishing to address only portions of the site as a partial response action should also note §361.608(d) of the statute which limits situations in which partial response actions may be approved by the executive director.

Section 333.8 addresses response action standards. The commission received a number of comments on the proposed section. Concerning §333.8(a), the commission received two comments. GLO requested that all media which exceed ecological risk based cleanup levels should be addressed through response actions. Without these, the commenter contends that a person could still be liable for natural resource damages on the site or affected by the site. The commission understands the commenter's concern and the final rule states "... exceed the health-based and environmental cleanup levels..." As noted earlier, participation in the VCP does not prevent a natural resource damage action. UT noted that an exposure assessment model may reasonably demonstrate that an exposure pathway does not exist, but it cannot prove that a pathway does not exist. To clarify the use of exposure assessment models, the commission is removing the portion of §333.8(a) which discusses limitations associated with an exposure assessment model. Exposure assessment models are already discussed in §333.7(a) concerning the site investigation, which is the appropriate location to include the use of such models. Section 333.8(a) will now read "Excepting areal limitations with partial response actions, all media which exceed the health-based and environmental cleanup levels shall be addressed..."

UT requested clarification on the extent to which the applicant shall select a response action and what role TNRCC will have in selecting the response in §333.8(b). The commission responds that the applicant will have the ability to select the response action, and the agency will review the selected response action to ensure that the action is capable of meeting the response action objectives. For State Superfund sites, a public meeting to receive comments on the proposed remedy is required by statute. However, the remedy selection criteria set out in 30 TAC Chapter 335, Subchapter K (relating to Hazardous Substance Facilities Assessment and Remediation) are not applicable to sites in the Voluntary Cleanup Program. Lloyd, Gosselink requested that the applicant limit its evaluation to one proposed remedy rather than all possible remedies. The commission responds that as long as the proposed remedy meets the requirement of 333.8(b), the applicant is not required to evaluate additional remedies.

Specifically concerning §333.8(c), Lloyd, Gosselink recommended adding the following language to the end of the subsection, "unless such requirements are inconsistent with a specific provision of this subchapter." The commission partially agrees with the comment noting that these rules cannot supersede federal or state statutes, federal rules, or other agencies' rules. The following language has been added to the proposed rule, "... unless such commission rule requirements are inconsistent with a specific provision of this subchapter". GLO stated that when contaminants have migrated or threaten to migrate onto state lands under the management of GLO, a surface easement must be obtained to support the remedial engineering proposed on those lands. The commission responds that this rule speaks only to permits, not the necessity for easements. Permission of the landowner is one method of achieving access to clean up a site. If access is denied, the commission may utilize its authority under the Texas Water Code and Texas Health and Safety Code to obtain access for the applicant. COH requested that the rule be amended to state that persons in the VCP are still required to comply with local codes and ordinances, and may need to obtain building, sewer, or fire permits. The commission believes that the rule requires clarification to limit the exemption from state and local permits to remedial actions and removals under the VCP. The proposed language has been amended to state, "State or local permits are not required for removal or remedial action under the Voluntary Cleanup Program..." to qualify when state or local permits are not required. The commission disagrees with the second half of the comment. The statute is clear that no state or local permits are required for this type of activity. Moreover, the statute does not require that the local substantive requirements are met, although the city may have other legal justification for the imposition of these requirements on an applicant. The commission believes that this issue is unsettled in law and will have to be determined by the courts or by negotiation. The language in the statute is virtually identical to that in the State Superfund Statute, Texas Health and Safety Code, §361. 196, and is similar in relevant aspects to the exemption from permitting under CERCLA. The commission received a comment from Jenkins & Gilchrist that this subsection should specify whether state permits that are issued pursuant to federally delegated programs such as RCRA and Treatment, Storage and Disposal (TSD) permits are covered by the permitting exclusion. In response, permits must be obtained if required by federal law or regulation or by a federal program.

Section 333.9 concerns deed certification. For purposes of this discussion, "deed certification" and "deed recordation" are used interchangeably. Locke, Purnell strongly supported the section as proposed. UT believes that filing the certificate of completion in the deed records should satisfy the deed certification requirement of this section. The commission partially agrees with the commenter. In order to simplify the deed certification process, for applicants in the VCP the commission will only require one instrument, the certificate of completion, to be recorded into the deed record. Specific deed certification provisions of the applicable rules (i.e, petroleum storage tank or risk reduction rules) will be included in the certificate of completion, as appropriate. These specific provisions will be determined by the actions taken on the site by the applicant, such as the use of engineering controls, which will require a specific provision to be included in the certificate of completion. For those sites which do not rely upon engineering or institutional controls, or post-closure care or are maintaining remediation systems, no additional provisions will be included in the certificate of completion over what is required to meet the statutory requirements for certificates of completion. The proposed language has been changed to indicate that for the VCP the filing of the certificate of completion into the deed record, as required by statute, will satisfy the deed certification requirements of 30 TAC Chapters 334 and 335 (i.e, petroleum storage tank and risk reduction rules) for the areas covered by the certificate of completion. There are two types of certificates of completion. Final certificates are issued when no more response actions are necessary. Conditional certificates are issued when the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care or non-permanent institutional controls are utilized pursuant to the Voluntary Cleanup agreement. The preamble further elaborates on final and conditional certificates of completion in the discussion concerning §333.10. GLO stated that deed certification should be required whenever any residual contamination is left on site; however, the certificate could specify that residential health based limits were achieved. The commission disagrees and believes that the stigma of deed certification inappropriately burdens the property title when no contaminants exist above health based levels. Lloyd, Gosselink recommended that the rule be amended so that sites that achieve industrial health-based levels should not require deed certification. The commission partially agrees with the commenter. No additional "deed certification" provisions will be included in the certificate of completion, since the statute requires that the certificate of completion indicate the proposed future land use. Applicants should note the statutory language in §361.610(c) which states "a release of liability does not apply to a person who changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment." Thus a future owner who does not maintain compliance with the terms of the certifi-

cate of completion will be changing the use of the site and will lose his release of liability. Since the situation that led to the certificate of completion may not be restorable after such a change in use, subsequent purchasers also do not receive a release of liability. However, they may re-enter the VCP prior to purchase and receive liability protection due to their own actions which may include additional response actions. Locke Purnell suggested adding a statement that deed recordation will not be required under the Risk Reduction Rules if health-based levels are achieved. This comment was addressed above, in that the certificate of completion will satisfy the deed recordation requirements for the areas covered by the certificate of completion; for areas not covered by the certificate of completion (i.e. potentially off-site areas), deed certification will be required under 30 TAC Chapters 334 and 335 when residential health-based levels are not achieved and/or non-permanent institutional controls (e.g, zoning), post-closure care, remediation systems, or engineering controls are utilized.

Jenkins & Gilchrist suggested notice be given to future landowners, both residential and non-residential, in place of deed recordation. In addition, deed recordation for off-site properties should not be required. The commenter believes this will eliminate the stigma created by deed recordation, and, in the case of off-site properties, eliminate a possible cause of action by the owner of that property. The commission disagrees and believes deed certification is an appropriate requirement under the circumstances noted earlier. In addition, the filing of a certificate of completion is required by statute. The commission has attempted to minimize filing requirements by allowing the certificates of completion to serve as deed certification. Finally, the commission believes that the filing of the certificate of completion should not damage properties but may enhance the value of the property due to evidence of approval by the State of the cleanup action and the statement of liability release for future lenders and owners of the property. Exposure to a cause of action by the off-site landowner is the choice of the applicant selecting a remedy which is not satisfactory to the off-site interest holder.

Brown McCarroll recommended amending the section to allow sites that have previously achieved a residential health-based level under the 30 TAC Chapter 335, Subchapter S, Risk Reduction Rules to supplement the deed record with a statement that the deed certification was made under circumstances that no longer require deed certification. As noted earlier, the amended language no longer requires deed certification for the areas covered by the certificate of completion. Moreover, The commission agrees with the comment and responds that upon filing of the certificate of completion, the party may supplement the deed record with a statement that the certificate of completion will supersede prior deed recordation requirements pertaining to the area described in the certificate of completion. The rule has been changed to reflect that possibility by adding new subsection (e) to §333.10 which states, "The executive director may allow the applicant to file a statement in the deed records stating that the certificate of completion supersedes prior deed certification requirements."

The commission received many comments on proposed §333.10 which discusses the certificate of completion. Lloyd, Gosselink supports the language as proposed. In conjunction with other comments regarding previous sections, Brown McCarroll requested that the section be amended to add a certificate of completion specifically for sites previously remediated under the Risk Reduction Rules. The commission responds that it does not have the authority to issue retroactive certificates of completion for sites previously approved by the agency. However, sites which have received agency review and approval prior to the effective date of the VCP rule may enter the VCP for evaluation to determine if current response action requirements are satisfied. The agency will issue a certificate of completion for previously approved sites only if currently appropriate response actions for all contaminants within the area described in the certificate of completion have been completed. The final rule contains a new, §333.10(c) which includes this provision. Proposed §333. 10(c) is §333.10(d) in the final rule.

Brown McCarroll also requested a provision in the Health and Safety Code, §361.610, be added to the rule. The specific language states that a "released" party cannot ever be held responsible by the State for existing contamination at the site that was not detected in the course of the voluntary cleanup investigation unless there was fraud, misrepresentation, or knowing failure to disclose material information. The commenter believes this will clarify that those who are not RPs at the time the certificate of completion is issued are released from undiscovered contamination at a site where a good faith investigation of contamination has been made. The commission agrees with the commenter that a released party cannot ever be held responsible by the State for existing contamination at the site unless the conditions stated under the Health and Safety Code, §361.610(b) exist or the previously released person changes the land use from that in the certificate of completion if the new use may result in increased risks to human health and the environment as stated in §361.610(c). In this regard, a non-RP may become liable in spite of the liability release if he changes the land use to one which may result in increased risks. A change in use includes not maintaining an engineering control, remediation system, or post closure care, or non-permanent institutional controls. The commission believes that it is not necessary to adopt the statutory language in the rule. However, the commission is adding a definition of "Change in land use" to clarify the intent of the statutory language in §361.610(c). GLO commented that the certificate of completion should not release a site from natural resource liability under federal law. The commission agrees and notes that parties are not released from federal liabilities under the VCP statute.

The commission received several comments regarding the specific subsections of §333.10. Concerning §333.10(a), COH suggested additional language to clarify that there are some minimum standards and approval necessary for a final report. The commission agrees and the language in the paragraph has been changed to read, "If reports acceptable to the executive director that are submitted..." Regarding §333.10(b), UT wanted clarification that the term "legal description" does not necessarily require a survey but must only provide adequate detail such that the areal extent and location of the site is obvious. The commission disagrees with this comment. The certificate will be recorded in the county property records. Without an adequate legal description of the property affected, those who rely upon the property records, such as title companies, may be misled. The legal description should consist of a metes and bounds survey completed by a registered professional surveyor. Jenkins & Gilchrist submitted a comment on proposed §333.10(c) stating that the certificate of completion should only be filed in deed records on property owned by the applicant. In response, the statute requires that the certificate of completion be filed in the real property records for the site. If contamination is addressed for off-site properties, the commission will extend the certificate of completion to those areas, unless the applicant requests otherwise. However, if the certificate of completion is not recorded for the offsite properties, the deed certification requirements, if any, of other applicable rules (e.g, risk reduction rules) must be met for cleanups which do not achieve residential health-based levels in all media of concern and/or cleanups that include engineering controls, remediation systems, or post-closure care or non-permanent institutional controls. As noted earlier, exposure to a cause of action by the offsite landowner is the choice of the applicant selecting a remedy which is not satisfactory to the off-site interest holder. The commission wishes to clarify the intent of proposed §333.10(c). The commission understands that certain transactions are time-sensitive, and §333.10(c) was proposed to allow applicants the opportunity to expedite the process of filing a certificate of completion. The commission believes that additional language is necessary to ensure that the commission's intent is clear in the rule. Therefore, the following language has been added to proposed §333.10(c), "The applicant must file the copy of the certificate of completion prior to the sale or transfer of the property, but not later than 60 days after the date of issuance of the certificate of completion." As stated earlier, proposed §333.10(c) in the proposed rule, is §333.10(d) in the final rule.

In the preamble to the proposed rule, the commission requested comment on the concepts of conditional certificates of completion and certificates of completion for phased cleanups. The commission has determined that it will designate certificates as either final certificates or conditional certificates. Final certificates are issued when no more response actions are necessary. Conditional certificates are issued when the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care, or non-permanent institutional controls are utilized pursuant to the Voluntary Cleanup agreement. For example, demonstration of "satisfactorily maintaining a remediation system" for a ground-water cleanup can be accomplished by showing declining contaminant concentrations and hydraulic control over the contaminant plume, in dedicated monitoring wells. Conditional certificates would be issued prior to final completion of the response action in instances where long-term actions or engineering controls

(e.g., groundwater pump and treat, cap and monitoring, non-permanent institutional controls) are necessary. As noted in the preamble to the proposal, the statute does not specifically authorize the issuance of a certificate of completion prior to attainment of final remediation goals when long-term response actions or engineering controls are implemented. However, the commission believes the purpose of the statute, to provide incentives to remediate property by removing liability of non-RP applicants, future landowners, and lenders would be advanced by issuing conditional certificates of completion in these instances. The commission would issue a final certificate of completion when the response actions have met the final remediation goals for the site. The phased approach would allow parties to divide remediation of a contaminated area into separate phases with separate schedules under a single voluntary cleanup agreement. Authorization to conduct a phased response action will be granted only when, in the executive director's evaluation, the schedule is reasonable, and §333.10(a) in the final rule includes this qualification for approval of a phased approach. At the completion of each phase, a certificate of completion would be issued for the portion of the contaminated area that has been remediated. The certificates in a phased project may be either final or conditional certificates of completion, depending upon the specific circumstances of each phase. The commission believes issuing conditional certificates and allowing phased cleanups will provide parties the flexibility to prioritize cleanup activities for portions of contaminated areas but still be responsible for remediating the entire area.

The commission received several comments in response to its requests. All comments supported both the conditional certificate of completion and certificates for phased projects. Several commenters had specific recommendations. Regarding the conditional certificate of completion, Weston recommended issuing the conditional certificate once a remediation system has been installed. This would allow the property transfer to take place. The commenter stated that if the system fails, it should be clear the TNRCC will pursue the original owner and not a new owner or new lender. The commission disagrees with the comment and notes the statute of the Texas Health and Safety Code, §361.610(b) and (c) states the conditions for liability for non-RP applicants, future owners or lenders once a certificate has been issued. The original owner and other responsible parties (under the Health and Safety Code, §361.271 and §361.275(g)), as well as those who change land use, would be targeted for enforcement if the remediation is not completed per the terms of the voluntary cleanup agreement. Otherwise, the release from liability granted to non-RP applicants, lenders, and subsequent purchasers would not be revoked. UT suggested three different types of conditional certificates. Option 1 would create a separate engineering controls agreement requiring the applicant to post a performance bond or deposit money into an escrow account sufficient to ensure completion of the engineering controls. Option 2 would allow a subsequent buyer to file an amended application without paying the application fee and become a co-applicant. The co-applicant would then be held responsible for completion of the work. The commission has addressed this comment in response to a general comment earlier in the preamble. Option 3 would simply grant a partial certificate of completion for all work except the engineering controls. The commission believes that its proposed solution is preferable to Option 3, since this will result in a full certificate of completion with full liability release. The commission disagrees with Option 1 concerning the need to create a separate "engineering controls" agreement, however a demonstration of financial capacity to complete the response action will be required. The commission believes that the statutory provision in the SWDA, §361.604, which requires that the applicant submit information concerning their financial capability to perform the voluntary cleanup allows the VCP to request documentation for demonstrating financial capacity for long-term response actions. In addition, the commission retains its enforcement power against the responsible parties. The commission interprets §361.606(e) of the statute to only protect RPs from enforcement during the term of the agreement. After the agreement is terminated, an RP is subject to enforcement should cleanup standards change or additional contamination be discovered. The commission will monitor the success of these controls in the future and if they are found to be inadequate, may propose statutory provisions related to financial assurance. Lloyd, Gosselink believes it is appropriate for the agency to cut off an applicant's ability to unreasonably delay the completion of a response action for a final certificate of completion; however, the commenter is concerned that the proposal preamble did not provide guidance on how long an applicant had to complete a response action. For this reason the commenter requested that TNRCC provide guidance that sets out some general criteria that will allow applicants to adequately predict applicable time constraints, but the commenter believes that specific time lines do not seem realistic given the wide range of possible response actions. The commission agrees. The VCP will negotiate schedules for achieving the response actions based on site-specific considerations. This schedule will enable the agency to ensure that voluntary parties are actively remediating sites. If schedules are not met, the commission may terminate a voluntary cleanup agreement under §361.607 of the statute.

The commission received several comments specific to the certificates of completion for phased projects. Weston believes they are necessary to expedite property transactions, and further notes a certificate issued under this scenario should not be voided if additional phases are not completed. If a transaction has occurred and the phased project is not completed, the original owner should be held accountable, not the purchaser or the purchaser's lender. The commission agrees with the comment. In the proposal preamble, the commission proposed an alternative of requiring the off-site contamination to be remediated or the on-site certificate becomes void. Lloyd, Gosselink opposed this because the commenter believes it will serve as a disincentive to those wanting to enter the VCP. The commission agrees with this comment and is not pursuing this alternative. The first phase certificate will not become void if the second phase is not remediated. Locke Purnell believes the statute allows TNRCC the discretion to allow both conditional and phased projects. According to their comments, to do otherwise would defeat the entire purpose of the program since most sites will probably require some type of engineering or control or monitoring. The commenter further stated that HB 2296 does not expressly require all non-permanent institutional or engineering controls to be removed before the certificate of completion is issued. As noted earlier, the commission agrees with the commenter that to not allow conditional certificates would seriously undermine the intent of the program; however, the statute uses the terms "successfully completed" and "has been completed" as prerequisites for issuing a certificate of completion. Therefore, the commission is adding a new definition of "completion" to the rule. "Completion" means that no more response actions are necessary or the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care, or non-permanent institutional controls are utilized pursuant to the Voluntary Cleanup agreement. Section 333.10(a) is amended by stating, "If reports acceptable to the executive director that are submitted under this subchapter demonstrate that no further action is required to protect human health and the environment, the executive director shall certify such facts by issuing the person a final certificate of completion. If the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care, or non-permanent institutional controls are utilized pursuant to an agreement, the executive director shall certify such facts by issuing the applicant a conditional certificate of completion."

Section 333.11 addresses public participation in the VCP process. The commission received a number of comments on this section. UT stated that the section should be entitled "Public notice." The commission agrees with this comment and is adopting this section under its general rulemaking authority. The statute states that the commission may adopt rules concerning public participation, but it is choosing not to at this time in order to expedite response actions under the VCP. GLO stated that notice to the public should be placed in local newspapers and the *Texas Register* 30 days prior to signing a voluntary cleanup agreement, and public comment should be requested. Along those lines, UT recommended amending the proposed rule to establish a time period for receipt of comments from other landowners. The commission disagrees with this comment and does not believe that notifying the public and receiving comments prior to the signing of a voluntary cleanup agreement is warranted in the Voluntary Cleanup Program. The suggested language would result in unnecessary delays in site cleanups. In spite of the lack of a rule for commenting by landowners, an off-site property owner may use all available legal remedies to require the responsible person to alter a remediation plan. For public entities, COH recommended notice be given to the Chief Clerk or the city secretary.

Several other comments were received requesting additional notice requirements. GLO requested amendment of the section to require certified return receipt requested letter to the Commissioner of the GLO whenever the site in the VCP is located adjacent to state owned lands. GLO also requested that TNRCC project managers should be required

to notify the Director of the NRDA program at GLO of VCP applications by certified mail return receipt requested. The commission disagrees. The commission does not consider it necessary to notify persons when no contamination has been released to adjacent properties. Where contamination has been released to an off-site property, the final rule requires various forms of notification depending on the level of contamination which has migrated off-site. COH requested that the rule require a good faith effort to give personal notice first.

Other comments received believe that less public notice is warranted. Weston believes public participation should be limited to adjacent landowners where contamination has migrated unless specifically required by other regulations or statutes such as RCRA, CERCLA, etc. Jenkins & Gilchrist believes that notification should be limited to property owners where contamination exists above residential health-based levels in any media of concern or where engineering or institutional controls are required. UT requested that the rules state minimum requirements for a sufficient notice including the type of publication, frequency, and deadlines, but the type of notification would be subject to the discretion of the executive director. Finally, Lloyd, Gosselink believes that public notice should be limited to letters to individual households and personal contacts, and TNRCC should not advertise the list of VCP applications on the agency electronic bulletin board service.

The commission believes that notice should be provided to all affected property owners, not just adjacent landowners, including non-adjacent landowners where contamination has migrated, as well as the owner of the site when the applicant is a lessee. The proposed rule has been changed to require that applicants shall use the notification form as provided by the executive director at a minimum, but may include additional language as desired. The applicant shall notify property owners with concentrations of contaminants on their property at or below the residential health-based levels for any media. However, notification will not be required when concentrations are at or below background. This notice will occur prior to initiation of the on-site response actions and within two weeks after agency approval of the Site Investigation Report or other final report confirming the nature and extent of contamination at the site. The notice will indicate that the contaminants are at concentrations protective of any future land use and that the commission will not require further investigation or remediation off-site. The notice shall also state the availability for inspection and copying of reports in the commission files concerning the site. For notification under these circumstances, the applicant will have the option of providing public notice in local newspapers, block advertisements, letters to individual households and businesses, or other personal contacts. Proof of such notice is required in the final rule. The final rule requires direct notice in the form of letters to individual households, businesses, and other interest holders when concentrations of contaminants exceeding residential health-based levels have migrated off-site. The notice shall state that concentrations of contaminants exceed the residential health-based level on the off-site property. The notice shall also state the availability for inspection and copying of the reports in the commission files concerning the site. The commission agrees that the frequency and deadlines for notification should be specified. Once the investigation confirms that concentrations of contaminants exceed residential health-based levels off-site, the applicant must provide the direct notice to all affected property owners and interest holders and submit copies of the notice letter delivered with the recipient's signature and date of delivery to the agency within two weeks after initial discovery of the off-site contamination or within two weeks after the effective date of the VCP agreement. If any initial notification attempts are unsuccessful, the applicant shall repeat the process monthly until all affected parties are notified or at least four failed attempts are documented to the satisfaction of the executive director. Proof of such notification is required in the final rule. Notice to governmental entities shall be delivered to the chief clerk or city secretary. The proposed rules have been amended to incorporate these recommended changes. Furthermore, §333.11 has been organized into two paragraphs: paragraph (1) addresses notification requirements for off-site migration at or below residential health-based levels; and paragraph (2) addresses notification requirements for off-site migration above residential health-based levels. The agency currently provides access to the VCP site database through the agency electronic bulletin board service.

COH recommended revising the language in §333.11 to address persons who hold an interest in a piece of property other than owners of property such as leaseholders, easements, etc. In addition, COH commented that the executive director "shall require verification" rather than "may require verification." The commission agrees and has changed the language to reflect these concerns.

The new sections are adopted under the Texas Water Code, §5.103 and §26. 011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.017, and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. Additional authority is provided in §382.017, Texas Health and Safety Code. The Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.604, §361.611, and §361.612 provide specific authority to promulgate the sections for the Voluntary Cleanup Program.

§333.1. Requirements.

(a) The requirements of the Voluntary Cleanup Program are found in this Subchapter and in the Texas Solid Waste Disposal Act, Subchapter S, Texas Health and Safety Code, Chapter 361.

(b) The applicant shall submit two copies of all documents, one of which the Voluntary Cleanup Program will file in the agency central records.

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

Change in land use–A change in use from a less protective risk classification to a more protective risk classification (e.g., non-residential to residential) or not maintaining an engineering control, remediation system, or post-closure care or non-permanent institutional control as set out in the conditional Certificate.

Completion–No more response actions are necessary or the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care or non-permanent institutional controls are utilized pursuant to the Voluntary Cleanup agreement.

Exposure assessment model–A conceptual model of the physical site conditions, contaminants of concern by media, release mechanisms, environmental fate and transport, and potential receptors, and the interaction of each as it relates to site risk. The model identifies the universe of on-site and off-site current and reasonably anticipated future human and environmental exposure pathways and receptors. The purpose of the model is to design and focus site investigations and to assist in the determination of site response action objectives.

Initiate an enforcement action–The issuance of a notice of violation by the executive director or referral to the United States Environmental Protection Agency or Attorney General's Office for a possible enforcement action.

Partial response action–A response action which is limited to an areal portion of the site and off-site areas, if any, contaminated due to releases which have migrated from the partial response action area onto property owned or controlled by others, inclusive of all media.

Partial response action area–The area of the site and off-site within which the partial response action will be conducted in accordance with a plan approved by the executive director.

Pending enforcement action–Concerning the remediation of the hazardous substance or contaminant described in the application, a notice of violation has been issued and further administrative, state, or federal enforcement action is under evaluation or an enforcement action is required by federal grant, or the state has incurred unreimbursed costs under the Texas Health and Safety Code, Chapter 361, Subchapter F.

Response action objectives–The goals of the response actions, which may include both qualitative and quantitative goals.

Site–The property as described in the legal description provided in the voluntary cleanup agreement.

Site subject to a commission permit or order–A site or portion of a site concerning which an order or permit has been issued by the commission. These also include hazardous waste facilities, which are operating under interim status.

§333.3. Purpose. The purpose of the Voluntary Cleanup Program is to provide incentives to remediate property by removing liability of future landowners and lenders and to provide a process by which voluntary response actions can be completed in a timely and efficient manner.

§333.4. Application to Participate in the Voluntary Cleanup Program (VCP). An application submitted to the Voluntary Cleanup Program must be accepted or rejected within 45 days of receipt by the commission. The commission shall not initiate enforcement action on a Voluntary Cleanup Program applicant during the pendency of the agency review of an application for the contamination or release that is the subject of the Voluntary Cleanup agreement or the activity that resulted in the contamination or release.

§333.5. Rejection of Application. The executive director may reject an application submitted to the Voluntary Cleanup Program when all costs recoverable under the Texas Solid Waste Disposal Act, Subchapter F, Texas Health and Safety Code, Chapter 361 (State Superfund) for the site are not paid in full to the hazardous and solid waste remediation fee fund by the applicant.

§333.6. Voluntary Cleanup Agreement.

(a) The voluntary cleanup agreement must be signed by the applicant and the executive director or his representative prior to initiation of any response action being implemented, with the exception of emergency measures which should be coordinated with the appropriate emergency response authorities. However, for response actions initiated or completed prior to the effective date of these rules, the executive director at his discretion may allow sites to enter the Voluntary Cleanup Program. After the effective date of these rules, persons initiating response actions prior to a signed Voluntary Cleanup Agreement may not enter the Voluntary Cleanup Program. A certificate of completion may not be issued for sites which have received agency approval for response actions completed prior to the effective date of the rule if:

(1) the action did not address all contaminants or contaminated media within the site or partial response action area;

(2) contaminant management practices were initiated or changed since the previous approval date; or

(3) regulatory requirements have changed since the approval date.

(b) In the case of partial response actions, the commission retains the authority to issue an enforcement action regarding releases or contamination not addressed by the partial response action.

§333.7. Voluntary Cleanup Work Plans and Reports.

(a) Voluntary cleanup work plans and reports shall include an investigation of the full nature and extent of contamination in all media unless the person demonstrates to the satisfaction of the executive director that site conditions warrant a focused investigation. This may be demonstrated with an exposure assessment model. The exposure assessment model shall examine all currently discovered and reasonably anticipated future exposure pathways for all contaminants and media of concern. Contaminated media within the investigation area shall be addressed according to the appropriate established technical standards.

(b) The requirements of subsection (a) of this section apply to a partial response action when a contaminant release originating from a partial response action area has migrated onto property owned or controlled by others.

(c) The requirements of subsection (a) of this section apply to all voluntary cleanup response actions with the following exceptions:

(1) when a person demonstrates to the satisfaction of the executive director that the source of contamination is from off-site and the person did not cause the release, the person may address only contamination on the site or the partial response action area within the site according to the appropriate established technical standards.

(2) when a contaminant release is present outside the site or partial response action area, but on property owned or otherwise controlled by the applicant, addressing the areal extent of contamination outside the site or partial response action area is not required under the Voluntary Cleanup Program; however, the contaminant release within the partial response action area shall be addressed according to the appropriate established technical standards.

§333.8. Response Action Standards.

(a) Excepting areal limitations with partial response actions, all media which exceed the health-based and environmental cleanup levels shall be addressed through the appropriate response action and in accordance with the appropriate technical standards based upon the site characteristics and site contaminants.

(b) The applicant shall select a response action for the response action area which will achieve the response action objectives.

(c) State or local permits are not required for removal or remedial action under the Voluntary Cleanup Program. The person conducting the voluntary cleanup shall comply with any federal or state standard, requirement, criterion, or limitation to which the response action would otherwise be subject if a permit were required unless such commission rule requirements are inconsistent with a specific provision of this subchapter.

§333.9. Deed Certification. The filing of the certificate of completion into the deed record shall satisfy the deed certification requirements of Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for the areas covered by the certificate of completion. However, if the certificate of completion is not recorded for the off-site properties, the deed certification requirements, if any, of other applicable rules must be met for cleanups which do not achieve residential health-based levels in all media of concern and/or cleanups that include engineering controls, remediation systems, or post-closure care or non-permanent institutional controls.

§333.10. Certificate of Completion.

(a) If reports acceptable to the executive director that are submitted under this subchapter demonstrate that no further action is required to protect human health and the environment, the executive director shall certify such facts by issuing the person a final certificate of completion. If the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care, or if non-permanent institutional controls are utilized pursuant to an agreement, the executive director shall certify such facts by issuing the applicant a conditional certificate of completion. The executive director may authorize an applicant to conduct a phased response action only when, in the executive director's evaluation, the schedule is reasonable.

(b) For partial response actions, the certificate of completion shall pertain only to the partial response action area and shall include a legal description of that area.

(c) For sites approved prior to the effective date of this rule, agency will issue a certificate of completion for sites only if currently appropriate response actions for all contaminants within the area described in the certificate of completion have been completed.

(d) The executive director may allow the applicant to file the copy of the certificate of completion into the site deed record on the executive director's behalf if the applicant provides subsequent documentation of the filing. The applicant must file the copy of the certificate of completion prior to the sale or transfer of the property, but not later than 60 days after the date of issuance of the certificate of completion.

(e) The executive director may allow the applicant to file a statement in the deed records stating that the certificate of completion supersedes prior deed certification requirements.

§333.11. Public Notice. Where contamination is located on property owned by another person or on property where an interest such as a fee ownership, leasehold, easement, or right-of-way is held by another person, the applicant must provide notification to all such property owners and interest holders. At a minimum, applicants shall use the notification form provided by the executive director, but may include additional language as desired.

(1) Notice to property owners and interest holders, who more likely than not due to migration off-site have concentrations of contaminants on their property at or below the residential health-based levels for any media, shall occur within two weeks after agency approval of a report describing the nature and extent of contamination at the site, and prior to initiation of response actions. However, notification will not be required when concentrations are at or below background. The notice will indicate that the contaminants are at concentrations protective of any future land use and that the TNRCC will not require further investigation or remediation off-site. The notice shall also state the availability for inspection and copying of reports in the commission files concerning the site. Under these circumstances, the applicant may provide notice in local newspapers, block advertisements, letters to individual households and businesses, or other personal contacts. The executive director shall require verification that such activity has been completed.

(2) Direct notice is required, in the form of letters to affected individual households, businesses, and other interest holders, when concentrations of contaminants exceeding residential health-based levels have migrated off-site. The notice shall state that concentrations of contaminants exceed the residential health-based levels on the off-site property. The notice shall also state the availability for inspection and copying of reports in the commission files concerning the site. The applicant shall submit copies of the notice letter delivered with the recipient's signature and date of delivery to the agency within two weeks after initial discovery of the off-site contamination or two weeks after the effective date of the VCP agreement. If initial notification attempts are unsuccessful, the applicant shall repeat the process monthly until all affected parties are notified or at least four failed attempts are documented to the satisfaction of the executive director. Notice to governmental entities shall be delivered to the chief clerk or city secretary.

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

Issued in Austin, Texas, on March 29, 1996.

TRD-9604401 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: April 19, 1996

Proposal publication date: November 7, 1995

For further information, please call: (512) 239-6087

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 16. Commercial Driver's License

Application Requirements and Examinations

- **37 TAC §16.49**

The Texas Department of Public Safety adopts an amendment to §16.49, concerning pre-trip inspection, without changes to the proposed text as published in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1249).

The justification for this section will be to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting only qualified individuals to hold licenses to drive these vehicles and ensuring that applicants are properly tested and approved.

The amendment is necessary in order for the department to conform to legislation that requires the department to issue and administer tests for commercial driver's licenses by defining exactly what a pre-trip inspection is to include.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Transportation Code, Chapter 522, §522.005,which provides the department may adopt rules necessary to carry out this chapter and the federal act.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604590 James R. Wilson
Director
Texas Department of Public Safety

Effective date: April 23, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 424-2890

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Chapter 21. Equipment and Vehicle Standards

- **37 TAC §21.2**

The Texas Department of Public Safety adopts an amendment to §21.2, concerning motorcycle operators' and passengers' protective headgear, minimum safety standards, and medical exemption for motorcycle protective headgear, without changes to the proposed text as published in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1249).

The justification for this section will be a means of obtaining a medical exemption waiver for more than ten days.

The amendment changes the exemption process for the wearing of protective headgear due to a medical condition. The amendment is necessary due to the passage of Senate Bill 1363, 74th Legislature, 1995.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Transportation Code, Chapter 661, which provides the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of this Act.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604665 James R. Wilson
Director
Texas Department of Public Safety

Effective date: April 23, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 424-2890

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Chapter 23. Vehicle Inspection

Inspection Items, Procedures and Requirements

- **37 TAC §23.42**

The Texas Department of Public Safety adopts an amendment to §23.42, relating to inspection items, procedures, and requirements, without changes to the proposed text as published in the February 16, 1996, issue of the *Texas Register*(21 TexReg 1250).

The justification for this section will be to allow for undercover officers to work undetected in order to provide more effective enforcement of criminal laws.

The amendment adds new subsection (f) which exempts vehicles maintained by a law enforcement agency and used for law enforcement purposes from the safety inspection requirement relating to sunscreening devices and renumbers current subsection (f) to (g).

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Transportation Code, Chapter 547, §547.613 and Chapter 548, §548.002, which provides the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of this Act.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604591 James R. Wilson
Director
Texas Department of Public Safety

Effective date: April 23, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 424-2890

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §700.104, 700.105, 700.507, and 700.510; adopts new §700. 104-700.114, 700.507, 700.510, 700.521, 700.1111, 700.1352-700.1355; and adopts amendments to §700.501-700.503, 700.506, 700.508, 700.511- 700.518, 700.520, 700.601-700.605, 700.702, 700.703, 700.705, 700.1103, 700.1310, 700. 1312, 700.1315, 700.1316, 700.1321, 700.1322, 700.1332, 700.1333, 700.1350, 700.1405, and 700.1502 in its Child Protective Services chapter. The new §700.106, 700.108, 700.113, 700.507, 700.510, 700.1111, 700.1353, and 700. 1355, and the amendments to §700.516, 700.518, 700.520, and 700.602 are adopted with changes to the proposed text published in the February 6, 1996, issue of the *Texas Register (21 TexReg 839). The repeal of §700.104, 700.105, 700.507, and 700.510, new §700.104, 700.105, 700.107, 700.109-700. 112, 700.521, 700.1352, and 700.1354, and the amendments to §700.501-700.503, 700.506, 700.508, 700.511-700.515, 700.517, 700.601, 700.603-700.605, 700.702, 700.703, 700.705, 700.1103, 700.1310, 700.1312, 700.1315, 700.1316, 700.1321, 700.1322, 700.1332, 700.1333, 700.1350, 700.1405, and 700.1502 are adopted without changes to the proposed text, and will not be republished.*

The justification for the repeals, amendments, and new sections is to incorporate changes to law made as a result of the last legislative session; changes resulting from TDPRS's new automation system; and changes to further clarify existing policy.

The sections will function by providing a streamlined eligibility determination process and public access to correct information.

During the public comment period, TDPRS received the following comments from Driscoll Children's Hospital:

Comment concerning §700.503: While changes to this rule were assumed to be in response to changes in the Texas Family Code, §264.302-264.304, the hospital raised questions as to whether Children's Protective Services was suggesting that children who are sexually aggressive or who are acting as perpetrators would not be served. The question was raised as to whether or not an "outcry" is required from a child in order to receive services. The hospital advocated that "Child Protective Services should provide services for sexually aggressive children/alleged perpetrators whether a specific verbal outcry is made or not."

Response: As assumed by Driscoll Children's Hospital, these changes were made in response to changes in the Texas Family Code. Prior to these legislative changes, Child Protective Services was required to provide services to children aged seven through nine years old who engaged in pre-delinquent behaviors, whether or not there were allegations of abuse or neglect of those same children. During the 74th Legislative session, the responsibility for providing services to this population was transferred to the Services for At-Risk Youth (STAR) program when no allegations of abuse or neglect of that child are known. Any child, of any age, alleged to be a victim of abuse or neglect by a person responsible for his care, custody or welfare, would still be eligible for Child Protective Services. Behaviors indicating that a child is at risk of child sexual abuse are not restricted solely to the child making an "outcry;" however, allegations of victimization are necessary to warrant a Child Protective Services intervention. Child Protective Services staff will continue to work with community groups to identify resources which most appropriately match children's needs. When circumstances indicate that a child has been abused or neglected, Child Protective Services will continue to be the appropriate initial resource. When no allegations of abuse or neglect are made, but children are clearly in need of some type of service, Child Protective Services staff will continue to assist in identifying the appropriate resource, including the STAR program. Nothing in this rule material is intended to leave children in need of services without a resource. TDPRS is adopting this section without change.

Comment concerning §700.512: Clarification was requested as to whether or not the use of the word "designated" indicated a change in the amount of evidence required to have a case termed "reason to believe."

Response: Use of the term "designated perpetrator" does not indicate a change in the determination of "some credible evidence" prior to making a Child Protective Services investigation disposition. The term has been introduced to reflect an awareness on the part of Children's Protective Services that a person who simply has been alleged to be a perpetrator has met no criteria other than someone's suspicion. Once Child Protective Service has determined to some credible evidence that there is reason to believe that a person did abuse or neglect a child, the role given to that person will change from alleged perpetrator to designated perpetrator. Failing to meet the criteria for a reason to believe disposition, a person's role would remain as that of alleged perpetrator. TDPRS is adopting this section without change.

Comment concerning §700.520(b)(1): Clarification was requested as to the difference between the roles of alleged perpetrator, alleged victim/perpetrator, designated perpetrator and sustained perpetrator.

Response: An alleged perpetrator is a person, ten years of age or older, believed by the reporter, to be a perpetrator of abuse or neglect of a child. An alleged victim/perpetrator is a child, of at least ten years of age, alleged by the reporter to be both a victim and a perpetrator of abuse or neglect within the same report. A designated perpetrator is a person, ten years of age or older, found by some credible evidence, to be a perpetrator of child abuse or neglect. A designated victim/perpe-

trator is a child of at least ten years of age found, by some credible evidence, to be both a victim and a perpetrator of child abuse or neglect. A sustained perpetrator is an individual, ten years of age or older, who according to the rules specified in §700.601-700.603, has been found at a preponderance of the evidence to be a perpetrator of child abuse or neglect. Use of this terminology will clearly be addressed in management policy which support this rule material in the Children's Protective Service Policy Handbook currently being revised. TDPRS may also consider these and other definitions as rules in the future.

TDPRS has initiated several clarification changes to the text.

In §700.106(c) the word "outcry" is changed to "statement." Outcry is a term which many associate primarily with sexual abuse. The term "statement" is used in the Texas Family Code and is not as commonly associated with sexual abuse alone.

In §700.108(a), the phrase "under any legal basis" is changed to cite the specific legal basis (§700.107) that is referred to in the subsection.

In §700.113(1)(A), the term "inquiry only" is clarified to state "is a request for an application only."

In §700.516(a)(2), the word "court" was mistakenly deleted and is now reinstated.

In §700.518(c), the phrase "and the indicted perpetrator is out of the home" is added to clarify circumstances under which a home might be left open after the criminal indictment of a foster or adoptive parent.

In §700.520(b), the word "can" is changed to "are authorized to" in order to further clarify the agency's authority to request criminal records checks.

Section 700.602 is modified to clarify its original intent. The changes do not alter the operational proceedings in place within TDPRS for several years, but simply cross reference other rules through citations and subheadings, which, as a package, thoroughly describe the process of designating sustained perpetrators and releasing information to persons who have control over the designated perpetrators access to other children.

In §700.1111(a)(2), the word "council" is corrected to "counsel."

In §700.1353(a)(1), the term "privately funded" is clarified and corrected to reflect that "privately operated" facilities may be classified as ICF-MR/RC programs.

Section 700.1355 is modified to clarify the reasons for not placing siblings together. The section now indicates that siblings might not be placed together if there are "identified therapeutic or safety reasons not to" place them together.

Subchapter A. Administration

• 40 TAC §700.104, §700.105

The repeals are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The repeals implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

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

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• 40 TAC §§700.104-700.114

The new sections are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The new sections implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

§700.106. Retention and Disposal of Case Information.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) retains Child Protective Services case information after case closure in order to document services provided to clients, and to meet state and federal accountability requirements.

(b) When the retention period has elapsed, TDPRS permanently removes the case information from the Child and Adult Protective Services System (CAPS) database and destroys the paper case record in a manner that does not jeopardize confidentiality.

(c) Case information to be destroyed does not include that given to the criminal justice system for its use in investigation and prosecution, such as a videotape of a child's statement. Such information given to the criminal justice system is subject to destruction according to that system's guidelines.

(d) Information in CAPS on persons who are principals or collaterals is retained until the last case in which the person is a member is removed from CAPS and then all the information on the person is also removed.

(e) The CAPS system classifies cases for retention and destruction purposes according to the criteria in this section at the time the cases are closed. If a closed case on a family is re-opened for subsequent action by TDPRS, such as another intake, investigation, services, or a casework-related special request, staff merge the open and closed cases into one. Staff may also merge cases while both are closed or open. When the merged case is closed it is reclassified and retained for the length of the reclassified retention period. Reclassification is based on the contents of the entire merged case or related cases and the case(s) is given the retention classification highest in the hierarchy.

(f) TDPRS may extend the retention period for a case for any of the following purposes:

(1) If an activity such as a fiscal or program audit, release notice or hearing, as specified in §700.601 of this title (relating to Definitions), fair hearing, lawsuit or appeal involving the case is in process, staff may extend the retention. The case information is retained as long as required by the auditor, administrative law judge, or attorney representing TDPRS.

(2) If a person is in more than one case, but the cases are not merged, the CAPS system relates the cases to the person. When the related cases are closed, staff may extend the retention of each of the related cases when necessary to assess risk of abuse/neglect of children and when it is necessary to retain the case information on-line. When it is not necessary to retain the information on-line, staff include the information in the paper case record.

(g) The regional director or the director of TDPRS's Office of Protective Services for Families and Children or either's designee must approve the extension of the retention period for a case. The retention period may be extended as long as needed. The reason for the longer retention and the approval must be documented on the records retention window in CAPS.

§700.108. Retention of Family Preservation Services Case Records.

(a) Family preservation case information is the documentation of a case in which the Texas Department of Protective and Regulatory Services (TDPRS) provided ongoing protective services in the child's home, but TDPRS was not the managing conservator of the child and the child was never in foster care as specified in §700.107 of this title (relating to Retention of Conservatorship or Foster Care Case Information).

(b) TDPRS must retain ongoing services case information for at least five years after the case is closed or until the 18th birthday of the youngest child living in the home when services were provided, whichever is longer. The case information must then be destroyed.

§700.113. Retention of Case Records Related to Foster and Adoptive Homes. The Texas Department of Protective and Regulatory Services (TDPRS) maintains case record information for foster homes or adoptive homes through TDPRS automated systems and in paper form. When the case record retention period has elapsed, TDPRS permanently removes the case information from TDPRS's automated systems and destroys the paper case record in a manner that does not jeopardize confidentiality. When a foster or adoptive home case record is closed, the retention and destruction policies specified in this section apply. However, if there are concerns about the family, the supervisor may approve an extension of the retention of the case information for up to 20 years.

(1) Records are kept for three years after the last case action, unless an extension is granted when the home:

(A) is a request for an application only; or

(B) is closed after TDPRS has received an application from the family but before TDPRS has made a decision about whether to verify and/or approve the home.

(2) Records are kept for five years after the last case action, unless an extension is granted when the home:

(A) is closed and no placement is made;

(B) is a foster home that is closed, and placements have been made in the past; or

(C) is an adoptive home that is closed after a disrupted adoptive placement and no subsequent placements are made with the adoptive family.

(3) Records are kept permanently when an adoptive home is closed in which placements are made and the adoption is consummated. The family record is consolidated with the child's record.

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Subchapter E. Intake, Investigation, and Assessment

- **40 TAC §700.501-700.503, 700.506-700.508, 700.510-700.518, 700.520, 700.521**

The amendments and new sections are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The amendments and new sections implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

§700.507. Investigation Interviews.

(a) Basic steps. The primary purpose of the investigation is the protection of the child, as specified in the Texas Family Code, §261.201(d). To this end, the Texas Department of Protective and Regulatory Services (TDPRS) Protective Services for Families and Children (PSFC) staff seek to identify protective issues as early in the investigatory process as possible, and terminate the investigation as early as possible if protective issues or risk based dynamics are not discovered. The PSFC worker may:

(1) interview and examine, or obtain an examination of, each alleged victim;

(2) interview each child in the home who may be at risk of abuse or neglect;

(3) interview each of the alleged victim's parents;

(4) interview the alleged perpetrator of abuse or neglect;

(5) contact collateral sources;

(6) make a home visit;

(7) conduct a criminal background check on the alleged perpetrator and/or the parents; and/or

(8) interview every child in the home who may have information that will help determine whether any child in the home:

(A) has been abused or neglected; or

(B) is at risk of abuse or neglect; and

(9) examine each child in the household unless information from other reliable sources makes doing so unnecessary.

(b) Response to allegations of abuse or neglect. PSFC staff may respond to allegations of abuse or neglect in one of three ways.

(1) Preliminary investigation (administrative closure).

(A) Under certain circumstances, a report which was initially assigned for investigation may be closed administratively as a result of additional information, such that the situation no longer appears to meet the statutory definitions of abuse/neglect or risk of abuse/neglect. Criteria TDPRS uses for consideration when deciding to administratively close a case include, but are not limited to, situations where a preliminary investigation reveals that:

(i) the allegations have already been investigated by TDPRS;

(ii) another authorized entity, such as law enforcement or another state agency, is, or will be, conducting the investigation; or

(iii) TDPRS does not have the authority to finish the investigation because:

(I) the alleged victim is not a child or was not born alive; or

(II) the abuse or neglect or risk of abuse or neglect is not occurring in Texas; or

(III) the initial collateral contacts refute the allegations and do not support evidence of abuse or neglect or risk thereof. This includes when a worker finds no corroboration of abuse or neglect in a preliminary investigation of an anonymous report.

(B) Administrative closure applies to the whole investigation, not individual allegations; therefore, PSFC staff must give all allegations the disposition of administrative closure if the goal is to close a case administratively.

(C) To administratively close a case assigned for investigation, PSFC staff must have made at least one contact with either a collateral or a principal who provides credible information.

(2) Abbreviated investigation with a disposition of "ruled out/no risk. " To conclude an investigation with findings of "ruled out/no risk," PSFC staff must, at a minimum:

(A) interview and examine the alleged victim child;

(B) interview at least one parent of the victim child; and

(C) have determined that no abuse or neglect has occurred or is likely to occur in the foreseeable future because no significant risk factors were identified or risk is controlled. PSFC staff must assess the impact of any noted risk factors and document how those factors are controlled.

(3) Thorough investigation.

(A) PSFC staff complete the steps to conduct a thorough investigation if the interview with the alleged victim child or the child's parent suggests that:

(i) abuse or neglect did occur;

(ii) risk of abuse or neglect is indicated; or

(iii) it is impossible to determine, based on the child's and parent's statements, whether or not abuse or neglect occurred or risk of abuse or neglect is indicated.

(B) Conducting a thorough investigation may include all of the basic steps specified in subsection (a) of this section, but must, at a minimum include:

(i) an interview and examination of the alleged victim child;

(ii) an interview with at least one of the parents of the alleged victim child; and

(iii) an interview with the alleged perpetrator. Exception: If the alleged perpetrator is in police custody, PSFC staff must obtain authorization from the investigating police officer before conducting the interview to ensure that the alleged perpetrator's rights under criminal law are protected.

§700.510. Completion of the Investigation and Assessment.

(a) To complete the preliminary investigation with an administrative closure, Texas Department of Protective and Regulatory Services (TDPRS) Protective Services for Families and Children (PSFC) staff must have contacted at least one source who provided credible information such that the situation met the criteria for preliminary investigation as specified in §700.507(b)(1) of this title (relating to Investigation Interviews).

(b) To complete an abbreviated investigation, PSFC staff must have:

(1) interviewed the victim child;

(2) interviewed at least one parent of the victim child;

(3) determined that abuse or neglect did not occur and that risk of abuse or neglect does not exist; and

(4) documented how and why any noted risk factors are believed to be controlled.

(c) To complete a thorough investigation and assessment, PSFC staff must have:

(1) interviewed the victim child;

(2) interviewed at least one parent of the victim child;

(3) interviewed the alleged perpetrator. Exception: If the alleged perpetrator is in police custody, PSFC staff must obtain authorization from the investigating police officer before conducting the interview to ensure that the alleged perpetrator's rights under criminal law are protected;

(4) taken any other actions necessary to complete a thorough investigation;

(5) completed a full risk assessment and documented the results;

(6) determined whether abuse or neglect has occurred and the involvement of the persons in the situation;

(7) determined whether there is a reasonable likelihood that a child will be abused or neglected in the foreseeable future; and

(8) taken appropriate actions to provide for the child's immediate or short-term safety if the child is at risk of abuse or neglect in the immediate or short-term future.

(d) At the end of the investigation, staff must assign a disposition to each allegation identified for the investigation in order to:

(1) specify their conclusions about the occurrence of abuse or neglect;

(2) derive the overall disposition for the investigation; and

(3) derive the overall role for each person with respect to the abuse or neglect that was investigated.

§700.516. Administrative Review of Investigation Findings.

(a) The purpose of an administrative review of investigation findings is to review the determination of whether abuse or neglect occurred, not to review the decision about risk conclusions. Anyone whom the Texas Department of Protective and Regulatory Services' (TDPRS's) Office of Protective Services for Families and Children (PSFC) designates as a perpetrator or victim/perpetrator of child abuse or neglect as specified in §700.512(b)(1) of this title (relating to Conclusions About Roles) may request an administrative review of PSFC's investigation determination of whether abuse or neglect occurred, unless the case involves:

(1) (No change.)

(2) any court order limiting the designated perpetrator's or designated victim/perpetrator's access to the child; or

(3) (No change.)

(b) The designated perpetrator or designated victim/perpetrator must request the review in writing within 45 days after receiving TDPRS's written notice of findings.

(c) If civil or criminal court proceedings related to the abuse or neglect that PSFC has investigated are pending when a designated perpetrator or designated victim/perpetrator requests an administrative review, or if such proceedings are initiated before PSFC begins the review, PSFC may postpone the review until the proceedings are completed.

(d) Civil suits to remove the child from the home or restrict the designated perpetrator's or designated victim/perpetrator's access to the child are not delayed by a request for an administrative review.

(e) The designated perpetrator or designated victim/perpetrator has a right to:

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

(f) If the designated perpetrator or designated victim/perpetrator or his parents do not speak English or are hearing impaired, TDPRS must provide a certified interpreter unless the designated perpetrator or designated victim/perpetrator or his parents choose to provide a certified interpreter of their own.

(g) The designated perpetrator or designated victim/perpetrator or his parents are responsible for all costs they incur in connection with the review, including the cost of an interpreter if they choose to provide one.

(h) The regional director for protective services for families and children, or his designee, conducts the review. The reviewer must confirm or revise PSFC's original dispositions based on the same policies that PSFC applied during the original investigation. Within 30 days after completing the review, the reviewer notifies the designated perpetrator or designated victim/perpetrator of the outcome of the review.

(i) The reviewer's notification must inform the designated perpetrator or designated victim/perpetrator that he can complain to TDPRS's Office of the Ombudsman if he is dissatisfied with the reviewer's decision. To this end, the notification must include the address and telephone number of the ombudsman.

(j) If the reviewer revises PSFC's original findings or advises PSFC to take any other actions in the case, PSFC must:

(1) enter the revised findings into the Child and Adult Protective Services System (CAPS);

(2) notify each person who was notified of the original findings about the revised findings, except for reporters who report in a non-professional capacity; and

(3) (No change.)

(k) Since the designated victim/perpetrator is a child, the parents may act on his behalf throughout the review process. The parents may request the review and participate in related decisions and requests as a representative of their child.

§700.518. Texas Department of Protective and Regulatory Services (TDPRS) Managing Conservatorship of Children in TDPRS Regulated Care.

(a) If the investigation finding is reason-to-believe in a case of reported abuse or neglect involving children in TDPRS's managing conservatorship, TDPRS's Office of Protective Services for Families and Children staff must notify:

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

(b) If the investigation finding is reason-to-believe in a case of reported abuse or neglect involving a child in a foster care home or in an adoptive home before the adoption is consummated, TDPRS considers removing the child from the home. If there is a continuing risk of substantial harm to the child, TDPRS removes the child. If TDPRS does not remove the child, the department and the foster or adoptive family must develop and implement a plan for corrective action within 30 days after the investigation is completed. The plan must address the needs of all children in TDPRS's conservatorship who reside in the home. TDPRS must also review its records regarding the foster or adoptive home, including the plan for corrective action, and determine whether to continue placing children in the home.

(c) If a law enforcement investigation of a report of abuse or neglect involving a child in a foster care or adoptive home results in criminal indictment of either of the foster or adoptive parents, TDPRS must close the home unless the regional director determines that there is not a continuing risk of substantial harm to children placed there and the indicted perpetrator is out of the home.

§700.520. Criminal Records Checks.

(a) As specified in the Government Code, §411.114, the Texas Department of Protective and Regulatory Services (TDPRS) "is entitled to obtain criminal history information records maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to investigate . . . a person who is the subject of a report . . . alleging that the person has abused or neglected a child."

(b) When necessary to complete a risk assessment, family assessment, or other assessment (including home studies or child care arrangements), TDPRS' Office of Protective Services for Families and Children (PSFC) staff are authorized to ask the Texas Department of Public Safety or local law enforcement to check the criminal records of any of the following parties:

(1) persons with a role of alleged perpetrator, alleged victim/perpetrator, designated perpetrator, designated victim/perpetrator, or sustained perpetrator;

(2) the alleged victim's custodial or absent parents or other person legally responsible for the child whom the worker is evaluating during the investigation to determine whether they have failed to protect the child or are otherwise active or passive perpetrators, whether or not this was alleged by the reporter, as indicated in §700.508 of this title (relating to Interviews with Parents or Other Alleged Perpetrators); and

(3) a person with whom the parent or other legally responsible person has placed an alleged or designated victim in accord with a safety plan.

(c) The statute indicates that a criminal history check can be made on a "person who is the subject of a report the department receives...provided that the report has proven to have merit." TDPRS defines "...proven to have merit..." as reports that:

(1) meet the criteria for assignment for investigation; or

(2) are assignable other than that an alleged criminal history needs to be verified through a criminal history check before it is appropriate to decide that the report meets the criteria for assignment.

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Subchapter E. Intake, Investigation, and Assessment

- **40 TAC §700.507, §700.510**

The repeals are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The repeals implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

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Subchapter F. Release Hearings

- **40 TAC §§700.601-700.605**

The amendments are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The amendments implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

§700.602. Sustained Conclusions About Designated Perpetrators and Designated Victims/Perpetrators.

(a) Conclusion of sustained perpetrator. When the Texas Department of Protective and Regulatory Services (TDPRS) concludes that an individual is responsible for abuse or neglect of a child in the investigation as specified in §700.512(b)(1) of this title (relating to Conclusions About Roles), the conclusion is based on "some credible evidence." However, except under the emergency release provisions of §700.603(c) of this title (relating to Releasing Information about Designated Perpetrators or Designated Victims/Perpetrators to Outside Parties), TDPRS cannot release information about a designated perpetrator or designated victim/perpetrator to people outside the investigation, unless one of the following conditions is met:

(1) release hearing held. Based on a preponderance of the evidence presented in a release hearing, under §700.603-700.605 of this title (relating to Releasing Information about Designated Perpetrators or Designated Victims/Perpetrators to Outside Parties, Notice Requirements for Releasing Information to Outside Parties, and Prerequisites for Release Hearings), an administrative law judge has sustained the conclusion that the designated perpetrator or designated victim/perpetrator is responsible for abuse or neglect of a child in the investigation;

(2) designated perpetrator waives right to release hearing. As specified in §700.604 of this title (relating to Notice Requirements for Releasing Information to Outside Parties), the designated perpetrator or designated victim/perpetrator has been provided with written notice of his right to a release hearing, but has not requested one within 15 days after receiving the notice; or

(3) right to release hearing waived by operation of law. The designated perpetrator's or designated victim/perpetrator's right to a release hearing has been waived by operation of law.

(b) Authority to release information when conclusions are sustained. When TDPRS's conclusion about a designated perpetrator or designated victim/perpetrator has been sustained as specified in subsection (a) of this section, TDPRS changes the person's role to sustained perpetrator and has the authority to:

(1) release information about the perpetrator to individuals who have control over his access to children as specified in §700.603 of this title (relating to Releasing Information About Designated Perpetrators or Designated Victims/Perpetrators to Outside Parties), and

(2) take other adverse action against the designated perpetrator or designated victim/perpetrator in accordance with applicable law.

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Subchapter G. Services to Families

- **40 TAC §§700.702, 700.703, 700.705**

The amendments are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The amendments implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

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Subchapter K. Court-Related Services

- **40 TAC §700.1103, §700.1111**

The amendment and new section are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The amendment and new section implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

§700.1111. Protective Court Orders.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) may apply for a protective order for the protection of a member of a family or household. Before filing an application for a protective order, the worker must consult with the:

(1) supervisor;

(2) designated legal counsel; and

(3) nonabusive parent.

(b) All parties must be involved in the decision to file an application for a protective order.

(c) The worker must provide written notice to the nonabusive parent of TDPRS's decision to apply for a protective order.

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Subchapter M. Substitute-Care Services

- **40 TAC §§700.1310, 700.1312, 700.1315, 700.1316, 700.1321, 700.1322, 700.1332, 700.1333, 700.1350, 700.1352-700.1355**

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The amendments and new sections implement the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

§700.1353. Intermediate Care Facilities for Persons with Mental Retardation/Related Conditions (ICF-MR/RC).

(a) Definitions.

(1) ICF-MR/RC program. The ICF-MR/RC program is a federal Title XIX (Medicaid funded) program which provides residential and habilitative services to persons with mental retardation and/or a related condition. Facilities range in size from small group homes (six beds or less) to very large institutions (state schools). ICFs-MR/RC may be operated by the state, by a community mental health/mental retardation center, or may be privately operated. ICFs-MR/RC are licensed by the Texas Department of Human Services, but the Texas Department of Mental Health and Mental Retardation manages the program. Some facilities serve adults, some serve children, and some serve both. Some ICFs-MR/RC specialize in certain disabilities (such as cerebral palsy, behavior problems), certain ages (such as school age only), or accept only males or females.

(2) Mental retardation. Mental retardation is a condition characterized by subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Individuals with mental retardation have difficulty learning and applying what they learn in different situations. Generally, the intelligence quotient (IQ) is below 70.

(3) Related condition. A related condition is a severe, chronic disability that meets all of the following conditions:

(A) a condition attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons;

(B) a condition manifested before the person reaches age 22 years;

(C) a condition likely to continue indefinitely; and

(D) a condition that results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(b) When appropriate.

(1) A child may be considered for placement in an ICF-MR/RC when:

(A) the child has a diagnosis of mental retardation and/or related condition;

(B) there is no single-family home (foster or relative) available that can provide the needed support services;

(C) the child has an adaptive behavior level (ABL) or I, II, III, or IV; and

(D) the child is Medicaid eligible.

(2) The least restrictive placement for most children with mental retardation and/or a related condition is a family (birth, foster, adoptive, relative) home in which support services are provided as needed to assist the child in functioning as independently as

possible within his community. Support services include, but are not limited to, Medicaid, respite care, homemaker services, home modifications, transportation, habilitative therapies, speech therapy, caregiver training, and special education.

(3) If a family home is not available, an ICF-MR/RC may be appropriate. The most desirable ICF-MR/RC for most children with mental retardation and/or a related condition is a home-like, small group home, with the least desirable being a large institution.

§700.1355. Sibling Contact. Siblings should be placed together, unless there are identified therapeutic or safety reasons not to. When a child has one or more siblings who have been placed with other substitute caregivers, the child must be given appropriate opportunities to maintain contact with those siblings, unless there are further identified therapeutic or safety reasons not to.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604499 Deborah L. Churchill
Supervising Attorney, Legal Services
Texas Department of Protective and Regulatory Services

Effective date: August 1, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 438-3765

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Subchapter N. AIDS Policies for Children in TDPRS's Conservatorship

- **40 TAC §700.1405**

The amendment is adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The amendment implements the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604500 Deborah L. Churchill
Supervising Attorney, Legal Services
Texas Department of Protective and Regulatory Services

Effective date: August 1, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 438-3765

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Subchapter O. Foster and Adoptive Home Development

- **40 TAC §700.1502**

The amendment is adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapter 261, which provides the department with the authority to investigate abuse or neglect of children.

The amendment implements the Human Resources Code, Title 2, Subtitle D, Chapter 40 and the Texas Family Code, Chapter 261.

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

Issued in Austin, Texas, on April 1, 1996.

TRD-9604501 Deborah L. Churchill
Supervising Attorney, Legal Services
Texas Department of Protective and Regulatory Services

Effective date: August 1, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 438-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 4. Employment Practices

Subchapter B. Job Application Procedures

- **43 TAC §§4.10-4.12, 4.14-4.16**

The Texas Department of Transportation adopts amendments to §§4.10, 4. 12, 4.14 and new §§4.11, 4.15-4.16, concerning the department's job application procedures, without changes to the text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10584).

These amendments and new sections are adopted to assure that department rules regarding job application and selection are consistent with current practices and to comply with Government Code, Chapter 657, Veteran's Employment Practices. Chapter 657 requires that an individual who qualifies as a veteran, a surviving spouse of a veteran, or an orphan of a veteran be given preference in employment with a public entity or public work over other applicants for the same position who do not have a greater qualification until at least 40% of the employees of the department are selected from individuals given that preference. An individual entitled to the veteran's employment preference is also entitled to a preference in retaining employment if the department reduces its workforce.

Amended §4.10 explains the authority and purpose of the job application procedures rules.

New §4.11 defines terms used in the amended and new sections.

Amended §4.12 requires job vacancy notices to include the essential functions, minimum qualifications, and knowledge, skills, and abilities required for each vacant position.

Amended §4.14 requires that applications must be received no later than 5: 00 p.m. on the closing day, or postmarked not later than the day before the closing day, and allow applications by facsimile only from out-of-state applicants.

New §4.15 reenacts, in an amended form, the subject matter of §29.1 which is contemporaneously proposed for repeal because the subject matter falls within Chapter 4, Employment Practices. This new section provides that after a conditional job offer is made and accepted, the department will require that the applicant pass a medical examination to verify that the applicant is able to perform the essential functions of the job, with or without reasonable accommodation, and that the department will designate practicing physicians to make the physical examination of applicants.

New §4.16 provides that a veteran, surviving spouse of a veteran, or an orphan of a veteran have employment preference in employment with the department over other applicants for the same position who do not have a greater qualification; an individual who has an established service-connected disability and is entitled to a veteran's employment preference is entitled to preference for employment in a position over all other applicants for the same position without a service-connected disability and who do not have a greater qualification; and the veteran's

employment preference does not apply to a position of private secretary or deputy of an official of the department, or a position that includes a strictly confidential relation to the appointing or employing official. This section describes eligibility criteria to be considered a qualified veteran, a surviving spouse of a veteran, or an orphan of a veteran; requires the department to provide information regarding an open position that is subject to the veteran's employment preference to the Texas Employment Commission; and provides that the department will give this preference until at least 40% of the employees of the department are selected from individuals given that preference. The department will give 10% of the preferences to qualified veterans discharged from the armed services of the United States within the preceding 18 months. This section describes the documents the department will accept as proof of eligibility for this preference and the department's investigation of the applicant's qualifications. An individual entitled to a veteran's employment preference is also entitled to a preference in retaining employment if the department reduces its workforce.

On January 3, 1996, the department conducted a public hearing on the proposed amendments and new section and no oral or written comments were received.

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Government Code, Chapter 657, which requires that an individual who qualifies as a veteran, a surviving spouse of a veteran, or an orphan of a veteran be given preference in employment with a public entity or public work.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604571 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: April 23, 1996

Proposal publication date: December 12, 1995

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

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Chapter 9. Contract Management

Subchapter C. Contracting for Architectural and Engineering

- **43 TAC §§9.31-9.33, 9.36-9.38**

The Texas Department of Transportation adopts amendments to §§9.31-9.33, 9.36-9.38, concerning contract management. Section 9.33 is adopted with changes to the text as published in the February 9, 1996, issue of the *Texas Register* (21 TexReg 948). Sections 9.31, 9.32, 9.36-9.38 are adopted without changes and will not be republished.

Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, sets forth requirements for selection and contracting of architectural and engineering services.

To clarify that a division and a special office may require a preproposal meeting, §9.33 is adopted with changes.

Section 9.31 revises the definition of: available personnel to reflect the personnel proposed to be used on the contract rather than the entire company; consultant approval team to reflect delegation to the district, division or special office; consultant review committee to reflect delegation of provider selection to the district, division or special office; and Historically Underutilized Business to refer to definition of Historically Underutilized Business as defined by the General Services Commission. The amendments also add the definition of constructability.

Section 9.32 clarifies types of work on which providers will be used by adding construction engineering and inspection.

Section 9.33: removes child support statement as a requirement of the Request for Proposal (RFP), as this is now required as an attachment to the contract; removes copy of the contract with attachments as a requirement of the RFP, as this will now be provided to the provider as revisions are made to the standard contract, by the consultant review committee; and redefines preproposal meeting to allow the meeting to be held at the discretion of the district, division, or special office, regardless of the estimated contract fee.

Section 9.36 clarifies the proposal evaluation summary.

Section 9.37 clarifies the interview evaluation, specifies the number of firms contained in the short list summary, clarifies the duties delegated to the district consultant review committee, removes two criteria from the consultant approval team consideration, and allows more than one extension of the contract execution date. The consultants review committee will establish weighting factors to be used statewide to evaluate interview factors and the consultant approval team evaluation criteria.

Section 9.38 clarifies criteria used to evaluate providers upon completion of the contract.

On February 23, 1996, the department held a public hearing to receive data, comments, views, and testimony concerning revisions to §§9.31-9.33 and §§9. 36-9.38 concerning contracting for architectural and engineering. The Consulting Engineers Council of Texas expressed approval of the primary thrust of the revisions to the rules, and suggested revisions or requested clarification to the proposed changes to §9.31 and §9.33 orally and in writing. Written comments suggesting revisions to §9.35 and §9.37 were received from Schrickel, Rollins and Associates, Inc.

One commenter requested a return to the original definition of "available personnel" in §9.31 and expressed concern that the amendments will promote gamesmanship in the selection process. The department believes that the amendments as proposed provide a more realistic measure of available personnel than the original definition, since it will now include only the personnel proposed to be used on the project. The ratio will utilize the performance rating of available personnel proposed by the provider team instead of the specified number of personnel employed by a firm or team. The department considers this to be a much more meaningful criterion and a measure of the team's ability to complete the work being contracted.

One commenter requested that §9.33 be revised to raise the threshold from $250,000 to $500,000 for a mandatory preproposal meeting. The rules as proposed eliminate any threshold above which a preproposal meeting is required. The decision to hold a preproposal meeting rests solely with the district, division, or special office soliciting the contract. This should result in fewer preproposal meetings being held. Section 9.33(d) is adopted with a change to clarify that a division and a special office may require a preproposal meeting.

One commenter stated that the current selection process minimizes the quality of work that firms have provided on previous department projects, and requested that more weight be given to previous performance. Criteria in §9. 35(a)(2) for the proposal evaluation and §9.37(a)(1)(B) for the interview evaluation address the experience of not only the prime provider, but also all the subproviders and the project manager. These criteria result in 30% to 45% of the proposal evaluation score, and 25% of the interview evaluation score. The department feels that this is a sufficient representation of prior successful work, including work performed for the department as well as other entities.

One commenter stated that the District/Division/Special Office Consultant Approval Team identified in §9.37(b) added an unnecessary level of review, and requested that it be eliminated. The proposed revisions delegate the responsibility for final selection from the Consultant Approval Team, one committee located in Austin, to the District/Division/Special Office Consultant Approval Team. The department feels that two levels of review are necessary for fair and equitable selection. This delegation should shorten the time required to procure architectural and engineering services.

One commenter stated that the criterion considering current dollar volume of work with the department compared to the ratio of available personnel defined in §9.37(b)(2)(B)(iii) should not have equal weight with some of the other factors used in the selection process, and recommended that less weight be given to this criterion. This criterion

is considered only by the District/Division/Special Office Consultant Approval Team after evaluation of the proposal and interview by the District/ Division/Special Office Consultant Review Committee. During both the proposal and interview evaluations, criteria addressing qualifications, experience and ability to commit resources comprise 100 percent of the evaluation score. The department feels that this process provides well qualified firms in the short list to be considered by the District/Division/Special Office Consultant Approval Team. Sixty to 70% of the District/Division/Special Office Consultant Approval Team's evaluation is also based on criteria relating to qualifications, experience, and ability to commit resources. The department feels that the criterion relating to current dollar volume of work with the department compared to the ratio of available personnel is not weighted too heavily in the evaluation by the District/Division/Special Office Consultant Approval Team.

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, which sets forth requirements for selection and contracting of architectural and engineering services.

§9.33. Request for Proposals and Preproposal Meetings.

(a) Notice.

(1) *Texas Register* and newspapers. The department will prepare a notice identifying a proposed contract and a due date for providers to send letters of interest to the department. The department will publish this notice in the *Texas Register* and newspapers a minimum of ten days prior to the deadline for receiving the letter of interest. The department will select newspapers based on general circulation to provide statewide distribution.

(2) Electronic notice. The department will publish a notice containing the same information as the notices in the *Texas Register* and newspapers on an electronic bulletin board a minimum of ten days prior to the deadline for receiving the letter of interest.

(3) Organizations. The department will publish a quarterly statewide list of projected contracts for consulting engineering and architectural services and will furnish the list on a quarterly basis to community, business, and professional organizations for dissemination to their membership.

(b) Letter of interest. Within ten days of the publication of the notice concerning the contract, the provider shall send a letter of interest to the department notifying the department of the provider's interest in submitting a proposal. The department will accept a letter of interest by electronic facsimile. The department will notify the provider of the date for the preproposal meeting, if applicable, and send the provider a copy of the RFP.

(c) Requests for proposals. An RFP will include the following proposal requirements:

(1) deadline, date, location, and time for submittal;

(2) scope of services to be provided by the department;

(3) scope of services to be provided by the provider;

(4) an outline of the proposal format and content;

(5) any geographic constraints directly relating to the performance of the contract, if applicable;

(6) description of the evaluation criteria including minimum and preferred qualifications;

(7) a copy of the evaluation forms;

(8) a standard form for a statement of intent to meet department goals for DBE/HUB participation in accordance with §9.38(a) of this title (relating to Contract Management) and §9.40 of this title (relating to Affirmative Action) (the department's assigned DBE/HUB participation goal for the contract will be stated on this form);

(9) a debarment certification form;

(10) a lower tier debarment certification form;

(11) a lobbying certification/disclosure form (if federally funded); and

(12) any special contract requirements.

(d) Preproposal meeting. The district, division, or special office may require a preproposal meeting to provide an opportunity for the provider to seek clarification of questions concerning the contract. If a preproposal meeting is required, the department will not accept proposals from providers that did not have a representative at the preproposal meeting.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604572 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: April 23, 1996

Proposal publication date: February 9, 1996

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

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Chapter 29. Insurance Division

• 43 TAC §29.1

The Texas Department of Transportation adopts the repeal of §29.1, concerning designated physicians, without changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10586).

This section is no longer necessary due to the simultaneous adoption of the re-enacted subject matter in Chapter 4, Employment Practices, as new §4.15 concerning medical examination, in an amended form.

On January 3, 1996, the department conducted a public hearing on the proposed repeal and no oral or written comments were received.

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

Issued in Austin, Texas, on April 2, 1996.

TRD-9604573 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: April 23, 1996

Proposal publication date: December 12, 1995

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

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TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and grphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation,

Graphic Material will not be reproduced in the Acrobat version of this issue of the Texas Register due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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 before 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 listed 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. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Tuesday, April 16, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A prehearing conference will be held at the above date and time in SOAH Docket Number 473-96-0642-application of GTE Southwest Incorporated for authority to recover lost revenues and costs of implementing expanded local calling service (PUC Docket Number 15332).

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: April 3, 1996, 11:26 a.m.

TRD-9604697

Monday, April 22, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Number 473-96-0626-application of Gulf States Utilities Company to revise its fixed fuel factors (PUC Docket Number 15489).

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: April 4, 1996, 3:31 p.m.

TRD-9604799

Monday, June 10, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled from May 15, 1996

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Numbers 473-96-0069 and 473-96-0070-complaint of Plexnet, Inc. and DFW-Direct against GTE Southwest, Inc. (PUC Docket Numbers 15101 and 15116).

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: April 2, 1996, 10:10 a.m.

TRD-9604567

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Texas Department of Agriculture

Friday, April 12, 1996, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Texas Agricultural Finance Authority

AGENDA:

Call meet to order, discussion and action on: minutes of previous meetings, briefing of the board by the Financial Advisors regarding the expansion of the loan guaranty program, discussion and action on: items needed for the expansion of the Loan Guaranty Program; lease arrangement for the Plainview facility; third party agreement for Moore Development for Big Spring, Incorporated on assets of Wright Fibers, Incorporated; procedures for completed applications received by the Loan Guaranty Program; portfolio of Loan Guaranty Program; discussion on budget comparison for the first six months of fiscal year 1996; public comment period; adjourn.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: April 4, 1996, 1:47 p.m.

TRD-9604771

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Texas Commission on Alcohol and Drug Abuse

Tuesday, April 16, 1996, 9:00 a.m.

710 Brazos, Perry Brooks Building, Eighth Floor Conference Room

Austin

Board of Commissioners

AGENDA:

Call to order; approval of March 26, 1996 minutes; public comment; approval of funding criteria for dual diagnosis pilot project; approval of budget revisions; approval of draft strategic plan; action on statement of authority and responsibility; report and possible action on staff proposal to address task force findings; chairman's report: discussion of possible committee formation; interim executive director's report; executive session: pursuant to Texas Government Code, §551.074, interview candidates for executive director; report and possible action on process and/or selection of an executive director; and adjourn.

Contact: Sharon F. Logan, 710 Brazos, Austin, Texas 78701, (512) 867-8147.

Filed: April 5, 1996, 1:53 p.m.

TRD-9604864

Friday, April 26, 1996, 11:00 a.m.

3930 Kirby, Suite 207, Texas Youth Commission Conference Room

Houston

Regional Advisory Consortium (RAC), Region 6

AGENDA:

Call to order; review and approval of minutes; public comment; discussion of TCADA funding process; TCADA charge to the RAC; action on structure for the RAC charge; discussion of next meeting agenda items; and adjourn.

Contact: Jackie Cook, 710 Brazos, Austin, Texas 78701, (512) 867-8805.

Filed: April 5, 1996, 1:54 p.m.

TRD-9604865

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The State Bar of Texas

Thursday-Friday, April 11-12, 1996, 8:30 a.m.

The Texas Law Center, 1414 Colorado, Room 206

Austin

Texas Commission for Lawyer Discipline

AGENDA:

Call to order/introductions/review minutes of prior meetings/closed session: discuss authorization of the general counsel/chief disciplinary counsel to make, accept or reject settlement offers or take other appropriate action with respect to pending disciplinary matters, discuss assignment of special counsel to pending disciplinary cases; discuss personnel matters/public session: discuss and authorize the general counsel/chief disciplinary counsel to take action on matters discussed in closed session/review outcome of recent disciplinary trials/discuss and take appropriate action with respect to the following: requests of Preston Henrichson and Maurice Bresenhan, Jr. to represent respondents in disciplinary matters; authorizing third-year bar card holders to try evidentiary cases; attorneys fees assessed in disciplinary cases; matters unresolved in prior meetings; statistical reports; development of mechanism for tracking respondents' compliance with conditions of disciplinary judgments; commission's compliance with the State Bar Act, Texas Rules of Disciplinary Procedure, and orders of the Supreme Court; budget and operations of the commission and the general counsel's office; district grievance committees; special counsel program; mediation of disciplinary matters/presentations by trial staff/discuss future meetings/discuss other matters as appropriate/receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: April 3, 1996, 4:27 p.m.

TRD-9604709

Thursday, April 11, 1996, 1:30 p.m.

Marriott Bayfront Hotel, 900 North Shoreline

Corpus Christi

Executive Committee

AGENDA:

Call to order/roll call/approval of minutes/reports from the following: president; president-elect; executive director; office of the general counsel; Policy Manual Committee; Texas Young Lawyer's Association president; immediate past president; Supreme Court liaison/adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: April 3, 1996, 4:27 p.m.

TRD-9604708

Friday, April 12, 1996, Noon.

Marriott Bayfront Hotel, 900 North Shoreline

Corpus Christi

Board of Directors

AGENDA:

Call to order/roll call/invocation/consent agenda-announcements/items from: the president; president-elect; executive director; Supreme Court liaison; Commission for Lawyer Discipline; office of the general counsel; American Bar Association Board of Governors; the following board committees: Administrative Oversight, Appeals, General Counsel Oversight, Grant Review, Policy Manual, and Client Security Fund; reports from board members re Local Bar Associations; reports from: immediate past president; Texas Young Lawyer's Association president; Court of Criminal Appeals; State Bar Committees and Sections (Business Law; Environmental and Natural Resources; Local Bar Services; Taxation Law; and Proposed Section); report from: the Federal Judicial liaison; Judicial Section liaison; out-of-state lawyer liaison/remarks from the general public/adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: April 3, 1996, 4:28 p.m.

TRD-9604710

Friday, April 12, 1996, Noon.

Marriott Bayfront Hotel, 900 North Shoreline

Corpus Christi

Board of Directors

Revised Agenda

AGENDA:

Call to order/roll call/invocation/consent agenda-announcements/items from: the president; president-elect; executive director; Supreme Court liaison; Commission for Lawyer Discipline; office of the general counsel; American Bar Association Board of Governors; the following board committees: Administrative Oversight, Appeals, General Counsel Oversight, Grant Review, Policy Manual, and Client Security Fund; reports from board members re Local Bar Associations; reports from: immediate past president; Texas Young Lawyer's Association president; Court of Criminal Appeals; State Bar Committees and Sections (Business Law; Environmental and Natural Resources; Local Bar Services; Taxation Law; and Proposed Section); report from: the Federal Judicial liaison; Judicial Section liaison; out-of-state lawyer liaison/remarks from the general public/adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: April 4, 1996, 3:51 p.m.

TRD-9604802

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Texas Commission for the Blind

Tuesday, April 9, 1996, 10:30 a.m.

4800 North Lamar Boulevard, Suite 320

Austin

Planning Committee of the Governing Board

AGENDA:

1. Work session of the Planning Committee of the Governing Board to prepare final report of the commission's state strategic plan

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: April 1, 1996, 12:51 p.m.

TRD-9604503

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Texas Bond Review Board

Tuesday, April 9, 1996, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

Planning Session

AGENDA:

I. Call to order

II. Approval of minutes

III. Discussion of proposed issues

A. Texas Department of Housing and Community Affairs-Multi-Family Housing Revenue Bonds (Harbors and Plumtree Apartments Project) Series 1996A, B, C, and D

B. Texas Department of Housing and Community Affairs-Multi-Family Housing Revenue Bonds (Dallas-Fort Worth Apartments Project) Series 1996A, B, C, and D

IV. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: April 2, 1996, 8:37 a.m.

TRD-9604551

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Texas Board of Chiropractic Examiners

Tuesday, April 16, 1996, 2:00 p.m.

8008 Cedar Springs

Dallas

Rules Committee

AGENDA:

The Rules Committee of the Texas Board of Chiropractic Examiners will meet to discuss, consider, take any appropriate action and/or approve: 1) Rulemaking procedures; 2) Response to request for rules by Chiropractic Society of Texas; 3) Response to rule petition submitted by Drs. Boren and Henson; 4) Response to rule submitted by Texas Osteopathic and Medical Association; 5) Default on student loan rule; 6) Chiropractic records rule; 7) Failure to pay court ordered child support rule; 8) Travel to treat rule.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: April 1, 1996, 4:27 p.m.

TRD-9604541

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Texas Department on Commerce

Monday, April 15, 1996, 2:00 p.m.

900 North Shoreline Boulevard, Nueces Room B, Marriott Bayfront Hotel

Corpus Christi

Texas Defense Economic Adjustment Advisory Council Community Development Committee Meeting

AGENDA:

I. 2:00-3:00 p.m.–Overview and consideration of revised initiatives

a. CD 001A Enterprise Zone Program

b. CD 002A state funding assistance

c. CD 005A strategic approach to redevelopment

d. CD 008A accelerated transportation

II. 3:00-4:00 p.m.–Finalize the initiatives

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Courtney Yantis (512) 936-0307 at least two days before this meeting so that appropriate arrangements can be made. Please contact Courtney Yantis (512) 936-0307 if need assistance in having English translated to Spanish.

Contact: Shirley Zimmerman, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0158.

Filed: April 5, 1996, 11:49 a.m.

TRD-9604849

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Texas Department of Criminal Justice

Wednesday, April 17, 1996, 9:00 a.m.

Jester Unit Clubhouse

Richmond

Programs Committee

AGENDA:

9:00-9:30 a.m.–Report on youthful offenders

9:30-10:00 a.m.–Update on APAC and status of Texas Foundation grant applications

10:00-10:15 a.m.–Report on program concept tracks for state jails

10:15-10:45 a.m.–Employment opportunities for offenders

10:45-11:15 a.m.–Ensuring completion of programs and auditing of program assignments

11:15-11:45 a.m.–Report on staff training

11:45 a.m.-12:15 p.m.–Windham School District update

12:15-12:35 p.m.–Report on Parenting Program at female facilities

12:35-1:05 p.m.–Update on Substance Abuse Treatment Program

1:05-1:20 p.m.–Report on project re-enterprise statistics

1:20-1:50 p.m.–Report on projects TRADE and CRAFT

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463-9472 at least two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: April 3, 1996, 10:55 a.m.

TRD-9604696

Wednesday, April 17, 1996, 9:00 a.m.

Jester Unit Clubhouse

Richmond

Revised Agenda

Programs Committee

AGENDA:

9:00-9:30 a.m.–Report on youthful offenders

9:30-10:00 a.m.–Update on APAC and status of Texas Foundation grant applications

10:00-10:15 a.m.–Report on program concept tracks for state jails

10:15-10:45 a.m.–Employment opportunities for offenders

10:45-11:15 a.m.–Ensuring completion of programs and auditing of program assignments

11:15-11:45 a.m.–Report on staff training

11:45 a.m.-12:15 p.m.–Windham School District update

12:15-12:35 p.m.–Report on Parenting Program at female facilities

12:35-1:05 p.m.–Update on Substance Abuse Treatment Program

1:05-1:35 p.m.–Report on project TRADE and CRAFT

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463-9472 at least two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: April 5, 1996, 8:13 a.m.

TRD-9604816

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Texas Education Agency

Wednesday, April 10, 1996, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Personnel

AGENDA:

Public testimony; request for approval of open-enrollment charter school applications.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:07 p.m.

TRD-9604618

Thursday, April 11, 1996, 10:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Public testimony; commissioner's comments; adoption of an additional indicator for the Academic Excellence Indicator System; update on open-enrollment charter schools; discussion of pending litigation. This discussion of pending litigation will be held in Room 1-103 in executive session in accordance with the Texas Government Code, §551.071(1)(A), and will include a discussion of: (1) *Edgewood ISD et al v. Meno* and related school finance litigation, (2) *Angel G. et al v. Meno, et al*, relating to students with disabilities residing in care and treatment facilities, (3) *Maxwell, et al v. Pasadena ISD* relating to Texas Assessment of Academic Skills (TAAS) testing, and (4) *Casias, et al v. Moses, et al*, relating to accountability intervention.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:07 p.m.

TRD-9604619

Thursday, April 11, 1996, 1:00 p.m.

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

Joint Meeting of the State Board of Education Committee on Students and Committee on School Finance

AGENDA:

The committees will meet jointly on the proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:07 p.m.

TRD-9604621

Thursday, April 11, 1996, 1:00 p.m. OR upon completion of the joint meeting of the Committees on Students and School Finance which convenes at 1: 00 p.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Students

AGENDA:

Public testimony; proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; proposed repeal of 19 TAC Chapter 63, Student Services; proposed repeal of 19 TAC Chapter 75, Curriculum, Subchapters A and E-J, and proposed new 19 TAC Chapter 74, Curriculum Requirements; proposed repeal of 19 TAC Chapter 75, Subchapter K, Extracurricular Activities, and proposed new 19 TAC Chapter 76, Extracurricular Activities; proposed amendments to the University Interscholastic League (UIL) policies and 1996-1997 constitution and contest rules; discussion of proposed new 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics; discussion of the final consolidated state plan under the improving America's School Act; update on the clarification of essential knowledge and skills process.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:08 p.m.

TRD-9604622

Thursday, April 11, 1996, 1:00 p.m. OR upon completion of the joint meeting of the Committees on Students and School Finance which convenes at 1: 00 p.m.

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on School Finance

AGENDA:

Public testimony; school finance update; proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; proposed repeal of 19 TAC Chapter 49, Internal Operations; proposed repeal and readoption of 19 TAC Chapter 61, School Districts; request for updates to adopted computer literacy electronic instructional media systems.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:08 p.m.

TRD-9604623

Thursday, April 11, 1996, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Personnel

AGENDA:

Public testimony; proposed repeal of 19 TAC §143.1, Minimum Teaching Duties, §145.1, Policy (concerning Professional Environment), §145.22, Developmental Leave, and §149.1, Purpose of Program (concerning Education Personnel Development), and Chapter 181, Procedure (concerning Teachers' Professional Practices Commission); proposed repeal of 19 TAC Chapter 149, Subchapter C, Appraisal of Certified Personnel; request for approval of open-enrollment charter school applications; request for initial approval of an alternative teacher certification program at Region IX Education Service Center; request for approval of an additional certificate program for Dallas Baptist University; discussion of ongoing communications activities; and status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:07 p.m.

TRD-9604620

Friday, April 12, 1996, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

AGENDA:

Public testimony; expert speaker presentation-issues related to advanced placement incentives; proposed repeal and readoption of 19 TAC Chapter 53, Regional Education Service Centers; development of the Long-Range Plan for Technology, 1996-2010; discussion of federal governmental relations activities.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:08 p.m.

TRD-9604624

Friday, April 12, 1996, 8:30 a.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund (PSF)

AGENDA:

Public testimony; proposed repeal of 19 TAC Chapter 33, Statement of Investment Objectives, Policies and Guidelines, and new 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund; approve a finding that the Texas PSF will meet the income expectations for the period from March 1-August 31, 1996, in order that funding for the payment of external managers be authorized; ratification of the purchases and sales to the investment portfolio of the Permanent School Fund (PSF) for the months of February and March; review of PSF securities transactions and the investment portfolio; report of the PSF executive administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:08 p.m.

TRD-9604625

Friday, April 12, 1996, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE)

AGENDA:

Invocation; roll call; approval of February 16, 1996 SBOE minutes; public testimony; resolutions of the SBOE; approval of consent

agenda; adoption of an additional indicator for the Academic Excellence Indicator System; proposed repeal of 19 TAC §143.1, Minimum Teaching Duties, §145.1, Policy (concerning Professional Environment), §145.22, Developmental Leave, and §149.1, Purpose of Program (concerning Education Personnel Development), and Chapter 181, Procedure (concerning Teachers' Professional Practices Commission) ; proposed repeal of 19 TAC Chapter 149, Subchapter C, Appraisal of Certified Personnel; request for approval of open-enrollment charter school applications; proposed repeal of 19 TAC Chapter 63, Student Services; proposed repeal of 19 TAC Chapter 75, Curriculum, Subchapters A and E-J, and proposed new 19 TAC Chapter 74, Curriculum Requirements; proposed repeal of 19 TAC Chapter 75, Subchapter K, Extracurricular Activities, and proposed new 19 TAC Chapter 76, Extracurricular Activities; proposed amendments to the University Interscholastic League (UIL) policies and 1996-1997 constitution and contest rules; proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Material; proposed repeal of 19 TAC Chapter 49, Internal Operations; proposed repeal and readoption of 19 TAC Chapter 61, School Districts; request for updates to adopted computer literacy electronic instructional media systems; proposed repeal and readoption of 19 TAC Chapter 53, Regional Education Service Centers; proposed repeal of 19 TAC Chapter 33, Statement of Investment Objectives, Policies and Guidelines, and new 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund; approve a finding that the Texas PSF will meet the income expectations for the period from March 1-August 31, 1996, in order that funding for the payment of external managers be authorized; ratification of the purchases and sales to the investment portfolio of the PSF for the months of February and March; information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 2, 1996, 4:08 p.m.

TRD-9604626

Monday, April 15, 1996, 1:30 p.m.

Bahia Mar Hotel, Tropical Room, 6300 Padre Boulevard

South Padre Island

State Parent Advisory Council for Migrant Education

AGENDA:

The meeting of the State Parent Advisory Council for Migrant Education will begin with a welcome and introductory remarks. The council will approve the minutes of the last meeting; discuss migrant program evaluation and council member recommendations for local parent advisory councils; and consider recommendations for the agenda of the next meeting.

Contact: Frank Contreras, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9067.

Filed: April 3, 1996, 2:28 p.m.

TRD-9604677

Monday, April 15, 1996, 1:30 p.m.

6300 Padre Boulevard, Bahia Mar Hotel, Tropical Room (Second Floor)

South Padre Island

Revised Agenda

State Parent Advisory Council for Migrant Education

AGENDA:

The meeting of the State Parent Advisory Council for Migrant Education will begin with a welcome and introductory remarks. The council will approve the minutes of the last meeting; discuss the Texas essential knowledge and skills, new bilingual rules, council member recommendations for local parent advisory councils, and migrant program evaluation; and consider recommendations for the agenda of the next meeting.

Contact: Frank Contreras, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9067.

Filed: April 5, 1996, 8:54 a.m.

TRD-9604820

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State Employee Charitable Campaign

Wednesday, April 10, 1996, 11:00 a.m.

2201-19th Street

Lubbock

Emergency Meeting

Local Employee Committee-Lubbock

AGENDA:

1. Select application review subcommittee

2. Discuss scheduled workshop

3. Finalize 1996 timeline

Reason for emergency: Did not have a quorum present at previous meeting.

Contact: Dianna L. Stewart, 2201-19th Street, Lubbock, Texas 79401, (806) 747-2711 or Fax: (806) 747-2716.

Filed: April 4, 1996, 3:01 p.m.

TRD-9604795

Monday, April 15, 1996, 1:00 p.m.

2801 IH-35

Denton

Revised Agenda

Local Employee Committee-Denton

AGENDA:

1. Jim Bob Jones, LEC/Lubbock will give a motivational speech on How to Organize Campaigns and Goal Setting

2. Selection of the local campaign manager

3. Review 1996 campaign plan

4. Review federation/member agency applications

5. Review local unaffiliated agency applications

6. Review statewide organizations filing as local agency applications

Contact: Pat Gobble, 625 Dallas Drive, Denton, Texas 76205, (817) 566-5851 or Fax: (817) 898-8976.

Filed: April 3, 1996, 3:39 p.m.

TRD-9604700

Tuesday, April 16, 1996, 3:30 p.m.

128 East Second Street

Odessa

Local Employee Committee-Odessa

AGENDA:

1. Review local applications

2. Select local agencies

3. Set next meeting date and agenda

Contact: Jill Nelson, 128 East Second Street, Odessa, Texas 79751, (915) 332-0941 or Fax: (915) 332-5245.

Filed: April 3, 1996, 3:39 p.m.

TRD-9604701

Wednesday, April 17, 1996, 3:30 p.m.

2207 Line Avenue

Amarillo

Local Employee Committee-Amarillo

AGENDA:

1. Review local agency applications

2. Prepare draft budget

3. Plan kickoff event

Contact: Diana Phillips, 2201 Line Avenue, Amarillo, Texas 79106, (806) 376-6359 or Fax: (806) 376-9343.

Filed: April 2, 1996, 3:23 p.m.

TRD-9604598

Tuesday, April 23, 1996, 4:30 p.m.

624 Indiana, Second Floor Meeting Room

Wichita Falls

Local Employee Committee-Wichita Falls

AGENDA:

1. Review and approve local agency applications

2. Review and approval of local campaign manager budget

3. Review campaign calendar

4. Review campaign plans

Contact: Mike Terry, 624 Indiana, Wichita Falls, Texas 76301, (817) 322-8638 or Fax: (817) 322-8643.

Filed: April 2, 1996, 3:24 p.m.

TRD-9604600

Wednesday, April 24, 1996, 3:00 p.m.

2207 Line Avenue

Amarillo

Local Employee Committee-Amarillo

AGENDA:

1. Review local agency applications

2. Prepare final budget

Contact: Diana Phillips, 2201 Line Avenue, Amarillo, Texas 79106, (806) 376-6359 or Fax: (806) 376-9343.

Filed: April 2, 1996, 3:24 p.m.

TRD-9604599

Thursday, April 25, 1996, 8:00 a.m.

901 Ross Avenue

Dallas

Local Employee Committee-Dallas

AGENDA:

1. Review local agency applications

2. Select local agencies for 1996 campaign

Contact: Kimberley Barber, 901 Ross Avenue, Dallas, Texas 75202, (214) 978-0075 or Fax: (214) 922-8232.

Filed: April 3, 1996, 3:39 p.m.

TRD-9604699

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Texas State Board of Registration for Professional Engineers

Wednesday, April 17, 1996, 8:30 a.m.

1917 IH-35 South, Board Room

Austin

AGENDA:

Call to order; roll call; recognize visitors; discuss and approve minutes of the January 10, 1996 regular quarterly board meeting, January 9, 1996 meeting of the Ad Hoc Committee on Registration, January 9, 1996 meeting of the Ad Hoc Committee on Rules, January 11, 1996 meeting of the Ad Hoc Committee on Professional Development, February 5, 1996 meeting of the Ad Hoc Committee on Legislative and Government Affairs, March 1, 1996 meeting of the Ad Hoc Committee on Operations, and April 2, 1996 meeting of the Ad Hoc Committee on Registration; receive board member activity reports; discuss and possibly act on: directors' reports on financial matters, applications and examinations; staff members' activity reports; disciplinary matters including administrative report, status of court cases, individual disciplinary matters and cease and desist orders; correspondence received from NCEES regarding NAFTA and NCEES candidates; personal appearance by various applicants; old business including future meetings, report on NCEES Southern Zone meeting, committee reports on registration, legislative and government affairs, operations, and professional development; new business including a presentation by Texas Christian University concerning recognition of engineering degrees, discuss and possibly act on: recommendations on rules concerning drug abuse or mental incompetency, changes in registration model, monitoring activities of suspended engineers, strategic plan, policy on truss design and manufacture, design/build model, NSPE registration model, Board Rule 131.155(a), and Novell certified netware engineer matter; applications requiring board rules, automatic non-approvals, and reconfirmation of previous votes on applications for registration; adjourn.

Contact: John R. Speed, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: April 8, 1996, 9:53 a.m.

TRD-9604892

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General Land Office

Tuesday, April 16, 1996, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue-Room 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; pooling applications, Poker Draw (Devonian) Field, Yoakum County; Wildcat, Cove (ME Zone) and (MF Zone), Matagorda County; Brazos Block, 338-L Field, Matagorda County; State Tract 339-L Field, Matagorda County; State Tract 444-S field, Matagorda County; Wildcat and Murfee (Cannon Reef) Field, Jones County; royalty incentive program, Reaves North (3200) Field, Reeves County; Clay, Northeast (Austin Chalk 11350), Burleson and Brazos Counties; applications to lease highway rights of way for oil and gas, Cameron County; Washington County; Lamb County; and Limestone County; consideration of schedule and procedures for the October 1, 1996, oil, gas and other minerals lease sale; consideration of tracts, terms and conditions for a special lease sale; consideration of easements on Texas Department of Mental Health and Mental Retardation lands, Travis County; briefing on expansion of gas marketing program; coastal public lands, easement applications, Copano Bay, Aransas County; Clear Lake, Harris County; boundary agreement, Copano Bay, Aransas County; structure (cabin) amendments and rebuilding requests, Laguna Madre, Kleberg County; Laguna Madre, Kenedy County; Laguna Madre, Willacy County; executive session pending or contemplated litigation; executive session and open session-consideration of land acquisition, Comal and Guadalupe Counties; executive session and open session-consideration of land acquisition, Tarrant County; executive session and open session-consideration of land lease, Brewster County; executive session and open session-consideration of land exchange, Fort Bliss, El Paso County.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: April 5, 1996, 12:21 p.m.

TRD-9604856

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Office of the Governor

Friday, April 19, 1996, 9:00 a.m.

1414 Colorado, Texas Law Center, Meeting Rooms 206-207

Austin

Texas Governor's Committee on People with Disabilities-Regular Quarterly Meeting

AGENDA:

1. Call to order and approval of minutes

2. Introductions/brief reports from members

3. Ex officio members reports

4. Public comment/reports

5. Executive director's report

6. Legislative update

7. Subcommittee meetings: Long-Range Planning and Policy Subcommittee and Programs Subcommittee

8. Subcommittee reports and action items

9. Closing remarks/suggestions for June 27, 1996, agenda

10. Adjournment

Contact: Virginia Roberts, 1100 San Jacinto, Austin, Texas 78701, (512) 463-5739.

Filed: April 2, 1996, 8:32 a.m.

TRD-9604543

Friday, April 19, 1996, 10:00 a.m.

Driskill Hotel, Citadel Lounge, 604 Brazos

Austin

Commission for Women

AGENDA:

I. Call to order

II. Approval of minutes

III. Discuss projects

A. Breast Cancer Awareness (PSA's, and other projects)

B. Women's Hall of Fame

C. Legislative handbook

IV. Speaker from M. D. Anderson (Jeff Rasco) about CD ROM project

V. Update on breast cancer treatment options by Glaxco Wellcome

VI. Adjourn

Contact: Lucy Weber, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: April 4, 1996, 2:08 p.m.

TRD-9604785

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Texas Department of Health

Friday, April 19, 1996, 9:30 a.m.

Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

Oral Health Services Advisory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes from the previous meeting; development of legislative priorities; report required by the Turner Commission; dental scans; update on managed care; limitations on replacement of lost/damaged dental/orthodontic appliances; new business not requiring committee action; opportunity for public comment not requiring committee actions; and setting of next meeting date.

Contact: Dr. Nana Lopez, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7323. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 1, 1996, 1:25 p.m.

TRD-9604505

Friday, May 15, 1996, 9:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Toxic Substances Coordinating Committee

AGENDA:

The committee will discuss and possibly act on issues related to the transportation of hazardous materials across the Texas-Mexico border.

Contact: Dennis Perrotta, Ph.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7268. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the

Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 1, 1996, 4:27 p.m.

TRD-9604523

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Texas Health and Human Services Commission

Thursday, April 11, 1996, 4:00 p.m.

Metropolitan Multi-Service Center, 1475 West Gray

Houston

AGENDA:

On Thursday, April 11, 1996, the Texas Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Protective and Regulatory Services and the Texas Department of Health will ask for comments and ideas on what Texas health and human services should be for fiscal years 1998-1999. Topics include statewide spending priorities, services and program directions, use of federal block grant funds, including Social Services Block Grant (Title XX), Maternal and Child Health Block Grant (Title V) and Public Health Service Act (Title X). Also, use of state genetic services funds (Human Resources Code, §134.0041).

Texas health and human services programs include:

Community care services, long-term care eligibility, child care for low-income families, family violence, licensing/regulation of child care facilities, child and adult protective services, child and adult foster care, prenatal care, family planning, preventive child health services, dental services, genetic services, nutrition services, services to children with special health care needs (CSHCN) under Chronically Ill and Disabled Children's program (CIDC), case management services for high-risk pregnant women and infants, and CSHCN.

Please send written comments to the Texas Health and Human Services Commission (HHSC) at P.O. Box 13247, Austin, Texas 78711. Persons with disabilities who may require special needs may contact Cecilia Berrios at HHSC in Austin at (512) 502-3200 (Voice or TDD).

Contact: Chuck Adams, 5425 Polk Street, Houston, Texas 77023, (713) 767-2407.

Filed: April 2, 1996, 11:20 a.m.

TRD-9604578

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Texas Higher Education Coordinating Board

Wednesday, April 17, 1996, 10:30 a.m.

Chevy Chase Office Complex, Building 1, Room 1.102, 7700 Chevy Chase Drive

Austin

Coordinating Board/State Board of Education Joint Advisory Committee

AGENDA:

Texas Advanced Placement Incentive Program; reporting TASP results; report on TexShare Library Resource Sharing Project; Teacher Education Program-(a) Centers for Professional Development; (b) State Board for Educator Certification; (c) Field-based courses; discussion of State of the South, a report which calls for restructuring of education-connecting curriculum from elementary school to the university level, making community colleges a hub for the restraining of working adults, and more directly involving businesses in schools at every level; and Hopwood Decision-Affirmative Action.

Contact: Glenda Barron, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: April 4, 1996, 2:24 p.m.

TRD-9604787

Wednesday, April 17, 1996, 3:00 p.m.

Chevy Chase Office Complex, Building 5, Room 5.262, 7745 Chevy Chase Drive

Austin

Access and Equity Committee

AGENDA:

The committee will be briefed on the Hopwood vs. State of Texas decision that invalidates the admission process used by the University of Texas School of Law to increase its ethnic diversity.

Contact: Betty James, P.O. Box 12788, Austin, Texas 78711, (512) 483-6140.

Filed: April 4, 1996, 10:17 a.m.

TRD-9604726

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Texas House of Representatives

Friday, April 12, 1996, 10:00 a.m.

Warren Theatre, 6300 Ocean Drive

Corpus Christi

House Committee on Insurance

AGENDA:

I. Review the long-term financial stability and solvency of the Texas Catastrophe Property Insurance Association (CATPOOL).

II. Review proposals to change the building codes in the plan of operations for the Texas Catastrophe Property Insurance Association (CATPOOL).

Contact: Tim Dudley, P.O. Box 2910, Austin, Texas 78703, (512) 463-0632.

Filed: April 3, 1996, 4:11 p.m.

TRD-9604703

Wednesday, April 17, 1996, 10:00 a.m.

Capitol Extension, 15th Street and Congress Avenue, Room E2.012

Austin

House Committee on Ways and Means Subcommittee on Transit Authorities Fund Balances

AGENDA:

The subcommittee will hear testimony from each of the transit authorities concerning fund balances attributable to excess sales tax revenues.

Contact: Tim Dudley, P.O. Box 2910, Austin, Texas 78703, (512) 463-0632.

Filed: April 1, 1996, 2:18 p.m.

TRD-9604514

Thursday, April 18, 1996, 8:00 a.m.

Capitol Extension, 15th Street and Congress Avenue, Room E1.030

Austin

House Committee on Appropriations Subcommittee on Special Issues Related to State Compensation

AGENDA:

I. Call to order

II. Roll call

III. New business

IV. Old business

V. Adjournment

Contact: Tim Dudley, P.O. Box 2910, Austin, Texas 78703, (512) 463-0632.

Filed: April 2, 1996, 1:21 p.m.

TRD-9604581

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Texas Commission on Human Rights

Friday, April 12, 1996, 10:00 a.m.

John H. Reagan Building, Room 109, 105 West 15th Street

Austin

AGENDA:

Executive session/commissioner panels pursuant to Texas Government Code, §551.071; discussion and vote on agenda item(s) covered in executive session as necessary or required; welcoming of guests; minutes; administrative reports; cash flow statement; EEO compliance training; commission's move to new office space; new administrative enforcement grant from HUD under FHIP funds; implementation of EEO Riders in Article IX of the Appropriations Act; co-sponsoring the HUD national policy conference; risk management recommendations; IAOHRA annual conference; IAOHRA southern regional conference; fair housing legislation before the congress; development of the commission's strategic plan and the initial preparation of the legislative appropriations request; commission's annual EEO conference; executive director's management plan; employee functions under the staff restructuring; library retention schedule; commissioner issues; unfinished business. All items on the agenda may be subject to a vote, if appropriate.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: April 2, 1996, 2:01 p.m.

TRD-9604586

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Texas Department of Human Services

Tuesday, April 16, 1996, 1:00 p.m.

701 West 51st Street, Third Floor, East Tower, Room 300H

Austin

State Advisory Committee on Child Care Programs

AGENDA:

Scan call sign-on and introductions. Program updates and discussion items: program transfer to TWC; formation of Local Workforce Development Boards; federal approval of Texas welfare reform waiver; update on pending federal legislation; preparation of CCBDG and IV-A state plans; update on EDCR, CCT and DV projects. Plans for next meeting. Adjourn.

Contact: Shelley Bjorkman, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4174.

Filed: April 5, 1996, 3:59 p.m.

TRD-9604871

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Texas Incentive and Productivity Commission

Wednesday, April 10, 1996, 1:00 p.m.

Reagan Building, Room #109, 105 West 15th Avenue

Austin

Revised Agenda

AGENDA:

Item III, consideration of employee suggestions for approval

Delete the following suggestion:

306-0016 Nancy Webb

Item V, change wording to read:

Consideration of revisions to State Employee Incentive Program Rules, 1 TAC Chapter 273, and possible decision to publish for comment

Item VI, change wording to read:

Consideration of revisions to Productivity Bonus Program Rules, 1 TAC Chapter 275, and possible decision to publish for comment

Item IX, change wording to read:

Consideration of and possible action on recommendations for administrative and statutory changes to the Texas Incentive and Productivity Commission, the State Employee Incentive Program, and the Productivity Bonus Program

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: April 2, 1996, 4:25 p.m.

TRD-9604630

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Texas Department of Information Resources

Thursday, April 18, 1996, 9:00 a.m.

300 West 15th Street, Fifth Floor, Committee Room #5

Austin

Board

AGENDA:

The board will meet in a work session for discussion between board and staff. No public testimony or comment will be accepted except by invitation of the board. The board will also discuss agency strategic plan, financials, and agency business plan measures.

No formal action will be taken by the board during this meeting.

Contact: Yvonne Montgomery, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 475-1715.

Filed: April 5, 1996, 2:55 p.m.

TRD-9604870

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Texas Juvenile Probation Commission

Friday, April 12, 1996, 9:00 a.m.

2015 South IH-35

Austin

Internal Audit Committee Meeting

AGENDA:

Call to order; Construction Bond Committee report-discussion, review, and approval of construction bond proposals; public comments; adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 1, 1996, 12:11 p.m.

TRD-9604488

Friday, April 12, 1996, 9:30 a.m.

2015 South IH-35

Austin

Internal Audit Committee Meeting

AGENDA:

Call to order; excuse absences; Internal Audit Committee report-approval of payroll, travel and intergovernmental relations audits; public comments; adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 1, 1996, 12:12 p.m.

TRD-9604489

Friday, April 12, 1996, 10:00 a.m.

2015 South IH-35

Austin

Budget Committee Meeting

AGENDA:

Call to order; excuse absences; approval of revisions to fiscal year 1996 administrative budget; update on the February, 1996 expenditure report; update on the relocation of TJPC offices; update on the expenditures for juvenile law books, LAR update; public comments; adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 1, 1996, 12:14 p.m.

TRD-9604490

Friday, April 12, 1996, 10:30 a.m.

2015 South IH-35

Austin

Board Meeting

AGENDA:

Call to order; excuse absences; introduction of advisory council members; approval of minutes; Construction Bond Committee meeting-discussion, review, and approval of construction bond proposals; Internal Audit Committee report-approval of internal audits for payroll, travel, and intergovernmental relations; approval of Harris County waiver; amendment to the standards for secure post-adjudication residential facilities; discussion and approval of Prevention Program-Texas A&M Extension Services; discussion and approval of utilization of unencumbered substance abuse funds; Budget Committee report-approval of revisions to the fiscal year 1996 administrative budget, February 1996 expenditure report, relocation of TJPC offices, expenditures to juvenile law books, LAR update; update on interagency activities-Buffalo Soldier's, TJPC/TYC Joint Task Force Subcommittee, TJPC/SBOE Joint Task Force Subcommittee, TJPC/DPRS Joint Task Force Subcommittee, CYD grants, and TJPC initial assessment tool; director's report-TYC commitment recommendation, update on March, 1996 TJPC update meeting, status on House Bill 327 requirements, classification compliance audit report; contract managements audit, White House leadership conference on youth, drug use, and violence, legislative update, fiscal year 1995 performance assessment; public comment, schedule next meeting, adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 1, 1996, 12:14 p.m.

TRD-9604491

Friday, April 12, 1996, 10:30 a.m.

2015 South IH-35

Austin

Revised Agenda

Board Meeting

AGENDA:

9. Amendment to the standards for juvenile detention facilities

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 2, 1996, 9:12 a.m.

TRD-9604560

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Board of Law Examiners

Friday, April 12, 1996, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Hearings Panel

AGENDA:

The hearings panel will hold public hearings and conduct deliberations, including the consideration of proposed agreed orders, on the character and fitness of the following applicants and/or declarants: Keith B. Kozura; John D. Sullivan; Michael Q. Webber; Johnny J. Colley; Harry M. Collins, Jr.; Robert G. Cochran. (Character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: April 1, 1996, 4:31 p.m.

TRD-9604525

Saturday-Monday, April 13-15, 1996, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

AGENDA:

The board will: consider requests for excused absences; consider approval of minutes, financial reports, and investment reports; con-

sider other investment matters; consider internship proposal; consider reports of staff, members, and Supreme Court Liaison; meet with legal counsel; consider proposal regarding strategic plan; consider special requests for waivers and interpretations of rules; review examination questions; consider requests to use TBE essay questions in commercial bar review materials; hear communications from the public; conduct Bar Admissions Forum (on April 15th at Noon at the Doubletree Guest Suites); and adjourn.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: April 2, 1996, 8:34 a.m.

TRD-9604547

Saturday-Monday, April 13-15, 1996, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Revised Agenda

AGENDA:

Revised agenda includes a new item 18, which is circled; it also renumbers previous items 18 and 19, respectively, as 19 and 20. The new item 18, which allows the board to consider recommending that the Supreme Court amend the board's fiscal year 1996 budget to include funds for a new computer system, was inadvertently omitted from the prior posting.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: April 2, 1996, 8:36 a.m.

TRD-9604549

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Texas Department of Licensing and Regulation

Wednesday, April 17, 1996, 9:30 a.m.

E. O. Thompson Building, 920 Colorado, Fourth Floor Conference Room

Austin

Board of Boiler Rules

AGENDA:

1. Call to order
2. Roll call
3. Introduction of visitors
4. Adoption of agenda
5. Approval of minutes of meeting on November 17, 1995
6. Administrative report
7. Task Force reports

a. Controls and safety devices for automatically fired boilers

b. Jacketed kettles and sterilizers

c. Water level indicators

d. Nonwelded boilers

8. New business

a. Process cooling and heating

9. Old business

a. Proposed legislation-pressure vessel

b. Opinion regarding insurance company inspection of boilers

c. 1995 edition of the NBIC

d. Section 129 of the Clean Air Act, environmental protection agency requirements

10. Next meeting

11. Adjournment

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Barbara Stoll at (512) 475-2858 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Bynog, 920 Colorado, Austin, Texas 78711, (512) 463-7365.

Filed: April 5, 1996, 10:02 a.m.

TRD-9604832

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Texas Lottery Commission

Saturday, April 13, 1996, 9:00 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

AGENDA:

According to the complete agenda, the Texas Lottery Commission will call the meeting to order; consideration and possible action on the criteria of selection, appointment, employment, duties or, interviewing and hiring, of the Internal Auditor; commission may meet in executive session with its attorneys to receive legal advice regarding pending litigation pursuant to §551.071(1) of the Texas Government Code, including but not limited to Scott Wenner v. Texas Lottery Commission; First Approach Financial, Inc. and Western United Life Assurance Company v. Texas Lottery Commission; in re: April Jo Flores, a minor child; Husan Ent. dba Village Food Store; and Golden Ventures for Senior Citizens vs. Texas Lottery Commission; to deliberate the criteria of selection, appointment, employment, duties or, interviewing and hiring, of the Internal Auditor pursuant to §551.074 of the Texas Government Code; return to open session for further deliberation and/or possible action; and adjournment.

Contact: Michelle Guerrero, 6937 North IH-35, Austin, Texas 78752, (512) 323-3791.

Filed: April 5, 1996, 11:31 a.m.

TRD-9604841

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Texas State Board of Examiners of Marriage and Family Therapists

Sunday, April 14, 1996, 1:00 p.m.

The Driskill Hotel, Sul Ross Room, 604 Brazos Street

Austin

Application Review Committee

AGENDA:

The committee will discuss and possibly act on pending applications: inactive status (BB; PKB; DTH; LJM; EAM; PS; PAS; and PNW); waiver from examination (RRM); and settlement issue (JD, PG, RM, and CS); and request for ratification of approved/renewed files since January 31, 1996.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 4, 1996, 4:24 p.m.

TRD-9604810

Sunday, April 14, 1996, 3:00 p.m.

The Driskill Hotel, Sul Ross Room, 604 Brazos Street

Austin

Budget Review Committee

AGENDA:

The committee will discuss and possibly act on update of board budget.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 4, 1996, 4:24 p.m.

TRD-9604813

Sunday, April 14, 1996, 3:00 p.m.

The Driskill Hotel, Sul Ross Room, 604 Brazos Street

Austin

Ethics Committee

AGENDA:

The committee will discuss and possibly act on pending complaints: MF-95-2; MF-95-5 through MF-95-7; MF-95-12; MF-95-13; MF-95-17 through MF-95-20; MF-95-22 through MF-95-24; MF-95-26 through MF-95-29; MF-96-1; MF-96-3; MF-96-5; MF-96-6; MF-96-19; MF-96-21; and final order on JAH.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 4, 1996, 4:24 p.m.

TRD-9604812

Monday, April 15, 1996, 10:00 a.m.

Room S-402, Exchange Building, 8407 Wall Street

Austin

AGENDA:

The committee will discuss and possibly act on: approval of the minutes from the January 31, 1996 meeting; application committee report (BB, PKB, DTH, LJM, EAM, PS, PAS, PNW, and RRM); budget review committee; ethics committee (MF-95-2, MF-95-5 through MF-95-7, MF-95-12, MF-95-13, MF-95-17 through MF-95-20, MF-95-22 through MF-95-24, MF-95-26 through MF-95-29, MF-96-1, MF-96-3, MF-96-5, MF-96-6, MF-96-19, MF-96-21, and final order on JAH); final order on JAH; settlement with JD, PG, RM, and CS; two-year post degree direct clinical experience, supervision, and temporary licenses; insurance issue with Blue Cross/Blue Shield and Texas Association of Marriage and Family Therapists; continuing education for participants in the Texas Association of Marriage and Family Therapy Conference held in Austin, Texas in January/February, 1996; out-of-state applicants; examination reciprocity; status of proposed rules; status of licensee roster; status of licensee survey; request for ratification of approved/renewed files since January 31, 1996 meeting; board chair report; executive director report; and next meeting date.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 4, 1996, 4:24 p.m.

TRD-9604811

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Texas State Board of Medical Examiners

Monday, April 8, 1996, 11:30 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Emergency Agenda

Hearings Division

AGENDA:

Probation appearance, 11:30 a.m.-Edward A. Balli, M.D., Seguin, Texas

Probation appearance, 11:30 a.m.-Robert K. Hatchett, M.D., Kerrville, Texas

Modification request, 11:30 a.m.-Garry J. Patton, M.D., Mexia, Texas

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes, regarding pending or contemplated litigation.

Reason for Emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016 or Fax: (512) 305-7008.

Filed: April 3, 1996, 2:25 p.m.

TRD-9604675

Tuesday, April 9, 1996, 11:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Emergency Agenda

Hearings Division

AGENDA:

Probation appearance, 11:00 a.m.-Bernice Anderson, D.O., Corpus Christi, Texas

Probation appearance, 11:00 a.m.-Robert K. Hatchett, M.D., Kerrville, Texas

Probation appearance, 11:00 a.m.-Vasuki Ramakrishnan, M.D., Stafford, Texas

Probation appearance, 1:30 p.m.-Richard Morgan, D.O., Brady, Texas

Termination request, 11:00 a.m.-Patrick D. Dwyer, M.D., Sugarland, Texas

Termination request, 1:00 p.m.-Royce D. Brough, M.D., Stanford, Texas

Termination request, 2:00 p.m.-Bob L. Weeks, D.O., Edmond Oklahoma

Termination request, 2:30 p.m.-Kermit R. veggeberg, M.D., Houston, Texas

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes, regarding pending or contemplated litigation.

Reason for Emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016 or Fax: (512) 305-7008.

Filed: April 3, 1996, 2:25 p.m.

TRD-9604674

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Texas Mental Health and Mental Retardation Board

Thursday, April 11, 1996, 10:30 a.m.

909 West 45th Street (Room 240)

Austin

Business and Asset Management Committee

AGENDA:

1. Briefing on the lease of the Triangle Property in Austin, Texas

Note-discussion will be in executive session.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: April 3, 1996, 8:15 a.m.

TRD-9604632

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Texas Natural Resource Conservation Commission

Wednesday, April 10, 1996, 9:30 a.m.

12118 North Interstate 35, Room 201S, Building E

Austin

Revised Agenda

AGENDA:

The commission will consider the addendum to the April 10, 1996, agenda: Coastal Coordination Council certification; motion for rehearing, Ingram Readymix.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 2, 1996, 2:53 p.m.

TRD-9604593

Wednesday, April 10, 1996, 1:00 p.m.

J. J. Pickle Research Center, 10,100 Burnet Road, The Commons Building, Room 1.106

Austin

AGENDA:

The commission will meet to discuss miscellaneous issues and budget matters.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 2, 1996, 3:56 p.m.

TRD-9604615

Wednesday, April 17, 1996, 9:30 a.m.

Room 201S, Building E, 12118 North Interstate 35

Austin

AGENDA:

The commission will consider approving the following matters on the agenda: Class 2 modifications; hearing request; district matter; petroleum storage tank enforcement; industrial hazardous waste enforcement; rules; administrative law judges proposal for decision; executive session; the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 a.m. agenda starts 8:45 a.m. until 9:25 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 4, 1996, 2:02 p.m.

TRD-9604783

Thursday, April 18, 1996, 10:00 a.m.

Building F-Room 5108, 12015 Park 35 Circle

Austin

AGENDA:

The Texas Natural Resource Conservation Commission has referred Scrap Tire Recycling to the State Office of Administrative Hearings (SOAH). SOAH has scheduled a public hearing on the assessment of administrative penalties and requiring certain actions of Scrap Tire Recycling, SOAH Docket Number 582-95-0559.

Contact: Susan Prior, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-3445.

Filed: April 5, 1996, 9:06 a.m.

TRD-9604822

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Texas Board of Nursing Facility Administrators

Thursday, April 18, 1996, 1:00 p.m.

Medallion Hotel, Executive Board Room, 4099 Valley View Lane

Dallas

Revised Agenda

Complaints Committee

AGENDA:

The committee will discuss and possibly act on complaints (appealed cases returned for discussion (04-93-07-04110); and appealed cases returned to discussion (95-NFA-00120)).

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: April 1, 1996, 4:27 p.m.

TRD-9604524

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Texas Optometry Board

Thursday, April 11, 1996, 1:00 p.m.

333 Guadalupe, Suite 2-420

Austin

Investigation-Enforcement Committee, Ad Hoc Committee on Law Changes

AGENDA:

1:00 p.m.-Investigation-Enforcement Committee to consider matters pending before committee and discuss resolutions with staff

2:30 p.m.-Ad Hoc Committee to consider possible law changes

4:00 p.m.-Investigation-Enforcement Committee to consider matters pending before committee and discuss resolutions with staff

Contact: Lois Ewald, 333 Guadalupe, Suite 2-420, Austin, Texas 78701, (512) 305-8500.

Filed: April 2, 1996, 3:52 p.m.

TRD-9604612

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State Pension Review Board

Wednesday, April 10, 1996, 10:00 a.m.

William Clements Building-Committee Room 5-Fifth Floor, 300 West 15th Street

Austin

Research Committee

AGENDA:

1. Organizational Meeting

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 1, 1996, 10:04 a.m.

TRD-9604483

Wednesday, April 10, 1996, 1:30 p.m.

William Clements Building-Room 103-First Floor, 300 West 15th Street

Austin

AGENDA:

1. Meeting called to order

2. Roll call

3. Reading and adoption of minutes of previous meeting

4. Committee reports

A. Administration-Chair Bruce Cox (Horwitz)

B. Research-Chair Larry Eddington (Deiters)

C. Actuarial-Chair Ronald Haneberg (Smith)

D. Communications-Chair Cheryl Dotson (Delters)

E. Legislative-Chair Gilbert Vasquez (Horwitz)

5. Discussion and possible action on old business

6. Announcements and invitation for audience participation

7. Executive director's report

8. Chairman's report

9. Adjournment-Announce schedule of board meetings

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 1, 1996, 10:04 a.m.

TRD-9604484

Wednesday, April 10, 1996, 1:30 p.m.

William Clements Building-Room 103-First Floor, 300 West 15th Street

Austin

Revised Agenda

AGENDA:

4. Committee reports

A. Administration-Chair Bruce Cox (Horwitz)

1. Update of strategic planning process

2. Hiring of accountant

B. Research-Chair Larry Eddington (Deiters)

1. Task force meeting

C. Actuarial-Chair Ronald Haneberg (Smith)

1. El Paso

2. Compliance update

3. Volunteer fire fighters and actuary's responses

D. Communications-Chair Cheryl Dotson (Delters)

1. Computer

2. Consistent look for publications, and logo

E. Legislative-Chair Gilbert Vasquez (Horwitz)

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 1, 1996, 3:38 p.m.

TRD-9604519

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Texas State Board of Plumbing Examiners

Tuesday-Wednesday, April 23-24, 1996, 9:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

9:00 a.m.-Call to order and roll call April 23, 1996

Consideration of minutes of March 15, 1996 Enforcement Committee meeting for adoption as recorded April 23, 1996

Review of citation list and possible action April 23, 1996

Informal conferences April 23-24, 1996

The committee will discuss the following cases with the individuals who have agreed to appear. Possible action by the committee on these cases:

Tuesday, April 23, 1996, 9:45 a.m.-Case #96-0078, 11:00 a.m., Case #96-0260, 1:45 p.m., Case #96-0261, Wednesday, April 24, 1996, 9:45 a.m., Case #96-0176, 10:45 a.m., Case #96-0176, 1:45 p.m., Case #96-0195.

Complaint cases for review:

The following cases will be reviewed by and possibly acted upon by the committee as time allows before, between and after the scheduled informal conferences on April 23-24, 1996:

Numbers 96-0167, 96-0280, 96-0206, 95-0360, 95-0379, 95-0363, 95-0239, 95-0435, 95-0072, 95-0233, 95-0453, 95-0517, 96-0012, 96-0060, 96-0030, 96-0058, 96-0111, 96-0123, 96-0125, 96-0147, 96-0149, 96-0139, 96-0114, 96-0159

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145, Ext. 233.

Filed: April 4, 1996, 3:01 p.m.

TRD-9604794

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Texas Department of Protective and Regulatory Services

Wednesday, April 10, 1996, 10:30 a.m.

Stemmons Office Building, 2355 North Stemmons Freeway, Executive Office Suite, 12th Floor

Dallas

Texas Board of Protective and Regulatory Services Community Partners Steering Committee

AGENDA:

1. Call to order. 2. Initial planning session. 3. Adjournment.

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 438-4435.

Filed: April 2, 1996, 3:57 p.m.

TRD-9604616

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Texas Public Finance Authority

Wednesday, April 10, 1996, 10:30 a.m.

John H. Reagan Building, 105 West 15th Street, Room 106

Austin

Board Meeting

AGENDA:

1. Call to order.

2. Approval of minutes of the February 21, 1996 board meeting.

3. Consider a resolution authorizing the issuance of Texas Public Finance Authority State of Texas General Obligation Refunding Bonds, Series 1996B by refunding certain outstanding commercial paper notes issued for financing various projects of the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, and the Texas Youth Commission, the execution and delivery of documents in connection therewith, and the taking of action to effect the sale and delivery of the bonds and resolving related matters.

4. Consider a request for financing from the General Services Commission for $8.6 million to renovate the State Insurance Building located at 1100 San Jacinto, Austin, and select the method of sale.

5. Consider a resolution authorizing the Texas Department of Criminal Justice to use additional funds for project costs under Texas Public Finance Authority General Obligation Bonds, Series 1991A.

6. Other business.

7. Executive session for conference authorized under §551.071, Texas Government Code.

8. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Patricia Logan at (512) 463-5544. Request should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: April 2, 1996, 10:04 a.m.

TRD-9604565

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Public Utility Commission of Texas

Wednesday, April 10, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on: secretary's report; Docket Number 14659 (SOAH Number 473-95-1210); Docket Number 14658 (SOAH Number 473-95-1209); Project Number 14440; Docket Numbers 14447 and 15452; Project 15345; Docket Number 14245 (SOAH Number 473-95-1170); Docket Number 14295; (SOAH Number 473-95-1192; Docket Number 15350; Project Numbers 14929, 14515, 14960, 14506, and 14997; Federal Telecommunications Act of 1996, including, but not limited to actions taken by the Federal Communications; filings submitted to the commission under Title I of the Federal Telecommunications Act of 1996; Project Numbers 14045, 15000, 15001, and 15002; Docket Number 14475 (SOAH Number 473-95-1189); Docket Number 13575; (SOAH Number 473-95-1173); Docket Numbers 15489, 15395, 15014, 15206, 14120, 15355, 15365; Project Numbers 13919, 15393 and 14941; report on winter operations of electric utilities; Project Number 15016; project assignments, correspondence, staff reports and agency administrative procedures; update on the Travis building project; budget fiscal matters and strategic planning; adjournment for closed session; reconvene for discussion and decisions on matters considered in closed session.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: April 2, 1996, 2:14 p.m.

TRD-9604587

Tuesday, April 16, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled for the above date and time in Docket Number 14892-application of Southwestern Bell Telephone Company for approval of new business optional calling plan options pursuant to Public Utility Commission Substantive Rule 23.26.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1996, 11:03 a.m.

TRD-9604695

Monday, April 22, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15594-application of American Communication Services of Fort Worth, Inc. for a service provider certificate of operating authority. This application was filed on April 2, 1996. ACS-Fort Worth intends to provide local switched services that include plain old telephone services, originating and terminating local calls; switched access service, originating and terminating traffic between a customer premise and an IXC POP via shared local trunks using a local switch; and PBX local trunking, transport of switched traffic between ACS-Fort Worth's switch and the customer's system. Applicant intends to provide service in the entire Fort Worth Metropolitan Exchange as defined in Southwestern Bell Telephone Company's local exchange tariff, Section 1, Sheet 73 and 5.4 and 5.4.1. The precise area to be served is that for which unlimited flat rate originating calling is available as described on SWB local exchange tariff, Section 1, Sheet 73. Applicant intends to allow its customers to originate and receive calls to and from the entire calling area described, including calling to and from all areas reachable by EAS or EMS. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by April 17, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1996, 3:12 p.m.

TRD-9604692

Monday, April 22, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15596-application of American Communication Services of El Paso, Inc. for a service provider certificate of operating authority. This application was filed on April 2, 1996. ACS-El Paso intends to provide local switched services that include plain old telephone services, originating and terminating local calls; switched access service, originating and terminating traffic between a customer premise and an IXC POP via shared local trunks using a local switch; and PBX local trunking, transport of switched traffic between ACS-El Paso's switch and the customer's system. Applicant intends to provide service in the entire area specified in Southwestern Bell Telephone Company's local exchange tariff, Section 1, Sheet 57, as the exchanges included in calling area for El Paso. The precise area to be served is that for which unlimited flat rate calling is available as specified on that page, and all areas in which optional or mandatory EAS calls may be made to or from the designated calling area. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by April 17, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1996, 4:13 p.m.

TRD-9604705

Monday, April 22, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15595-application of American Communication Services of Amarillo, Inc. for a service provider certificate of operating authority. This application was filed on April 2, 1996. ACS-Amarillo intends to provide local switched services that include plain old telephone services, originating and terminating local calls; switched access service, originating and terminating traffic between a customer premise and an IXC POP via shared local trunks using a local switch; and PBX local trunking, transport of switched traffic between ACS-Amarillo's switch and the customer's system. Applicant intends to provide service in the entire area specified in Southwestern Bell Telephone Company's local exchange tariff, Section 1, Sheet 52, as the exchanges included in calling area for Amarillo, and all areas in which optional or mandatory EAS calls may be made to or from the designated calling area. Applicant intends to allow its customers to originate and receive calls to and from the entire calling area described, including calling to and from all areas reachable by EAS or EMS. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by April 17, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1996, 4:13 p.m.

TRD-9604706

Thursday, April 25, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15606-application of MCImetro Access Transmission Services, Inc. for a service provider certificate of operating authority. This application was filed on April 3, 1996. The specific types of services applicant plans to offer include, but are not limited to: two-way lines/trunks, direct inward/outward dialing options, local calling, operator-assisted services, directory assistance, dual party relay and other special needs services, and 911 emergency services. Applicant requests authority to provide the proposed services in those areas of Texas currently served by Southwestern Bell Telephone Company, GTE Central, Sprint/Central Telephone Company of Texas, Sprint/United Telephone Company of Texas, Lufkin-Conroe Telephone Company, ALLTEL/Sugarland Telephone Company. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by April 17, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 4, 1996, 11:26 a.m.

TRD-9604755

Thursday, April 25, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15616-application of ACSI Technologies, Inc. for a service provider certificate of operating authority. This application was filed on April 4, 1996. AAT intends to provide resold local switched services. This includes, but may not be limited to, monthly recurring, flat-rate local exchange service, extended area service, extended metro service, foreign exchange service, foreign business office service, toll restriction, call control options, tone dialing, custom calling services, caller ID and any other services which are available for resale from the underlying incumbent local exchange carrier or other carriers authorized to do business within the designated service area. Applicants intends to provide service within each of the following LATAs: Abilene, Amarillo, Austin, Beaumont, Brownsville, Corpus Christi, Dallas, El Paso, Hearn, Houston, Longview, Lubbock, Midland, San Antonio, Waco, and Wichita Falls. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by April 17, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1996, 8:59 a.m.

TRD-9604821

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Railroad Commission of Texas

Monday, April 15, 1996, 1:30 p.m.

1701 North Congress Avenue, 12th Floor, Suite 12-100, Willa Mae Palmer Conference Room

Austin

AGENDA:

The Railroad Commission of Texas will hold a meeting on reorganization and personnel matters; the commission may interview applicants for chief administrative officer and may take action on personnel matters. The commission may meet in executive session as permitted by Texas Government Code, Chapter 551.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711, (512) 463-7008.

Filed: April 1, 1996, 2:44 p.m.

TRD-9604515

Tuesday, April 16, 1996, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

The commission will consider the following items:

1. Letter to Governor regarding the National Transportation Safety Board proposal to require excess flow valves on natural gas pipelines.

2. Quarterly update on Gas Infrastructure Data Project mapping work.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: April 5, 1996, 10:18 a.m.

TRD-9604833

Tuesday, April 16, 1996, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: April 5, 1996, 10:28 a.m.

TRD-9604834

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Texas Senate

Friday, April 19, 1996, 9:00 a.m.

900 Bagby, Public Level

Houston

Intergovernmental Relations

AGENDA:

The committee will take testimony in the following order:

Charge II-The problems of urban infrastructure, recognizing the deterioration in such areas and the shift of population and businesses to suburban areas

Charge I-The possible consolidation of services that are provided by both county and municipal government.

Contact: Amy Kelly, P.O. Box 12068, Austin, Texas 78711, (512) 463-0385.

Filed: April 3, 1996, 4:36 p.m.

TRD-9604712

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Stephen F. Austin State University

Thursday, April 11, 1996, 2:00 p.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents Finance Committee

AGENDA:

I. Open session

A. Financial statements

B. Top ten scholarships

C. Kiosk project

D. Austin building swing space

E. Revision of investment policy

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: April 2, 1996, 10:00 a.m.

TRD-9604561

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Texas Guaranteed Student Loan Corporation

Thursday, April 11, 1996, 1:30 p.m.

Hyatt Regency DFW Hotel, East Tower, Meteor Room

Dallas/Fort Worth Airport

Planning Committee

AGENDA:

1. Call to order

2. Approval of February 16, 1996 committee meeting minutes

3. Discussion and recommendations regarding strategic priorities

4. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: April 3, 1996, 2:31 p.m.

TRD-9604682

Thursday, April 11, 1996, 2:00 p.m.

Hyatt Regency DFW Hotel, East Tower, Meteor Room

Dallas/Fort Worth Airport

Board of Directors

AGENDA:

1. Call to order

2. Approval of March 6-7, 1996 board meeting minutes

3. Presentation by internal auditor

4. Discussion and action on resolution for brokers' accounts

5. Discussion and action on strategic priorities

6. Adjourn to executive session

Consultation with attorney on litigation issues

7. Resume open session

8. Action on items arising from executive session

9. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: April 3, 1996, 2:31 p.m.

TRD-9604681

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Texas State Technical College System

Wednesday, April 10, 1996, 10:00 a.m.

3801 Campus Drive, Building 32-01

Waco

Policy Committee for Human Resources

AGENDA:

Recommendations, if any, to the full Board of Regents regarding personnel issues on the Harlingen Campus.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: April 4, 1996, 11:27 a.m.

TRD-9604756

Wednesday, April 10, 1996, 10:00 a.m.

3801 Campus Drive, Building 32-01

Waco

Policy Committee for Human Resources

AGENDA:

Following Item III of the agenda shown as Item IV closed meeting agenda the Policy Committee for Human Resources will go into closed meeting in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in §§551.071, 551.074, and 551.075 to discuss the following:

Discuss status of pending litigation regarding Maria Christina Lucio vs. Texas State Technical College and J. Gilbert Leal in his official capacity as President of Texas State Technical College Harlingen, Civil Action B-95-01, U. S. District Court Brownsville Division.

Consider and deliberate personnel recommendations and issues on the Harlingen Campus including organizational structure and procedural relationships between campus president and subordinate departments.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: April 4, 1996, 11:28 a.m.

TRD-9604758

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Texas Title Insurance Guaranty Association

Tuesday, April 9, 1996, 10:00 a.m.

333 Guadalupe, First Floor, Hobby III

Austin

Board of Directors

AGENDA:

I. Call meeting to order

II. Approval of minutes from January 9, 1996 Board of Directors meeting

III. Financial report-Marvin Coffman

IV. Report from West, Davis and Company regarding the annual audit of the financial statements for year ended December 31, 1995.

V. Special deputy receiver's report-Ed Engleking

VI. Title examiner's report-Ethel Benedict

VII. Conservator's report-Gene Jarmon

VIII. Counsel's report-Burnie Burner

IX. Discussion and ratification of agreement to move Fidelity Accounts to Chase Securities.

X. Discussion and possible action regarding expanded role of Title examiners to audit title agent statistical reports

XI. Discussion of storage of Guaranty Association and receivership records and methods of funding.

XII. Set date and time for next meeting (July 9, 1996)

XIII. Adjourn

Contact: Burnie Burner, 301 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 474-1587.

Filed: April 2, 1996, 11:42 a.m.

TRD-9604580

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Texas Department of Transportation

Thursday, April 25, 1996, 11:30 a.m.

Red Lion Hotel, 6121 IH-35 North at Highway 290

Austin

Aviation Advisory Committee

AGENDA:

Approve minutes. Approval of draft aviation three-year capital improvement program-1997-1999. Report on budget submission for fiscal year 1998 and 1999. Briefing on aviation funding studies. Report on federal aviation issues. Public comments.

Contact: Suetta Murray, 125 East 11th Street, Austin, Texas 78701, (512) 416-4500.

Filed: April 5, 1996, 8:42 a.m.

TRD-9604819

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Texas Turnpike Authority

Friday, April 19, 1996, 9:30 a.m.

Dallas Marriott Quorum, 14901 Dallas Parkway

Dallas

Board of Directors

AGENDA:

The agenda includes: approval of minutes of Board of Directors meeting of March 25, 1996, and Right-of-Way Acquisition Committee meeting of March 20, 1996; presentation by North Texas Metropolitan Counties, the Regional Transportation Council, the Dallas Regional Mobility Coalition and other local governments related to the Sunset Review of the TTA performed by the Texas Sunset Commission; consider 183-A Turnpike matters: (a) receive and accept TTA staff report; and (b) consider options and act to direct staff on further studies; executive session: (a) advice from counsel and TTA personnel about pending or contemplated litigation and/or settlement offers related to the Dallas North Tollway System, including the Dallas North Tollway, the Addison Airport Tunnel, and the President George Bush Turnpike; (b) deliberations concerning purchase, exchange, lease, value, and donation of real property related to the Dallas North Tollway System, including the Dallas North Tollway, the Addison Airport Tunnel, and the President George Bush Turnpike; (c) deliberations concerning appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of various staff persons and positions; and (d) briefing by TTA staff and questioning of TTA staff related to Dallas North Tollway and other TTA operations; consider award of engineering design and service contracts; consider approval of interlocal/interagency agreements involving engineering and construction matters relative in 190T, 190T-W, Addison Tunnel and DNT; public discussions; consider acceptance of ROW appraisal/offer/Purchase List Number 68 related to the Dallas North Tollway System; and consider award of 190T construction contract DNT-275.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: April 5, 1996, 12:30 p.m.

TRD-9604857

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University of North Texas/University of North Texas Health Science Center

Wednesday, April 10, 1996, 9:30 a.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents

AGENDA:

UNT: Purchase of property; Union Food Court and Bookstore renovation

Contact: Jana K. Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: April 5, 1996, 8:13 a.m.

TRD-9604817

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Texas Workforce Commission

Wednesday, April 10, 1996, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; staff reports; executive session to discuss (a) litigation plans in case #90-JTPA-5 State of Texas v. Department of Labor and (b) personnel matters; actions, if any, resulting from executive session; discussion, consideration and adoption of staff realignment and reduction-in-force policy for inclusion in Texas Workforce Commission personnel manual; discussion, consideration and possible action with regard to transfer of programs pursuant to House Bill 1863; discussion, consideration and possible action with regard to submitted applications for certification of various local workforce development boards, including: (a) South Texas (b) Texoma and (c) Middle Rio Grande; discussion, consideration and possible action on proposed rule to establish procedures for local TWC offices to participate in competitive bidding process for service provision and establishing an independent evaluation of results and outcomes of performance; consideration and possible action on staff recommendation for publication of proposed amendments to the state JTPA rules; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 15; and set date and discuss agenda for next meeting.

Contact: C. Kingsbery Otto, 101 East 15th Street, Austin, Texas 78778, (512) 475-1119, (512) 463-8812.

Filed: April 2, 1996, 3:42 p.m.

TRD-9604606

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Texas Youth Commission

Wednesday, April 10, 1996, 2:00 p.m.

4900 North Lamar Boulevard, Room 2405

Austin

Budget Committee

AGENDA:

Approval of committee minutes of March 7, 1996

Review of TYC strategic plan draft-Chuck Jeffords

Contact: Steve Robinson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

Filed: April 2, 1996, 3:10 p.m.

TRD-9604596

Wednesday, April 10, 1996, 3:00 p.m.

4900 North Lamar Boulevard, Room 2422

Austin

Trust Committee

AGENDA:

Description of trusts and financial report (information)-Neil Nichols

Identification of eligible beneficiaries (information)-Neil Nichols

Overview of past distribution practices (information)-Neil Nichols/Sandy Burnam

Review of current distribution practices (information)-Karen Chalkely Turcotte/Judy Meador

Recommendations regarding future distribution practices and consideration of an expenditure request (action)-Sandy Burnam

Contact: Steve Robinson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

Filed: April 2, 1996, 3:40 p.m.

TRD-9604603

Wednesday, April 10, 1996, 3:00 p.m.

4900 North Lamar Boulevard, Room 2405

Austin

Construction Committee

AGENDA:

Approval of committee minutes of March 7, 1996

Fiscal year 1994-1995 Construction Program update

Fiscal year 1996-1997 Construction Program update

Conversion projects

Contact: Steve Robinson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

Filed: April 2, 1996, 3:37 p.m.

TRD-9604601

Thursday, April 11, 1996, 9:00 a.m.

1100 West 49th Street, Room M739

Austin

Board

AGENDA:

Approval of a change order to renovate Building #15 at the Corsicana State Home to provide 24 additional residential beds (action)

Approval of the construction contract for the Evins Regional Juvenile Center fiscal year 1996-1997 project (action)

Trust Committee report and approval of trust expenditures (action)

Report on agency female offender programming (information)

Strategic plan status review (information)

Contact: Steve Robinson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

Filed: April 2, 1996, 3:41 p.m.

TRD-9604604

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Regional Meetings

Meetings Filed April 1, 1996

The Gillespie Central Appraisal District Appraisal Review Board met at the County Courthouse, 101 West Main, Basement Suite 104-C, Fredericksburg, April 9, 1996, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9604513.

The Millersview-Doole Water Supply Corporation Board of Directors met One Block West of FM Highway 765 and FM Highway 2134, at Corporation's Office, Millersview, April 8, 1996, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box 130, Millersview, Texas 76862-0130, (915) 483-5438. TRD-9604512.

The Stephens County Rural WSC Regular Monthly Board met at 301 West Elm Street, Breckenridge, April 4, 1996, at 7:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9604487.

The Tri County Special Utility District (SUD) Board of Directors met at Highway 7 East, Marlin, April 8, 1996, at 7:00 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (817) 803-3553. TRD-9604502.

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Meetings Filed April 2, 1996

The Austin -Travis County Mental Health and Mental Retardation Public Relations Committee met at 1430 Collier Street-Board Room, Austin, April 11, 1996, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9604562.

The Bandera County Appraisal District Board of Directors met at the Bandera County Appraisal District, 1116 Main Street, Bandera, April 9, 1996, at 3:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039 or Fax: (210) 796-3672. TRD-9604608.

The Bell County Tax Appraisal District Board of Directors met at 411 East Central Avenue, Belton, April 10, 1996, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9604595.

The Canadian River Municipal Water Authority Board met at 2902 West Fourth Street, Plainview, April 10, 1996, at 10:30 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325. TRD-9604585.

The Canyon Regional Water Authority Regular Board met at the Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, April 8, 1996, at 7:00 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass Drive, New Braunfels, Texas 78130-9579, (210) 609-0543. TRD-9604566.

The Colorado County Appraisal District Board of Directors met at 400 Spring, (County Courtroom), Columbus, April 9, 1996, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9604584.

The Deep East Texas Private Industry Council, Inc. Planning/Worker Adjustment Committees met in Room 102, Lufkin City Hall, 300 East Shepherd Street, Lufkin, April 9, 1996, at 1:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9604614.

The Deep East Texas Private Industry Council, Inc. met in Room 102, Lufking City Hall, 300 East Shepherd Street, Lufkin, April 9, 1996, at 2: 30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9604613.

The Denton County Appraisal District Board of Directors met at 3911 Morse Street, Denton, April 9, 1996, at 5:00 p.m. Information may be obtained from Kathy Williams, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9604568.

The High Plains Underground Water Conservation District Number 1 Board met at 2930 Avenue Q, Board Room, Lubbock, April 9, 1996, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9604609.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, April 8, 1996, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9604607.

The Permian Basin Regional Planning Commission Policy Advisory Committee met at 2910 La Force Boulevard, Midland, April 9, 1996, at 9:00 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9604617.

The Red Bluff Water Power Control District Board of Directors met at 111 West Second Street, Pecos, April 8, 1996, at 1:00 p.m. Information may be obtained from Jim Ed Miller, 111 West Second Street, Pecos, Texas 79772, (915) 445-2037. TRD-9604579.

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee met at 603 Navarro, South Texas Building, Fourth Floor Conference Room, San Antonio, April 8, 1996, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9604564.

The San Patricio County Appraisal District Board of Directors met at 1146 East Market, Sinton, April 11, 1996, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9604594.

The South Franklin Water Supply Corporation Board of Directors met at the Office of South Franklin Water Supply Corporation, 4430 Highway 115, South of Mount Vernon, April 9, 1996, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9604589.

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Meetings Filed April 3, 1996

The Austin Transportation Study Policy Advisory Committee met at the Joe C. Thompson Conference Center, 26th and Red River-Room 2.102, Austin, April 8, 1996, at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088-Annex, Austin, Texas 78767, (512) 499-2275. TRD-9604673.

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, April 9, 1996, at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9604707.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District #1 Board of Directors met at 221 Highway 132, Natalia, April 8, 1996, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9604694.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, April 8, 1996, at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9604639.

The Concho Valley Council of Governments Executive Committee met at 5014 Knickerbocker Road, San Angelo, April 10, 1996, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9604693.

The Education Service Center, Region V Board met at 2295 Delaware Street, Beaumont, April 10, 1996, at 1:00 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703-4299, (409) 838-5555. TRD-9604691.

The Education Service Center, Region X Board of Directors met at 400 East Spring Valley Road, Richardson, April 10, 1996, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, (214) 231-6301. TRD-9604680.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, April 16, 1996, at 9:00 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9604702.

The Gregg Appraisal District Board of Directors met at 2010 Gilmer Road, Longview, April 9, 1996, at 11:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9604666.

The Lee County Appraisal District Appraisal Review Board met at 218 East Richmond Street, Giddings, April 10, 1996, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9604704.

The San Antonio-Bexar County Metropolitan Planning Organization (Revised Agenda.) Technical Advisory Committee met at 603 Navarro, South Texas Building, Fourth Floor Conference Room, San Antonio, April 8, 1996, at 1: 30 p.m. Information may be obtained from Charlotte A. Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9604698.

The South Plains Association of Governments Executive Committee met at 1323 58th Street, Lubbock, April 9, 1996, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9604640.

The South Plains Association of Governments Board of Directors met at 1323 58th Street, Lubbock, April 9, 1996, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9604641.

The Taylor County Central Appraisal District Board of Directors met at 1534 South Treadaway, Abilene, April 10, 1996, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800,

Abilene, Texas 79604, (915) 676-9381, Ext. 24 or Fax: (915) 676-7877. TRD-9604631.

The Trinity River Authority of Texas Joint Meeting of Executive and Administration Committees met at 5300 South Collins Street, Arlington, April 10, 1996, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9604678.

The Upper Rio Grande Private Industry Council Upper Rio Grande Private Industry Council Board will meet at 1155 Westmoreland, Suite 211, El Paso, April 10, 1996, at 7:30 a.m. Information may be obtained from Norman R. Haley, 1155 Westmoreland, Suite 235, El Paso, Texas 79925, (915) 772-5627, Ext. 406. TRD-9604686.

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Meetings Filed April 4, 1996

The Andrews Center Board of Trustees, Executive Committee met at the Andrews Center, 2323 West Front Street, Board Room, Tyler, April 9, 1996, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 535-7338. TRD-9604807.

The Archer County Appraisal District Board of Directors met at 101 South Center, Archer City, April 10, 1996, at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9604723.

The Atascosa County Appraisal District Agricultural Advisory Board met at Fourth and Avenue J, Poteet, April 11, 1996, at 8:30 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9604724.

The Austin Travis County MHMR Center Board of Trustees, Human Resources Committee met at 1700 South Lamar Boulevard, Building #1, Suite 102A, Austin, April 10, 1996, at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9604815.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors-Regular Meeting met at 1124A Regal Row, Austin, April 11, 1996, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or Fax: (512) 282-7016. TRD-9604806.

The Bi-County WSC met at Arch Davis Road (FM 2254), Bi-County Office, Pittsburg, April 9, 1996, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9604728.

The Blanco County Appraisal District 1996 Board of Directors met at 200 North Avenue G, Johnson City, April 9, 1996, at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9604734.

The Blanco County Appraisal District Agricultural Advisory Board met at North Avenue G, Courthouse Annex, Johnson City, April 10, 1996, at 9:00 a.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013 or Fax: (210) 868-7330. TRD-9604733.

The Brazos River Authority Oil and Gas Committee met at the Lake Supervisor's Office, Possum Kingdom Lake, April 11, 1996, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9604763.

The Brazos River Authority Lake Management Committee met at the Lake Supervisor's Office, Possum Kingdom Lake, April 11, 1996, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9604762.

The Brazos Valley Development Council Executive Committee met at 1706 East 29th Street, Bryan, April 10, 1996, at 1:30 p.m. Information may be obtained from Mary Stevens, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9604803.

The Cass County Appraisal District Board of Directors met at 502 North Main Street, Linden, April 9, 1996, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9604788.

The Central Texas Council of Governments K-TUTS Technical Committee and K-TUTS Planning Committee met at 333 East Avenue A, Belton, April 11, 1996, at 9:30 a.m. Information may be obtained from A. C. Johnson, P. O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9604786.

The Coleman County Water Supply Corporation Annual Membership met at 214 Santa Anna Avenue, Coleman, April 9, 1996, at 2:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9604797.

The Coleman County Water Supply Corporation Board of Directors met at 214 Santa Anna Avenue, Coleman, April 9, 1996, at 3:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9604798.

The Concho Valley Council of Governments Private Industry Council met at 1911 South Bryant Boulevard, San Angelo, April 10, 1996, at 11: 30 a.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76903, (915) 944-9666. TRD-9604770.

The Dallas Area Rapid Transit Commuter Rail Advisory Committee met in Conference Room C, 1401 Pacific Avenue, Dallas, April 8, 1996, at 2:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9604784.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, April 17, 1996, at 9:00 a.m. Information may be obtained from Kathy Williams, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9604764.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, April 18, 1996, at 4:00 p.m. Information may be obtained from Kathy Williams, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9604765.

The East Texas Council of Governments JTPA Board of Directors met at 1306 Houston Street, Kilgore, April 10, 1996, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9604717.

The East Texas Council of Governments Private Industry Council met at 3800 Stone Road, Kilgore, April 11, 1996, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9604722.

The Education Service Center, Region I Region I ESC Board met at 1900 West Schunior, Edinburg, April 9, 1996, at 7:00 p.m. Information may be obtained from Dr. Roberto Zamora, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9604792.

The Education Service Center, Region XII Board of Directors will meet at 2101 West Loop 340, Waco, April 18, 1996, at 11:00 a.m. Information may be obtained from Harry J. Beavers or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76702-3409, (817) 666-0707. TRD-9604729.

The El Oso Water Supply Corporation Board of Directors met at FM 99, Karnes City, April 9, 1996, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9604768.

The Elm Creek WSC Board met at 508 Avenue E, Moody, April 8, 1996, at 7:00 p.m. Information may be obtained from Debra Williams, 508 Avenue E, Moody, Texas 76557, (817) 853-3838. TRD-9604769.

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, April 11, 1996, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2622. TRD-9604761.

The Hickory Underground Water Conservation District Number 1 Board and Advisors met at 2005 South Bridge Street, Brady, April 11, 1996, at 7:00 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9604809.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, April 11, 1996, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9604732.

The Jones County Appraisal District Appraisal Review Board will meet at 1137 East Court Plaza, Anson, April 12, 1996, at 1:00 p.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9604721.

The Jones County Appraisal District Board of Directors will meet at 1137 East Court Plaza, Anson, April 18, 1996, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9604720.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, April 9, 1996, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9604791.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization met in the LRGVDC Conference Room, 311 North 15th Street, McAllen, April 11, 1996, at 6:30 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas 78501, (210) 682-3481. TRD-9604735.

The Texas Municipal Power Agency (TMPA) Board of Directors met at the Holiday Inn Select LBJ Northeast, Rose Room, 11350 LBJ Freeway at South Jupiter, Dallas, April 11, 1996, at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9604796.

The Nortex Regional Planning Commission Executive Committee will meet at the Galaxy Center #2 North, Suite 200, Conference Room, 4309 Jacksboro Highway, Wichita Falls, April 18, 1996, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281 or Fax: (817) 322-6743. TRD-9604760.

The Northeast Texas Municipal Water District Board of Directors met at Highway 250 South, Hughes Springs, April 8, 1996, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9604757.

The Northeast Texas Rural Rail Transportation District Board met at 100 Jefferson Street, Conference Room, Sulphur Springs, April 10, 1996, at 3:00 p.m. Information may be obtained from Sue Ann Harting, P.O. Box 306, Commerce, Texas 75428-0306, (903) 450-0140. TRD-9604793.

The Wise County Appraisal District Board of Directors met at 206 South State Street, Decatur, April 9, 1996, at 7:30 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9604719.

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Meetings Filed April 5, 1996

The Colorado River Municipal Water District Board of Directors met at 400 East 24th Street, Big Spring, April 10, 1996, at 10:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9604823.

The Dallas Area Rapid Transit Audit Committee met in Conference Room C, 1401 Pacific Avenue, Dallas, April 9, 1996, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9604850.

The Dallas Area Rapid Transit (Revised Agenda.) Audit Committee met in Conference Room C, 1401 Pacific Avenue, Dallas, April 9, 1996, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9604869.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, April 9, 1996, at 1:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9604851.

The Dallas Area Rapid Transit Board met in the Board Room-First Floor, 1401 Pacific Avenue, Dallas, April 9, 1996, at 6:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9604852.

The Manville Water Supply Corporation Board met at Spur 277, Board Room, Coupland, April 11, 1996, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9604853.

The Middle Rio Grande Development Council Executive Committee met at the Uvalde Operations, Conference Room, 209 North Getty Street, Uvalde, April 10, 1996, at 10:00 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9604866.

The Middle Rio Grande Development Council Joint PIC Planning Committee and Board Executive Committee met at the Uvalde Operations, Conference Room, 209 North Getty Street, Uvalde, April 10, 1996, at 3:30 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9604867.

The Texas Political Subdivisions Joint Self-Insurance Funds Board of Trustees met at 4099 Valley View Lane, Dallas, April 11, 1996, at 5: 00 p.m. Information may be obtained from James R. Gresham, P.O. Box 803356, Dallas, Texas 75380, (214) 392-9430. TRD-9604863.

The San Antonio River Authority Special Meeting of Board of Directors met at 100 East Guenther Street, Boardroom, San Antonio, April 10, 1996, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9604827.

The Sulphur-Cypress Soil and Water Conservation District #419 met at 1809 West Ferguson, Suite D, Mt. Pleasant, April 11, 1996, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9604868.

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Meetings Filed April 8, 1996

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, April 16, 1996, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9604877.

The Garza Central Appraisal District Board of Directors will meet at 124 East Main, Post, April 12, 1996, at 1:30 p.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9604880.

The Mills County Appraisal District Board of Directors will meet at the Mills County Courthouse, Commissioners Courtroom-Fisher Street, Goldthwaite, April 16, 1996, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9604875.

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Automobile Theft Prevention Authority

Request for Applications under the Automobile Theft Prevention Authority Fund

Notice of Invitation for Applications: The Automobile Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Theft Prevention Authority (ATPA) Fund. This grant cycle will be one year in duration, and will begin on September 1, 1996. One or more of the following types of projects may be awarded, depending on the availability of funds: Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding. Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses. Grants could include funding of efforts to implement changes in the prosecution of auto thieves and forfeiture of their property. Prevention Projects, to test experimental equipment which is considered to be designed for theft deterrence. Reducing the Sale of Stolen Parts Projects, for the development of vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen parts. Education/Information Projects, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants: An applicant may be county, commissioner precinct, general or home rule city, school district, university, or state agency; or it may be a department, division, or office within the governmental unit having authority and responsibility for carrying out the proposal to be funded. An applicant may also be a neighborhood, community organization or business organization, or a department, division or office within such an organization having authority and responsibility for carrying out the proposal to be funded.

Contact Person: Detailed specifications, including selection process and schedule for regional workshops for applicants will be made available through ATPA. Contact Linda Young, Executive Director, Auto Theft Prevention Authority, One Commodore Plaza, 800 Brazos Street, Suite 620, Austin, Texas 78701, (512) 494-0039.

Application Workshops: April 23, 1996, Houston, 9:30 a.m.-12:00 noon, Wyndham Warwick Hotel, 5701 Main Street, Imperial Room, (713) 526-1991; April 24, 1996, Brownsville, 1:30-4:00 p.m., Holiday Inn Fort Brown Hotel, 1900 East Elizabeth Street, Calvary Room, (210) 546-2201; May 1, 1996, El Paso, 1:30-4: 00 p.m., Hilton, 2027 Airway Boulevard, Acacia Room, (915) 778-4241; May 2, 1995, Odessa, 1:30-4:00 p.m., Radisson, 5200 East University, Alamo I Room, (915) 368-5885; May 10, 1996, Arlington, 9:30 a.m.-12:00 noon, North Central Texas Council of Governments, 616 Six Flags Drive, Suite 200, Committee Room; (817) 261-8200; May 17, 1996, San Antonio, 9:30 a.m.-12:00 noon, Holiday Inn Riverwalk-North, 110 Lexington, Brazos A&B Room, (210) 223-9461.

Closing Date for Receipt of Applications: The original and eight copies of the proposal must be received by the Automobile Theft Prevention Authority by 5 p.m., June 4, 1996 or postmarked by June 4, 1996. If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed previously. If delivered, please leave application with the contact person (or designee) at the address listed. Selection Process: Applications will be rated according to the standard point system in the application kit by the ATPA executive director and by an Application Review Committee composed of the seven members of the Automobile Theft Prevention Authority, or their designees. Final selection may depart from the standard rating. Grants will be awarded on or before September 1, 1996.

Issued in Austin, Texas, on April 2, 1996.

TRD-9604605 Linda Young
Executive Director
Automobile Theft Prevention Authority

Filed: April 2, 1996

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Comptroller of Public Accounts

Notice of Consultant Contract Awards

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract awards.

The related Request for Proposal was published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 903).

The consultants will assist the Comptroller in conducting a management and performance review of the Houston Independent School District, and will produce periodic progress reports and assist in producing a final report. These reports shall include analyses and recommendations to contain costs, improve management strategies, and to promote better education through school administration efficiency. The successful proposers will be expected to begin performance of the contracts on or about April 8, 1996.

The contracts are awarded to the following entities: Group I–Empirical Management Services, Inc., 8323 Southwest Freeway, Suite 510, Houston, Texas 77074-1609. The total dollar value of the contract is not to exceed $156,984 in the aggregate. Groups II, III, and IV–Coopers & Lybrand L.L.P., 600 Congress Avenue, Suite 1800, Austin, Texas 78701. The total dollar value of the contract is not to exceed $456,458 in the aggregate. Group V–Neal & Gibson, 101 West 6th Street, #702, Austin, Texas 78701. The total dollar value of the contract is not to exceed $119,900 in the aggregate. The contracts were executed on April 1, and April 3, 1996, respectively and all extend through December 31, 1996. These entities are to assist the Comptroller in preparing final reports which will be made public on or about October 23, 1996.

Issued in Austin, Texas, April 8, 1996.

TRD-9604886 Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: April 8, 1996

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1. 04).

[graphic]

Issued in Austin, Texas, on April 1, 1996.

TRD-9604588 Leslie L. Pettijohn
Commissioner

Filed: April 2, 1996

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Texas Department of Criminal Justice

Correction of Error

The Texas Department of Criminal Justice adopted new §151.21, concerning prohibition on carrying weapons. The rule appeared in the March 26, 1996, issue of the *Texas Register* (21 TexReg 2476).

In subsection (a)(3) the agency inadvertently omitted the word "and" the sentence should read as follows:

"(3) In addition to the prohibitions in paragraphs (1) and (2) of this subsection, an employee of TDCJ is prohibited from carrying a firearm in a state-owned vehicle, and except as provided in the Use of Force Plan or other applicable agency policies, no employee may use or carry a firearm on his person or in his vehicle while on duty."

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Texas Education Agency

Correction of Errors in the February 27, 1996, Issue of the *Texas Register*

The following errors appear in the February 27, 1996, issue of the *Texas Register*.

On page 1450, an error as published appears in the signature block for proposed new §§89.1001. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

Also on page 1450, an error as published appears in proposed new §§89. 1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1070, 89.1075, 89.1080, 89.1085, 89.1090, 89. 1095, 89.1100, 89.1105, and 89.1110. The undesignated head "Clarification of Provisions in Federal Regulations and State Law" was omitted from the header information.

On page 1454, an error as published appears in proposed new §89.1080. The section number and title, which run into §89.1075(e), should appear on a separate line to begin a new paragraph.

On page 1461, an error as published appears in the signature block for proposed new §§89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89. 1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1070, 89.1075, 89.1080, 89.1085, 89.1090, 89.1095, 89.1100, 89.1105, and 89.1110. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

Also on page 1461, an error as published appears in proposed new §89.1121 and §89.1125. The undesignated head "Special Education Funding" was omitted from the header information.

On page 1462, an error as published appears in the signature block for proposed new §89.1121 and §89.1125. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

Also on page 1462, an error as published appears in proposed new §89.1131. The undesignated head "Special Education and Related Service Personnel" was omitted from the header information.

On page 1463, an error as published appears in the signature block for proposed new §89.1131. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

Also on page 1463, an error as published appears in proposed new §89.1141. The undesignated head "Regional Education Service Center Special Education Programs" was omitted from the header information.

Also on page 1463, an error as published appears in the signature block for proposed new §89.1141. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

Also on page 1463, an error as published appears in proposed new §§89. 1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, and 89. 1190. The undesignated head "Hearings Concerning Students with Disabilities Under the Individuals with Disabilities Education Act" was omitted from the header information.

On page 1465, an error as submitted appears in proposed new §89.1185. In the last sentence of subsection (m), a section symbol was inadvertently omitted from the citation "... Texas Government Code, §2001.051 et seq." The citation should read "... Texas Government Code, §§2001.051 et seq."

On page 1466, an error as submitted appears in proposed new §89.1190. In subsection (c), the phrase "... described in subsection (b) of this **subsection** ..." should read "... described in subsection (b) of this **section** ..."

Also on page 1466, an error as published appears in the signature block for proposed new §§89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89. 1180, 89.1185, and 89.1190. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

On page 1468, an error as submitted appears in proposed new §89.1210. A period should appear after the first word "Cognitive" in subsection (c)(3).

On page 1470, several errors as submitted appear in proposed new §89.1225. The phrase "... **an** TEA-approved ..." appears three times in subsection (a)(2) and one time in subsection (h)(2). In each instance, the phrase should read "... **a** TEA-approved ..."

On page 1472, an error as submitted appears in proposed new §89.1250. In the second sentence of paragraph (4)(A), the word "Americas" in the phrase "... Improving Americas Schools Act ..." should read "America's."

On page 1473, an error as submitted appears in proposed new §89.1255. In the first sentence of subsection (d), a space should appear in the phrase "... (TEA)shall monitor ..." between the closing parenthesis and the word "shall."

Also on page 1473, an error as published appears in the signature block for proposed new §§89.1201, 89.1205, 89.1210, 89.1215, 89.1220, 89.1225, 89. 1230, 89.1235, 89.1240, 89.1245, 89.1250, 89.1255, 89.1260, and 89.1265. The title of the certifying official is incorrectly identified as "**Assistant** Commissioner, Policy Planning and Research." The correct title is "**Associate** Commissioner, Policy Planning and Research."

Issued in Austin, Texas, on April 2, 1996.

TRD-9504611 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: April 2, 1996

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Correction of Errors in the March 12, 1996, Issue of the *Texas Register*

The following errors appear in the March 12, 1996, issue of the *Texas Register*.

In the table of contents for Part I of the issue, on page 1927, an error as published appears in the listing for proposed new §53.1. The section is cited erroneously as "**40** TAC §53.1." The correct citation is "**19** TAC §53.1."

On page 1952, an error as published appears in proposed new §53.1. In the header information, the section is cited erroneously as "**40** TAC §53. 1." The correct citation is "**19** TAC §53.1."

On page 1955, an error as submitted appears in proposed new §§74.11-74. 14. In §74.11(c)(3), the word "Physic" should read "Physics."

In the same proposal, on page 1958, an error as submitted appears in the first sentence of §74.13(d)(7)(C). The word "credit" should read "credits."

On page 1961, an error as submitted appears in proposed new §§74.21-74. 30. In the last sentence of §74.27(b), the word "courses" should read "course."

On page 1970, an error as published appears in proposed new §§89.1-89.5, 89.21-89.33, 89.41-89.48, 89.61-89.63, and 89.71. In the header information, the title of the chapter was omitted. The title of Chapter 89 is "Adaptations for Special Populations."

On pages 2076 and 2077, one identical error as published occurs in each of the submissions under Chapter 109. In each case, the proposal publication date is listed incorrectly as "January 12, **1995**." The correct date is "January 12, **1996**."

On page 2076, an error as published appears in the adopted repeal of §§109.21-109.24. The header information for this submission was omitted. The subchapter should be identified as "Subchapter B. Central Education Agency Audit Functions," and the sections should be cited as "19 TAC §§109.21-109. 24."

On page 2077, an error as published appears in adopted new §109.1. The header information for this submission was omitted. The subchapter should be identified as "Subchapter A. Budgeting, Accounting, Financial Reporting, and Auditing for School Districts," and the section should be cited as "19 TAC §109.1."

Issued in Austin, Texas, on April 2, 1996.

TRD-9504610 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: April 2, 1996

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Employees Retirement System of Texas

Request for Information (RFI) for Independent Audit Services

Notice of Invitation for Responses to Request for Information

The Employees Retirement System of Texas (the System) is requesting information from independent certified public accountants (the Auditor) to perform a financial audit of the System for the fiscal year ended August 31, 1996. The selected Auditor will be awarded an initial contract of one year, with the System having the option to extend the contract period.

Please refer any requests for information about this Request for Information (RFI) to Darrell J. Leslie, Director of Accounting, P.O. Box 13207, Austin, Texas 78711-3207, (512) 867-3224, FAX (512) 867-3491.

The System will not be responsible for expenses incurred in preparing and submitting the responses to the RFI. Such costs will not be included in the response to the RFI.

The Auditor will submit 10 copies of the completed response to the RFI by 3: 00 p.m. on April 22, 1996, to the Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, to the attention of Karen Moore, Purchasing Officer, or delivered to ERS Building Annex, Room 11, 18th and Brazos, Austin, Texas.

If the response to the RFI will be submitted by mail, it must be received by the System no later than the date and time set out previously. Hand carried responses to the RFI may be delivered between 8:00 a.m. and 3:00 p.m. through the date set out previously. All responses to the RFI will be in a sealed envelope with the respondent's name, address and RFI subject shown on the outside.

Responses to the RFI will be reviewed by the System staff. Based on this review, interviews may be scheduled with the Auditors considered to be the best qualified.

Responses to the RFI will be evaluated using 3 sets of criteria. The Auditors meeting the mandatory criteria will have their responses to the RFI evaluated and scored for both technical qualifications and price. The following represent the selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

a. The Auditor is independent and licensed to practice in Texas.

b. The Auditor's professional personnel have received adequate continuing professional education within the preceding two years.

c. The firm has no conflict of interest with regard to any other work performed by the Auditor for the System.

d. The Auditor submits a copy of its most recent external quality control review report, and the Auditor has a record of quality audit work.

e. The Auditor adheres to the instructions in this request for information on preparing and submitting the response to the RFI.

2. Technical Qualifications

a. Expertise and Experience

i. Extent and quality of retirement system auditing experience, based on information provided by the Auditor as well as references of former and present clients;

ii. The Auditor's ability and willingness to meet the requirements and needs of the System with respect to the audit as outlined in this RFI and as demonstrated in the response to the RFI; and

iii. The quality of the Auditor's professional personnel to be assigned to the engagement and the quality of the Auditor's management support personnel to be available for technical consultation.

b. Audit Approach

i. Adequacy of proposed staffing plan for various segments of the engagement;

ii. Adequacy of sampling techniques; and

iii. Adequacy of analytical procedures

3. Price

a. Proposed cost as evidenced by billing rates and hours budgeted for each type of position. Although a significant factor, fees charged may not be the dominant factor.

b. The award of any contract will be made to the Auditor which, in the opinion of the System, is best qualified based on the criteria listed previously.

4. Oral Presentations

a. At the discretion of the System, the Auditors submitting responses to the RFI may be requested to make oral presentations as part of the evaluation process.

b. In all interviews held with the Auditor, the proposed audit partner and manager for the System's engagement and the individual who will have on-site responsibility for the audit (if a person other than the partner or manager) must be present.

5. Final Selection. Final selection of the Auditor will be made by the System Board of Trustees.

6. Right to Reject

a. Submission of a response to the RFI indicates acceptance by the Auditor of the conditions contained in the request for information unless clearly and specifically noted in the response to the RFI submitted and confirmed in the contract between the System and the Auditor selected.

b. The System reserves the right to reject any and all responses to the RFI submitted without any obligation or payment for costs incurred by proposing Auditors. The System reserves the right, where it may serve the System's best interest, to request additional information or clarification from any proposer, to allow corrections of errors or

omissions, or to discuss points in the response to the RFI before and after submission, all of which may be used in forming a recommendation. The System reserves the right to waive any and all formalities contained within the request for information except for the deadline for filing. Responses to the RFI received late will not be considered.

c. The System reserves the right to retain each response to the RFI submitted and to use any aspect of the response to the RFI regardless of whether that respondent is selected.

7. Open Records

a. Following the award of a contract, responses to this RFI are subject to release as public information unless the response or specific parts of the response can be clearly shown to be exempt from the Texas Open Records Act. Auditors are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard proprietary information. The System assumes no obligation or responsibility for asserting legal arguments on behalf of the Auditor.

b. If an Auditor believes that a proposal or parts thereof are confidential, then the Auditor must so specify. The Auditor must stamp in bold red letters the term "CONFIDENTIAL" on that part of the proposal which the Auditor considers confidential. The Auditor must submit in writing specific detailed reasons, including relevant legal authority, stating why the Auditor believes material to be confidential. Vague and general claims will not be accepted. The System will be the sole judge as to whether a claim is general and/or vague in nature. All proposals and parts of proposals which are not marked confidential will be automatically considered public information after the contract is awarded. The successful proposal may be considered public information even though parts are marked confidential.

c. Copyrighted proposals are unacceptable and will be disqualified as non-responsive.

Issued in Austin, Texas, on April 5, 1996.

TRD-9604835 Charles D. Travis
Executive Director
Employees Retirement System

Filed: April 5, 1996

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on March 29, 1996.

TRD-9604592 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: April 2, 1996

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Maternal and Child Health Block Grant Funds/Request for Proposal

The Texas Department of Health announces the availability of approximately $42,000 in Maternal and Child Health Block Grant funds for the provision of preventive and primary health services to a public school population. Funds are available for fiscal year 1996, beginning May 1, 1996, and ending August 31, 1996, to fund one program to continue school-based health services in Schertz-Cibolo-Universal City ISD and Marion ISD.

Qualifying programs must:

1) demonstrate an unmet need for health services in the student population to be served;

2) be planned and directed by a local advisory body which includes but is not limited to parents of students served, school administrators, school nurses, local physicians, and representatives of local agencies serving students;

3) be supervised and monitored by a physician who has expertise in the care of children and adolescents;

4) demonstrate referral linkages for provision of emergency care and other specialized acute and chronic health care services, and mechanisms for the efficient and confidential exchange of medical information among providers;

5) provide assurance that students will not receive services at the school health center unless a parent or guardian executes a consent form approved by the advisory body.

Applicants will be judged on the basis of proposal narratives and budget documents.

Applications must be received by TDH on or before April 26, 1996. Requests for applications and other inquiries should be directed to: School Health Program, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Phone inquiries may be directed to John R. Dillard, M.Ed., at (512) 458-7111, ext. 2782.

Issued in Austin, Texas, on April 5, 1996.

TRD-9604891 Susan Steeg, Office of General Counsel
General Counsel
Texas Department of Health

Filed: April 8, 1996

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program–Notice of Funding Availability

The Texas Department of Housing and Community Affairs (Department), through its HOME Investment Partnerships (HOME) Program, is authorized to provide grants to finance, acquire, rehabilitate and develop affordable, decent, safe, and sanitary housing for low and very-low income persons and families. The Department will make approximately $27,000,000 available as grants to eligible applicants to rehabilitate or reconstruct owner-occupied housing; construct single-family housing; provide downpayment, closing cost, and gap-financing assistance to homebuyers; and provide rental assistance and security deposits to tenants. The State HOME Program allocation includes funds from the FY '95 allocation and funds from the partial FY '96 allocation. Should HUD provide the remaining FY '96 allocation, the State HOME Program allocation will increase accordingly.

Applications can be obtained by attending one of four application workshops (Notice published in the March 19, 1996, issue of the *Texas Register*, (21 TexReg 2316-1317)), or by request. These funds will be distributed according to the rules and procedures as set forth in the State of Texas HOME Program Rules.

Eligible applicants: (further defined in the application guidelines)

Local Units of Government

Public Housing Agencies

State-Certified Community Housing Development Organizations

Nonprofit Organizations

Private For-profit Entities and

Estimated Allocations:

Total Homebuyer Assistance $5,500,000

Region 1 $500,000

Region 2 $500,000

Region 3 $500,000

Region 4 $500,000

Region 5 $500,000

Region 6 $500,000

Region 7 $500,000

Region 8a $500,000

Region 8b $500,000

Region 9 $500,000

Region 10 $500,000

Special Needs Set-Aside $1,000,000

Total Owner-Occupied Housing Assistance $6,000,000

Region 1 $450,000

Region 2 $450,000

Region 3 $450,000

Region 4 $450,000

Region 5 $450,000

Region 6 $450,000

Region 7 $450,000

Region 8a $475,000

Region 8b $475,000

Region 9 $450,000

Region 10 $450,000

Special Needs Set-Aside $1,000,000

Total Tenant-Based Rental Assistance $2,000,000

Special Needs Set-Aside $1,000,000

Total Interim Construction Assistance $5,500,000

CHDO Set-Aside $3,000,000

Allocations were determined by the 1996 Consolidated Plan. Funding for Owner-Occupied Housing Assistance and Homebuyer Assistance will be awarded through regional competition. Tenant-Based Rental Assistance and Interim Construction Assistance will be awarded through statewide competition. A portion of the Homebuyer Assistance will be awarded through direct award.

The 10% Special Needs set-aside is only for those applicants with experience working with the special needs population. All activities are eligible under the Special Needs Set-Aside. The 15% CHDO set-aside is only for state-certified CHDOs. Interim Construction Assistance is a CHDO Set-Aside eligible activity.

Applications must be received by the Department no later than 5:00 p.m., June 3, 1996. Applications sent by facsimile will not be accepted. Applicants are required to submit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of $25.00 per application. Please send check, cashier's check or money order; **do not send cash**. The application fee should be paid at the time of submission. For additional information, contact the HOME Program at (512) 475-3109.

Please mail your applications to the address listed as follows.

Texas Department of Housing and Community Affairs

HOME Investment Partnership Program

P.O. Box 13941

507 Sabine, Suite 900

Austin, Texas 78711-3941

Issued in Austin, Texas, on April 3, 1996.

TRD-9604664 Larry Paul Manley
Executive Director

Filed: April 3, 1996

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Notice of Public Hearing Multi-Family Housing Revenue Bonds Dallas-Fort Worth Apartments Project) Series 1996

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs in the 4th Floor Board Room of its offices, located at 507 Sabine, Austin, Texas, at 10:00 a.m. on April 29, 1996 with respect to an issue of multi-family residential rental project revenue bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount not to exceed $22,150,000, by the Texas Department of Housing and Community Affairs (the "Issuer") and the proceeds of which will be loaned to AOF\DFW Affordable Housing Corporations, a Texas nonprofit corporation and a subordinate of The American Opportunity Foundation, Inc., to be formed as a Texas nonprofit corporation, to finance the acquisition and rehabilitation of four multi-family housing projects (collectively, the "Project") described as follows: Dakota Apartments, 8403 Mandeville Lane, Dallas, Texas 75231 (584 units); Ridgmar Apartments, 2001 Aden Road, Fort Worth, Texas 76116 (232 units) ; Sterling Point Apartments, 7407 Fair Oaks Avenue, Dallas, Texas 75231 (149 units); and Woodcreek Apartments, 8215 Meadow Road, Dallas, Texas 75231 (300 units). The Project will be owned by AOF\DFW Affordable Housing Corp. and will be initially operated and managed by the Tesco Properties Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Shawn Jamail at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 474-7303.

Persons who intend to appear at the hearing and express their views are invited to contact Shawn Jamail in writing in advance of the hearing. Any interested persons unable to attend the hearing my submit their views in writing to Shawn Jamail prior to the date scheduled for the hearing.

This notice is published and the described hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income of the owners thereof of the interest on the Bonds, other than the taxable bonds, for federal income tax purposes.

Individuals who require auxiliary aids in order to attend this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 4, 1996.

TRD-9604767 Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs

Filed: April 4, 1996

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Notice of a Public Hearing Multi-Family Housing Revenue Bonds (Harbors and Plumtree Apartments Project) Series 1996

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs in the Fourth Floor Board Room of its offices, located at 507 Sabine, Austin, Texas, at 10:00 a.m. on April 29, 1996 with respect to an issue of multi-family residential rental project revenue bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount not to exceed $13,050,000, by the Texas Department of Housing

and Community Affairs (the "Issuer") and the proceeds of which will be loaned to AOF\DFW Affordable Housing Corp., a Texas nonprofit corporation and a subordinate of The American Opportunity Foundation, Inc., to be formed as a Texas nonprofit corporation, to finance the acquisition and rehabilitation of four multi-family housing projects (collectively, the "Project") described as follows: The Harbors Apartments, 7550 South Westmoreland Road, Dallas, Texas 75237 (264 units) and Plumtree Apartments, 7676 South Westmoreland Road, Dallas, Texas 75237 (216 units). The Project will be initially operated and managed by Insignia Management Group.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Shawn Jamail at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 474-7303.

Persons who intend to appear at the hearing and express their views are invited to contact Shawn Jamail in writing in advance of the hearing. Any interested persons unable to attend the hearing my submit their views in writing to Shawn Jamail prior to the date scheduled for the hearing.

This notice is published and the described hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income of the owners thereof of the interest on the Bonds, other than the taxable bonds, for federal income tax purposes.

Individuals who require auxiliary aids in order to attend this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 4, 1996.

TRD-9604766 Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs

Filed: April 4, 1996

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Notice of Request for Proposal for Audit Services

The Texas Department of Housing and Community Affairs (TDHCA) seeks proposals in response to its Request for Proposal (RFP) from firms with the qualifications and experience required to perform the year-end audits of TDHCA. The independent auditor should have work experience and familiarity with taxable and tax-exempt housing bonds and federal grants. The audit must be unlimited in scope and cover all operations and activities of TDHCA in such a way that the audit report addresses TDHCA's financial statements taken as a whole.

The trust indentures of TDHCA's outstanding bonds require that the annual audit of the Revenue Bond Enterprise Fund be conducted by a **nationally-recognized** independent auditor. Participation of local and/or minority firms through joint venture arrangements with nationally-recognized firms is encouraged.

The audit must be conducted by an independent auditor as defined by and in accordance with generally-accepted auditing standards, Government Auditing Standards, issued by the Comptroller General of the United States; and Office of Management and Budget Circular A-128, Audits of State and Local Governments.

Period of the Audit-The focus period of audit services requested is for three fiscal years: September 1, 1995-August 31, 1996; September 1, 1996-August 31, 1997; September 1, 1997-August 31, 1998 with an option for renewal based on satisfactory performance for fiscal years September 1, 1998-August 31, 1999; and September 1, 1999-August 31, 2000.

Date Requirements

1. Pursuant to Article VII, §713.3 of TDHCA's bond indenture covenants, "The agency shall annually, within 150 days after the close of each bond year, file with the Trustee, and otherwise as provided by law, a copy of an annual report for such year, accompanied by an accountant's certificate, including the following statements in reasonable detail: a statement of financial position as of the end of such year, a statement of revenues and agency expenses, and a summary with respect to each fund and account established under the indenture of the receipts therein and disbursements therefrom during such year and the amounts held therein at the end of such year."

2. In accordance with TDHCA's enabling legislation, Texas Government Code, Chapter 2306, §2306.074, "The state auditor or a certified public accountant shall audit the department's books and accounts each fiscal year and file a copy of the audit with the governor and the legislature on or before March 1 of each year."

3. However, current Comptroller and State Auditor reporting requirements are such that the Revenue Bond Enterprise Fund audit and General Purpose Financial Statements audit need to be completed and issued by December 31 and January 31, respectively.

To obtain a copy of the complete RFP, call Shirley Berry at TDHCA, (512) 475-3937. Responses to this RFP for Audit Services must be submitted to TDHCA by 5:00 p.m., Friday, April 19, 1996.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604504 Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs

Filed: April 1, 1996

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Notice of Public Hearings

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") is hereby giving notice of the public comment period to be held for the **1996 State Low Income Housing Plan and Annual Report** Draft for Public Comment. A 30 public comment period will commence on April 15, 1996 and close on May 14, 1996.

1996 State Low Income Housing Plan and Annual Report is mandated by §§2306.072-2306.0723 of the Texas Government Code. The planning document required by the statute provides state policy makers (as well as local government, housing providers and citizens) one plan which addresses the full spectrum of the State's housing needs, housing resources and patterns of allocation.

The Plan, in conjunction with the Consolidated Plan mandated by the U.S. Department of Housing and Urban Development, provides: an overview of statewide housing needs; information on 135 federal, state and local housing programs available to citizens of the State of Texas; funding allocation amounts for approximately $655,000,000 in housing program funds; a resource allocation plan for the various programs administered by the Texas Department of Housing and Community Affairs; and a report on the allocation patterns of the Department's resources in the previous program year.

Drafts of the 1996 State Low Income Housing Plan and the Annual Report will be available for inspection during normal business hours from April 15 to May 14, 1996 at the following locations:

Abilene: West Central Texas COG; 1025 East North Tenth; Jim Compton; (915) 672-8544; **Alpine**: Sul Ross State University; Bryan Wildenthal Memorial; Library; Circulation Desk; Sherry Williams; (915) 837-8417; **Amarillo**: Panhandle Regional Planning Commission; 2736 W. 10th Street; Courtney Sharp; (806) 372-3381; **Arlington**: North Central Texas COG; 616 Six Flags Drive, Suite 200; Joanne Jackson; (817) 640-3300; **Austin**: Texas State Library; 1201 Brazos; Reading Room 300; Diana Houston; (512) 463-5426; **Austin**: Capital Area Planning Council; 2520 IH-35S; Suite 100; Lee Cain; (512) 443-7653; **Baytown**: Lee College Library; 511 South Whiting Street; D.G. Owens; (713) 425-6497; **Belton**: Central Texas COG; 100 South East Street; Alyse Flannary; (817) 939-5724; **Brownsville**: University of Texas Pan American; Serials Department; 1825 May Street; Eva Jerez; (210) 982-0295; **Brownwood**: Howard Payne University, Walker Memorial Library; 1000 Fisk Avenue; Nancy Anderson; (915) 649-8610; **Bryan**: Brazos Valley Development Council; 1706 East 29th Street; Robert Grisham; (409) 775-4244; **Canyon**: West Texas A&M University Library; Cornette; Library;Documents Department; Bennett Pomsford; (806) 656-2204; **Carrizo Springs**: Middle Rio Grande Development Council; 1904 North First Street; Anne Vaughn; (210) 876-3533; **College Station**: Texas A&M University; Sterling C. Evans Library; Reference Department; Julia Rhodes; (409) 845-8111; **Commerce**: East Texas State University; James Gilliam Gee Library; Government Documents; Texas Station; (903) 866-5726; **Corpus Christi**: Coastal Bend COG, 2910 Leopard Street; Richard Bullock; (512) 883-5743; **Corsicana**: Navarro College; Learning Resource Center; 3200 West 7th Avenue ; Jorene Helms; (903) 874-6501; **Dallas**: Dallas Public Library, Government Publications Division.; 1515 Young Street; Kathy Cottage; (214) 670-1468; **Denton**: University of North Texas Willis Library; 1500 Highland; Doris Chipman; (817) 565-2413; **Edinburg**: University of Texas Pan American at Edinburg Library; Government Documents Division; Reserve Desk, 1201 West University Drive; David Mizener; (210) 381-3304; **El Paso**: Rio Grande COG; 1100 North Stanton; Suite 610; Justin Ormsby; (915) 533-0998; **Fort Worth**: Forth Worth Public Library; 300 Taylor Street; Reference Department; (817) 871-7701; **Galveston**: Rosenberg Public Library; Reference Section, 2310 Sealy Avenue; Robert Lipscomb; (409) 763-8854; **Garland**: Nicholson Memorial Library System; 625 Austin Street; Betty Landen; (214) 205-2543; **Houston**: Houston Public Library; Texas Room; 500 McKinney; Carol Johnson; (713) 236-1313; **Huntsville**: Sam Houston State University; Newton Gresham Library; Government Documents; Don H. Ko; (409) 294-1629; **Irving**: Irving Public Library System; 801 West Irving Boulevard; Lynn Baker; (214) 721-2606; **Jasper**: Deep East Texas COG; 274 East Lamar; Walter Diggels; (409) 384-5704; **Kilgore**: East Texas COG; 3800 Stone Road; Glenn Knight; (903) 984-8641; **Kingsville**: Texas A&M University; Jernigan Library; 105 University Avenue; Sylvia Martinez; (512) 595-3416; **Laredo**: South Texas Development Council; 1718 Calton Road; Suite 14; Myrna Garza; (210) 722-3995; **Longview**: Longview Public Library, Adult Services Unit, 222 West Cotton; Ron Heezen; (903) 237-1353; **Lubbock**: South Plains Association of Governments; 1323 58th Street; Nancy Banuelos; (806) 762-8721; **McAllen**: Lower Rio Grande Valley Development Council; 311 North 15th Street; Terrie Salinas; (210) 682-3481; **Midland**: Permian Basin Regional Planning Commission, 2910 La Force Blvd.; Terry Moore; (915) 563-1061; **Nacogdoches**: Stephen F. Austin Library; Steen Library; Documents Department; Kayce Halstead; (409) 468-4307; **Odessa**: University of Texas Permian Basin Library, 4901 East University Blvd.; Steve Pettijohn; (915) 552-2000; **Port Arthur**: South East Texas Regional Planning Commission; 3501 Turtle Creek Drive; Suite 108; Fred Hellen; (409) 727-2384; **Prairie View**: Prairie View A&M University; John B. Coleman Library; Doc. Department; Phyllis Martin; (409) 857-2612; **Richardson**: UT at Dallas; McDermott Library; Government Documents; 2601 North Floyd Rd.; Paula Sutherland; (214) 883-2918; **San Angelo**: Concho Valley COG; 5002 Knickerbocker; Robert Weaver; (915) 944-9666; **San Antonio**: Alamo Area COG; 118 Broadway; Suite 400; Al J. Notzon III; (210) 225-5201; **San Marcos**: Southwest Texas State University Library; Documents Div.; Alkek Bldg.; Ross Dalton; (512) 245-3686; **Seguin**: Texas Lutheran College; Blumberg Memorial Library; 1000 West Court St.; Vicki Eckhardt; (210) 372-8100; **Sherman**: Austin College; Abel Library Center; 900 North Grand; Beth Pettit; (903) 893-2161; **Sherman**: Texoma COG; 3201 Texoma Pkwy; Suite 200; Frances Pelli; (903) 893-2161; **Stephenville**: Tarlton State University; Dick Smith Library; Pat Cockrell; (817) 968-9937; **Wake Village**: Ark-Tex COG; 911 North Bishop; Bldg A; Jim Fisher; (903) 832-8636; **Tyler**: UT at Tyler; Muntz Library; Document Dpt; 3900 University Blvd; Marie Crow; (903) 566-7344; **Victoria**:Golden Crescent Regional Planning Commission; 568 Big Bend Dr.; Mary Ann Wyatt; (512) 578-1587; **Waco**: Heart of Texas COG; 300 Franklin Avenue; Leon Wilhite; (817) 756-7822; **Wichita Falls**: Nortex Regional Planning Commission; 4309 Jackboro Highway; Suite 200; Debra Melburn; (817) 322-5281

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941. For more information or to order draft copies please contact the Housing Resource Center at (512) 475-3976.

Notice of public hearings

Public hearings for the 1996 State Low Income Housing Plan and Annual Report Drafts for Public Comment will be held as follows:

Monday, April 22, 1996 10:00 am Location: Houston (Reservations pending. Locations will be published in the Friday, April 12, 1996 edition of the Houston Chronicle.)

Tuesday, April 23, 1996 10:00 am Location: (Reservations pending. Locations will be published in the Friday, April 12, 1996 edition of the Dallas Morning News.)

Monday, April 29, 1996 10:00 am Location: Austin TDHCA 4th Floor Board Room 507 Sabine Austin, Texas

78711-3941

For more information please call the Housing Resource Center at (512) 475-3975.

Individuals who require auxiliary aids in order to attend this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1-800-735-2989 at least two days prior to the hearing you will be attending.

Issued in Austin, Texas, April 4, 1996.

TRD-9604881 Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs

Filed: April 8, 1996

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Texas Department of Human Services

Correction of Errors

The Texas Department of Human Services submitted an Open Solicitation for Crane County, which appeared in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2317).

On page 2318, the sentence read, "The written reply must be received by TDHS by 5:00 p.m., April 8, 1996." The sentence should read, "The written reply must be received by TDHS by 5:00 p.m., April 18, 1996."

On page 2318, the sentence read, "The primary selection process will be completed on April 8, 1996." The sentence should read, "The primary selection process will be completed on April 29, 1996."

The Texas Department of Human Services submitted a proposed amendment to §19.1807. The rule appeared in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2213).

The preamble contained an error as published, it should read as follows.

"The Texas Department of Human Services (DHS) proposes to amend §19.1807, concerning rate setting methodology, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to allow additional nursing facility Medicaid recipients to participate in the ventilator-dependent supplemental reimbursement. The amendment will allow facilities to receive supplemental reimbursement for recipients who require less than continuous ventilation. Supplemental reimbursements currently are limited to residents who qualify for the Texas Index for Level of Effort (TILE) heavy-care case mix classification and require continuous artificial ventilation in order to sustain life. This amendment will allow residents in any TILE classification to participate if they receive at least six consecutive hours of ventilation daily. For individuals requiring six consecutive hours or more but less than continuous ventilation facilities will be eligible to receive 40% of the total ventilator-dependent supplemental reimbursement.

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration.

Application for a name change in Texas for Frankona America Life Reassurance Company, a foreign life, accident and health company. The proposed new name is ERC Life Reinsurance Corporation. The home office is in Jefferson City, Missouri.

Application for a name reservation in Texas for Orthopedic HealthCare of Texas, Inc., a domestic health maintenance organization. The home office is in Hurst, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on April 2, 1996.

TRD-9604628 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 2, 1996

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Notice

The Commissioner of Insurance, or his designee, will consider approval of two rate filing requests outside the promulgated flexibility band filed by Indiana Lumbermens Mutual Insurance Company pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing rates of plus 40% for both liability and physical damage for commercial automobile, and plus 40% for all classifications and territories for private passenger automobile.

Copies of the filings may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

These filings are subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe Boulevard, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on April 3, 1996.

TRD-9604638 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 3, 1996

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2218 on April 18, 1996 at 10:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider and possibly take action on the staff recommendation to designate Acxiom as the Texas statistical agent for 1996 private passenger automobile experience.

This staff recommendation does not conflict with the Department's recently released Request for Interest and Qualifications (RFIQ) from organizations interested in designation as the Texas statistical agent for 1997 and beyond private passenger automobile experience. In addition, the designation of Acxiom as the Texas private passenger automobile statistical agent for 1996 experience

will not alter the process of designating a Texas statistical agent for 1997 and beyond private passenger automobile experience, as described in the recently released RFIQ.

Staff is recommending designation of Acxiom for 1996 experience to ensure continuity of data collection and production of necessary reports of 1996 experience, while allowing the Department to pursue the RFIQ process in a manner which allows for adequate deliberations and, if necessary, reasonable transition periods for reporting insurers and the designated statistical agent.

Under Texas Insurance Code, Article 21.69, the designation of a statistical agent in Texas is at the sole discretion of the Commissioner of Insurance, subject to statutory requirements.

Issued in Austin, Texas, on April 3, 1996.

TRD-9604637 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 3, 1996

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of GALIC Disbursing Company, a foreign third party administrator. The home office is Cincinnati, Ohio.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, April 3, 1996.

TRD-9604790 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 4, 1996

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The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Premier Benefits, Inc., a foreign third party administrator. The home office is Springfield, Missouri.

Application for incorporation in Texas of Select Benefit Services, a domestic third party administrator. The home office is Live Oak, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on April 2, 1996.

TRD-9504629 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 2, 1996

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Texas Natural Resource Conservation Commission

Application for License and Environmental Analysis and Opportunity to Request a Public Hearing

This notice replaces the notice issued on April 1, 1996.

THE TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY (TLLRWDA), 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a radioactive material license to construct, operate and close a commercial radioactive waste disposal facility. The proposed disposal site is approximately five miles southeast of Sierra Blanca, Hudspeth County, Texas, and comprises a 477-acre area at the northern end of Faskin Ranch. The facility design consists of engineered below-ground disposal units. Packaged waste to be disposed of at the facility will be placed in concrete canisters and buried in the disposal units under a multilayered cover. The radioactive material to be disposed of at the facility will be limited to low-level waste (LLW) as defined in section 402.003 of the Texas Health and Safety Code. The proposed license will not allow the facility to dispose of material defined by federal law as high-level radioactive waste, mixed hazardous and radioactive waste, or certain categories of LLW that are under federal jurisdiction. The Executive Director of the TNRCC has prepared a draft license that, if approved by the Commission, will authorize the TLLRWDA to construct, operate and close the proposed facility under the authority of the Texas Radiation Control Act, Chapter 401 of the Texas Health and Safety Code and the Texas Low-Level Radioactive Waste Disposal Authority Act, Chapter 402 of the Texas Health and Safety Code. TNRCC staff have prepared an environmental analysis entitled An Environmental and Safety Analysis of a Proposed Low-Level Radioactive Waste Disposal Facility Near Sierra Blanca, Hudspeth County, Texas (Publication Number AS-102). Copies of the draft license, environmental review document and other materials in the public file are available for inspection in the Chief Clerk's Office, TNRCC, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3300. If you wish to comment or request a public hearing on the license, you must do so in writing within 31 days after the date of publication of this notice in the newspaper or in the Texas Register, whichever is later. Hearing requests should be sent to the Chief Clerk's Office, Mail Code 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300. You must include: your name, mailing address, daytime phone number and fax number, if any; license number (RW3100) or other recognizable reference to this license; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the license; a description of the location of your property in relation to the applicant's operations; and any proposed adjustments to the license which would satisfy your concerns and cause you to withdraw your request for hearing. Information concerning the proposed license is available from Steve Etter, Staff Geologist, UIC, Uranium and Radioactive Waste Section, Mail Code 131, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6065. Further information about requesting a hearing is available from Elizabeth Bourbon, Staff Attorney, Mail Code 173,

TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

Issued in Austin, Texas, on April 5, 1996.

TRD-9604873 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: April 8, 1996

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Correction of Errors

The Texas Natural Resource Conservation Commission submitted a Notification of Availability of Grants for Construction of Scrap Tire Recycling Facilities. The notification appeared in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2326).

On page 2326, second paragraph, the last sentence should read:

"Also, tire incineration for energy recovery is not considered as "recycling" for purposes of this grant program."

The Texas Natural Resource Conservation Commission proposed an amendment to §305.45, concerning consolidated permits. The rule appeared in the March 5, 1996, issue of the *Texas Register* (21 TexReg 1735).

In the preamble on page 1735, second column, the comments paragraph should read: "...P.O. Box 13087, Austin, Texas 78711-3087; fax to (512) 239-4808;.... All comments should reference Rule Log Number 95032-305-WS."

The Texas Natural Resource Conservation Commission adopted new §§324. 1-324.21, concerning used oil recycling. The rules appeared in the March 22, 1996, issue of the *Texas Register* (21 TexReg 2393).

On page 2393, first paragraph of the preamble, last sentence, should read: "Subchapter B, §§324.50-324.54, is continued for consideration for adoption at a later date, while the staff considers other options."

In the March 22, 1996, issue of the *Texas Register* (21 TexReg 2357), a Withdrawn rule was published for the Texas Natural Resource Conservation Commission.

On page 2357, Chapter 324, Subchapter B, §§324.50-324.54, should read: "The Texas Natural Resource Conservation Commission will reconsider for permanent adoption proposed §§324.50-324.54."

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Notice of Addendum to Scrap Tire Recycling Facility Construction Grants

The Texas Natural Resource Conservation Commission will mail out an addendum regarding the Request for Proposal referenced in the Notification of Availability of Grants for Construction of Scrap Tire Recycling Facilities published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2326), concerning **Grant Application Packet 96-Tire-R**, for construction grants to public or commercial entities that recycle used/scrap tires. The addendum will correct language contained in the Request for Proposal and the Payment Procedures portions of the **Grant Application Packet 96-Tire-R**. All individuals on the mailing list will receive a copy of the addendum.

Please direct any questions regarding these corrections to the Automotive Programs, Municipal Solid Waste Division, MC 125, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6001, FAX: (512) 239-6015.

Issued in Austin, Texas, April 8, 1996.

TRD-9604883 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: April 8, 1996

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Notice of Applications for Waste Disposal Permits

Notice of Applications for Waste Disposal Permits issued during the period of March 29th-April 5, 1996.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239- 3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

City of Boerne, P.O. Box 1677, Boerne, Texas 78006; the wastewater treatment plant is on the east side of the City of Boerne, at 350 South, Esser Road, approximately 0.1 mile north of its intersection with State Highway 46 in Kendall County, Texas; amendment; 10066-01.

Double Diamond, Inc., 3500 Maple Avenue, Dallas, Texas 75219; the proposed wastewater treatment facility; the plant site is approximately 2.5 miles northwest of the intersection of FM Road 933 ad FM Road 2604 in Hill

County, Texas; new; 13786-02.

Eubank Manufacturing Enterprises, Inc., P.O. Box 7938, Longview, Texas 75607; the wastewater treatment plant is on FM Road 2011, approximately two miles south of Interstate Highway 20 in Gregg County, Texas; new; 13830-01.

Harris County Water Control and Improvement District Number 76, 12203 Frazier River, Houston, Texas; the wastewater treatment facilities are approximately 600 feet east of U.S. Highway 59 at Greens Bayou Bridge on South Bank of Greens Bayou in Harris County, Texas; renewal; 10451-01.

City of Houston, P.O. Box 262549, Houston, Texas 77207-2549; the Easthaven Wastewater Treatment Plant; the plant site is at 8545 Scranton Street, due east of William P. Hobby Airport, approximately 0.7 mile southwest of the intersection of Interstate Highway 45 (Gulf Freeway) and Airport Boulevard in Harris County, Texas; renewal; 10495-065.

North Alamo Water Supply Corporation, Route 10, Box 130, Edinburg, Texas 78539; the wastewater treatment facilities and the disposal site are approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 490 and FM Road 493, southwest of the City of Hargil in Hidalgo County, Texas; new; 13747-03.

Robert E. Pine, 3900 County Road 48, Rosharon, Texas 77583; The wastewater treatment facilities are approximately 2.8 miles north of the intersection of State Highway 6 and County Road 48 and 0.3 mile south of American Canal on County Road 48 in Brazoria County, Texas; new; 13735-01.

Texas Lime Company, P.O. Box 851, Cleburne, Texas 76033; the lime manufacturing facility is adjacent to FM Road 1434, immediately south of Cleburne State Park, near the City of Cleburne in Johnson County, Texas; new; 03874.

U.S. Department of the Navy, 11001 D Street, Suite 143, Corpus Christi, Texas 78419-5021; the Corpus Christi Naval Air Station (CCNAS); the plant site is at the Naval Air Station east of Cayo del Oso, at the end of Ocean Drive and east of the City of Corpus Christi in Nueces County, Texas; amendment; 02317.

Issued in Austin, Texas, on April 5, 1996.

TRD-9604840 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: April 5, 1996

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Notice of Availability and Request for Comments on a Proposed Regional Solid Waste Management Plan Agency Code

The Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a regional solid waste management plan proposed by the Rio Grande Council of Governments (RGCOG) and a 30-day period for public comment on the plan.

Notice is hereby given that the document entitled, *Municipal Solid Waste Plan for Far West Texas*, is available for public review and comment. Regional solid waste management plans are required by the Texas Health and Safety Code, Chapter 363 (*Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act*, 1990) for each of the established regional planning agencies (COGs) in the state, which have been officially designated as solid waste management planning regions. The RGCOG region includes the counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio. The plan describes current solid waste management efforts in the region, assesses problems and needs, and provides recommendations for future action. The plan was developed with the input of a solid waste advisory committee composed of various public and private interests; meetings of this advisory committee were open to the general public. In addition, numerous public meetings and a formal public hearing concerning the plan were held in accordance with guidelines of TNRCC. Upon adoption by TNRCC, the plan is incorporated, be reference, into Subchapter O of the Municipal Solid Waste Regulations (§330.568).

The interested public is invited to submit written comments on the proposed regional plan to the Texas Natural Resources Conservation Commission. Written comments must be received by no later than 30 days from the publication date of this notice. Please address comments to: Linda Haynie, Acting Director, MC 132, Waste Planning and Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas, 78711-3087.

Copies of the regional plan document are available for public review at the following two locations: Rio Grande Council of Governments, 110 North Stanton, Suite 610, El Paso, Texas 79902, (903) 893-2161 and the Texas Natural Resource Conservation Commission, Library, 12100 Park 35 Circle, Building A, First Floor, Austin, Texas 78753, (512) 239-0020.

The Texas Natural Resource Conservation Commission will consider formal adoption of this regional plan at a regular agenda meeting, after the close of the comment period.

Issued in Austin, Texas, April 4, 1996.

TRD-9604731 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: April 4, 1996

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Notice of Date Extension

The Texas Natural Resource Conservation Commission is announcing that the due dates for submitting the Toxic Release Inventory (TRI) report (Form R) and Source Reduction and Waste Minimization Annual Progress Report (SR/WM Report) have been extended from July 1, 1996 to August 1, 1996 due to the federal government shutdown earlier this year and other factors. The extensions will align due dates of these two state and federal reporting requirements, which will reduce the burden to the regulated community and result in higher quality data overall.

The TRI reports are required under the federal Emergency Planning and Community Right-to-Know Act (EPCRA), §313 and the State Health and Safety Code, Chapter 370 (Toxic Chemical Release Reporting). The Environmental Protection Agency (EPA) recently authorized a similar

extension under the federal program in the January 29, 1996 *Federal Register*. The SR/WM Report is required under 30 TAC Chapter 335, Subchapter Q, §§335.471-335. 480 and the Health and Safety Code, Chapter 361. A significant amount of the data included in the SR/WM Report is based on the TRI report. Figure 1: Notice of Date Extension

Unless another announcement is forthcoming, this due date extension is only for submittals due in 1996.

Facilities who have previously filed Toxic Release Inventory Form R reports will be notified of this extension by letter prior to July 1, 1996. For further information on the Toxic Release Inventory Form R date extension, please call Becky Kurka at (512) 239-3147. Facilities who have previously submitted SR/WM Annual Progress Reports will be notified of this extension by a letter included with the SR/WM Annual Progress Report Instruction Manual and Forms prior to July 1, 1996. For further information on the SR/WM Annual Progress Report date extension, please call Emily Coyner at (512) 239-3183.

Issued in Austin, Texas, April 4, 1996.

TRD-9604882 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: April 4, 1996

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Notice of Opportunity to Comment on Permitting Actions

The following applications will be signed by the Executive Director in accordance with 30 TAC §263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register.*

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

U.S. Department of the Army for a minor amendment to Permit Number 02713 in order to amend the current permit to limit chlorine residual to 0.1 mg/1 at Outfall 001. The current permit authorizes a discharge of domestic wastewater, septic tank wastewater, cooling tower and boiler blowdown, HMX pilot plant wastewater, laboratory wastewater and X-ray development wastewater at a volume not to exceed an average flow of 500,000 gallons per day via Outfall 001 and an intermittent, flow variable discharge of impounded stormwater via Outfall 002, which will remain the same. The applicant operates the Longhorn Army Ammunition Plant. The plant site is adjacent to Caddo Lake with the Town of Uncertain at the northern boundary and the Town of Karnack at the western boundary in Harrison County, Texas.

Consideration of the application of North Shore Water Supply Corporation to Amend Water Certificate of Convenience and Necessity Number 10168 in Denton County, Texas. (Application #30876-C, Albert Holck)

Consideration of the application of G & W Water Supply Corporation to Transfer Water CCN Number 12508 from Waller County Water Wells, Inc. and Cancel Water CCN Noumber 12508 in Waller County, Texas. (Application #30730-S, Albert Holck)

The City of Big Spring for a minor amendment to Permit Number 10069-01, issued to in order to modify the biomonitoring language of the existing permit. The permit currently authorizes a discharge of treated domestic wastewater effluent at a final volume not to exceed an average flow of 3,800,000 gallons per day, which will remain the same. The wastewater treatment plant is on the north side of Eleventh Street, approximately 1,000 feet east of the intersection of FM Road 700 and Eleventh Street in Howard County, Texas.

City of Sugar Land for a minor amendment to Permit Number 12833-02 to add an interim phase. The current permit authorizes a discharge of treated domestic wastewater effluent at an interim I volume not to exceed an average flow of 5,000,000 gallons per day, interim II a volume not to exceed an average flow of 7,500,000 gallons per day and a final volume not to exceed an average flow of 10,000,000 gallons per day. The proposed amendment would add an interim volume not to exceed an average flow of 6,000,000 gallons per day. The wastewater treatment facilities are at 4802 Oilfield Road in Fort Bend County, Texas.

Brazos Valley Solid Waste Management Agency (BVSWMA) and the City of College Station have applied to the Texas Natural Resource Conservation Commission for a minor amendment to Permit Number MSW1444-A in order to transfer the permit from the City of College Station to BVSWMA. The facility and property were transferred in May and September, 1990. BVSWMA has indicated that all conditions of the permit would be adhered to. The municipal solid waste facility is located on a 119.53 acre site located southeast of College Station, 2.75 miles southeast of the intersection of State Highway 6 and Loop 507, south of Rock Prairie Road, in Brazos County, Texas.

Signature of a Proposed Order Approving the Application by CNP District of Harris County for Approval of $2,750,000 Unlimited Tax and Revenue Bonds, Fifth Issue, 6.95% Net Effective Interest Rate; Series 1996. Applicant requests approval of a bond issue to finance water,

wastewater and stormwater drainage facilities. (TNRCC Internal Control Number 112895-D01; Randy Nelson)

Consideration of the application of W. C. Morris doing business Western Water System for an increase in retail water rates. (Application #30966-G, Vera Poe).

Consideration of the application of C & C Water Works, Inc. for an increase in retail water rates. (Application #30922-G, Debi Carlson).

Consideration of the application of J. D. Malone Malone Water System for an increase in retail water rates. (Application #30932-G, Debi Carlson).

Consideration of the application by E.B.J.V., Inc. doing business as Southern Oaks Water System for an increase in retail water rates. (Application #30919-G, Mary Jane Ford).

Issued in Austin, Texas, on April 5, 1996.

TRD-9604839 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: April 5, 1996

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Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning new Chapter 7.

The commission proposes new §7.101, concerning a Memorandum of Understanding (MOU) with the Texas Department of Commerce (TDOC). The new section will satisfy statutory requirements of Health and Safety Code, §382. 0365 and Government Code, §§481.123, 481.129, and 481.142. The purpose of the MOU is to coordinate assistance to small businesses applying for environmental permits. The MOU will allow the commission and TDOC to coordinate their activities and programs directed toward small businesses in a more efficient manner.

A public hearing on the proposal will be held May 2, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or e-mailed to LMARTIN@SMTPGATE.TNRCC.STATE.TX.US. All comments should reference Rule Log Number 95169-007-AD. Comments must be received by 5:00 p.m., May 16, 1996. For further information, please contact Lisa Evans, Air Policy and Regulations Division, (512) 239-5885.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604380 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: March 29, 1996

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Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361, as amended (the Act), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The first registry of such sites was published in the *Texas Register* on January 16, 1987 (12 TexReg 205). The last registry was published in the March 31, 1995 issue of the *Texas Register* (20 TexReg 2484). There have been two additions, Aztec Ceramics and Harvey Industries, to the proposed registry of sites that may constitute an imminent and substantial endangerment, since its last publication. Pursuant to §361.181, the registry identifying those facilities that may constitute an imminent and substantial endangerment in Texas lists those facilities in relative priority of need of action as follows:

Col-Tex Refinery, adjacent to Colorado City, Mitchell County: Oil refinery, tank farm and sludge pits.

Houston Scrap, 3799 Jensen Drive, Houston, Harris County: Scrap metal and battery recycling.

Houston Lead, 300 Holmes Road, Houston, Harris County: Battery recycling.

State Marine, Yacht Club Road, Port Arthur, Jefferson County: Barge cleaning.

Precision Machine, 500 W. Olive Street, Odessa, Ector County: Machine and chrome plating.

Sonics International, Inc., 2 miles west of Ranger on the north side of FM Road 101, Eastland County: Two hazardous waste injection wells.

Maintech International, 8300 Old Ferry Road, Port Arthur, Jefferson County: Chemical cleaning service.

Federated Metals, 9200 Market Street, Houston, Harris County: Metal smelting and reclamation plant.

Gulf Metals, northwest corner of the intersection of Mykawa and Alameda-Genoa, Houston, Harris County: Metal slag and organic waste disposal.

Wortham Lead Salvage, on the north side of Highway 175 approximately 2.5 miles southeast of Mabank, Henderson County: Battery recycling.

Texas American Oil, approximately 3 miles north of Midlothian on State Highway 67, Ellis County: Oil refining.

Niagara Chemical, 421 North C Street, Harlingen, Cameron County: Pesticide formulation plant.

International Creosoting, 1110 Pine Street, Beaumont, Jefferson County: Wood creosoting.

McBay Oil & Gas, 3 miles northwest of Grapeland on FM 1272, Houston County: Waste oil recycling and refinery.

Aztec Mercury, 401 Callaway Drive, Alvin, Brazoria County: Mercury recycling.

Solvent Recovery Services, 5502 Highway 521 approximately 0.2 mile south of Highway 521 and Highway 6, Arcola, Fort Bend County: Solvent Recovery.

Harris Sand Pits, 23340 South Highway 16, 10.5 miles south of San Antonio city limits, Bexar County: Industrial waste disposal.

Butler Ranch, 11.8 miles west of Falls City on FM 791, Karnes County: Industrial waste disposal.

Pip Minerals, 3303 Beaumont Avenue, Liberty, Liberty County: Chromium, ignitable wastes, and drilling chemicals.

Hayes-Sammons Warehouse, East 8th Street and Moller Avenue, Mission, Hidalgo County: Pesticide storage.

Baldwin Waste Oil Company, on County Road 44 approximately 0.1 mile west of Highway 77, Robstown, Nueces County: Waste oil recycling.

Waste Oil Tank Service, 2010 Hartwick Road off Highway 59 North, Houston, Harris County: Waste oil recycling.

Hall Street, north of intersection of California Street and 20th Street East, north of Dickinson, Galveston County: Industrial waste disposal.

Unnamed Plating Site, 6816-6824 Industrial Boulevard, El Paso, El Paso County: Metal plating waste ponds.

La Pata Oil/S.W. Oil, 1403 Ennis Street, Houston, Harris County: Waste oil recycling.

Munoz Borrow Pits, 0.1 mile south of Highway 83 on FM 1016, Mission, Hidalgo County: Pesticide contaminated fill area.

South Texas Solvents, approximately 4 miles south of Banquete at the intersection of FM 666 and County Road 32, Nueces County: Solvent recycling and oil refinery.

Bestplate, 1095 South I-45, south of Hutchins, Dallas County: Chromium plating.

Pursuant to §361.184(a) those facilities which have been determined to be eligible and have been proposed for listing on the State Superfund Registry are listed in relative priority of need of action as follows:

Double R Plating Company, on CR 3544 north of Highway 96 three miles west of Queen City, Cass County: Zinc and chromium plating.

Pioneer Oil & Refining Co., adjacent to 20280 South Payne Road, outside of Somerset, Bexar County: Oil refinery.

Higgins Wood Preserving, intersection of Paul Avenue and Warren Street, Lufkin, Angelina County: Wood creosoting.

Marshall Wood Preserving, 2700 West. Houston Street, Marshall, Harrison County: Wood creosoting.

Thompson-Hayward Chemical, on the east side of Highway 277 between Eden and Houston Streets, Munday, Knox County: pesticide formulating.

Old Lufkin Creosoting, 1411 East Lufkin Avenue, Lufkin, Angelina County: Wood creosoting.

Harvey Industries, Southwest Corner, Intersection FM 2495 & Highway 31, Athens, Henderson County: Fire training school.

Hagerson Road Drum, east of 1221 Hagerson Road, DeWalt, Fort Bend County: Drummed industrial waste.

American Zinc, 3.5 miles north on Highway 287 & 3 miles east on FM 119 from Dumas, Moore County: Abandoned zinc smelting facility.

Toups, on the west side of Highway 326, 2.1 miles n. of intersection of Highway 326 & Highway 105 in Sour Lake, Hardin County: Fencepost treating facility, municipal waste dump.

JCS Company, on County Road 2410 one and three quarter miles north of Highway 98 east of Phalba, Van Zandt County: Battery recycling.

Jerrell B. Thompson, on County Road 2410 one half mile north of Highway 109, east of Phalba, Van Zandt County: Battery recycling.

Hi-Yield, NE of Southern Pacific Railroad, bordered by Sycamore Street (S.), Johnson Street (E.), & Ross Street (N.), Commerce, Hunt County: Pesticide blending facility.

Aztec Ceramics, 4735 Emil Road, San Antonio, Bexar County: Ceramics tile manufacturing.

Jensen Drive Scrap, 3603 Jensen Drive, Houston, Harris County: Scrap salvage.

Permian Chemical, 1901 Pronto Road, southeast of Odessa, Ector County: Acid production.

Tricon America, Inc., 101 East Hampton Road, Crowley, Tarrant County: Industrial waste pile.

Interested parties may submit written responses to the Commission relative to the addition of Harvey Industries and Aztec Ceramics to the list of proposed sites and the order of relative priority to the attention of Nancy Overesch, Manager, Superfund Investigation Section (MC 143), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The public records for each of the sites are available for inspection and copying during regular Commission business hours. Such information may by obtained by contacting Beth Behrend, Central Records Center (MC 199), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. Copying of file information is subject to payment of a fee.

Issued in Austin, Texas, April 4, 1996.

TRD-9604730 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: April 4, 1996

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Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of April 5, 1996.

Application Number TA-7646 by Anadarko Petroleum Corporation for diversion of ten acre-feet in a one-year period for mining (drilling operations) use. Water may be diverted from the North Fork Double Mountain Fork Brazos River at a location approximately 22 miles south

southwest of Crosbyton, Crosby County, Texas, Brazos River Basin.

Application Number TA-7642 by Georgia Gulf Corporation for diversion of ten acre-feet in a one year period for industrial (hydrostatic test) use. Water may be diverted from an unnamed tributary of Buffalo Bayou (fire water pond), at Beltway 8 Toll Bridge and Highway 225, approximately 12 miles east of Houston, Harris County, Texas, San Jacinto River Basin.

Application Number 7645 by Torres Ready-Mix, Inc. for diversion of ten acre-feet in a six-month period for mining (washing operation-sand and gravel) purposes. Water may be diverted from the FM 1436 crossing of the Nueces River, approximately 25 miles north of Crystal City, Zavala County, Texas, Nueces River Basin.

Application Number 7649 by Union Pacific Resources for diversion of five acre-feet in a one year period for industrial use. Water may be diverted from the Brazos River at a location approximately 18.0 miles southeast of Bryan, Brazos County, Texas, Brazos River.

Application Number 7644 by Young Contractors, Inc. c/o AGC of Texas for diversion of two acre-feet in a ten month period for industrial use. Water may be diverted from the Navasota River at a location approximately 25.0 miles west of Madisonville, Madison County, Texas, Brazos River.

Application Number TA-7647 by Union Pacific Resources for diversion of five acre-feet in a one year period for industrial use. Water may be diverted from the Brazos River at a location approximately 12.0 miles northeast of Caldwell, Burleson County, Texas, Brazos River.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 787311, (512) 239-3300.

Issued in Austin, Texas, on April 5, 1996.

TRD-9604838 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: April 5, 1996

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Texas Parks and Wildlife Department

Public Notice of Changes in Red Snapper Regulations

The Texas Parks and Wildlife Department implements the following actions under authority of Wildlife Code, Chapter 79, §79.002 to provide for consistency with federal regulations in the Exclusive Economic Zone.

1. The purchase, barter, trade, or sale of red snapper landed in this state is prohibited; and 2. The at-sea transfer of red snapper caught or possessed in waters of this state is prohibited.

Prohibition of sale and at-sea transfer of red snapper taken in state waters correspond to the regulation implemented by the Gulf of Mexico Fishery Management Council in federal waters where most of the red snapper fishery occurs. This would insure consistency in regulation enforcement and reduce confusion for anglers.

Dr. Andrew Kemmerer, Director, Southeast Region, National Marine Fisheries Service (NMFS) announced the closure of the commercial fishery for red snapper in the Gulf of Mexico federal waters from April 5, 1996-December 31, 1996. Red snapper landings estimates for 1996 indicate that the commercial quota, which is set by the Gulf of Mexico Fishery Management Council and is currently 3.06 million pounds, will be reached on April 4, 1996.

The Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico requires closure of the commercial fishery to protect the overfished red snapper resource when the commercial quota is reached or projected to be reached. The Gulf of Mexico Fishery Management Council and NMFS requests all Gulf states to close the commercial fishery and prohibit sale of red snapper from state waters during the closure period. A vessel with red snapper aboard must land and sell such red snapper prior to 12.01 a.m., Central Standard Time, April 5, 1996. Federal rule states that during the closure, the daily recreational bag limit of 5 red snapper per person applies to catches possessed in or landed from Gulf of Mexico federal waters. The purchase, barter, trade, sale or at-sea transfer of reef fish (including red snapper) caught or possessed in Gulf of Mexico federal waters under bag limits is prohibited.

The actions are adopted for immediate implementation under the authority of 31 TAC §57.801 to provide for consistency with federal regulations in the Exclusive Economic Zone . In November 1995, the Texas Parks and Wildlife Commission delegated to the executive director the duties and responsibilities of taking actions necessary to modify state coastal fisheries regulations to conform with regulations in the Exclusive Economic Zone.

Effective date: April 19, 1996

Expiration date: August 17, 1996

For further information, please call: 1 (800) 792-1112, Ext 4648 or (512) 389-4648.

Issued in Austin, Texas, on April 4, 1996.

TRD-9604800 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Filed: April 4, 1996

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Texas State Board of Pharmacy

Correction of Error

The Texas State Board of Pharmacy adopted amendments to §§291.31-291.34 and §291.36. The rules appeared in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2227).

On page 2232 §291.33(a)(1)-(5) and (8) and (9):

The text in each of these paragraphs read as follows:

(1) A Class. A pharmacy shall register....

(2) A Class. A pharmacy which changes ownership....

(3) A Class. A pharmacy which changes location....

(4) A Class. A pharmacy owned....

(5) A Class. A pharmacy shall notify....

(8) A Class. A Pharmacy, licensed....

(9) A Class. A (community) pharmacy,...

There should not be a period after the word Class in these paragraphs. Class A is a type of pharmacy.

On page 2233 §291.34(b)(4)(D):

In the last sentence of this subparagraph the phrase "or any other format that clearly indicates the subsection" should be deleted so that the subparagraph reads:

Such electronic prescription drug order may follow the two-line format in paragraph (2)(B) of this subsection, or any other format that clearly indicates the substitution instructions.

On page 2234 §291.34(b)(7)(C)(iii):

The phrase "if the prescription is carried out," should be added so that the clause reads as follows:

(iii) name, address, telephone number, and if the prescription is carried out, the original signature of the practitioner;

On page 2235 §291.36(b)(11):

The hyphen is misplaced, the definition should read as follows:

"(11) Carrying out or signing a prescription drug order- The completion of a prescription drug order..."

On page 2237 §291.26(c)(3)(B)-(C):

Clauses (i) and (ii) are misplaced. These clauses should be below subparagraph (B) not (C). In addition these clauses contain three typographical errors. These corrections are underlined in the following text.

(B) Duties.

(i) Supportive personnel may not perform any of the duties listed in paragraph 2(B) of this subsection.

(ii) A pharmacist may delegate to supportive personnel any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist conducts inprocess and final checks; and

(II) supportive personnel are under the direct supervision of and responsible to a pharmacist.

(C) Ratio of pharmacists to supportive personnel. The ratio of pharmacist to supportive personnel shall be not greater than 1:2, provided that only one supportive person may be engaged in the compounding of sterile pharmaceuticals.

On page 2238 §291.36(c)(3)(E)(i)(I):

The word "task" should be plural and not singular so that the subclause reads:

(I) ....and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

On page 2238 §291.36(c)(3)(E)(ii)(VII)(-f-):

The punctuation in this item should read as follows:

(-f-) Preparing the finished product for inspection, labeling, and final check by pharmacists.

On page 2238 §291.36(c)(4)(C)

The 3 in this subparagraph should be in parenthesis so the text reads: "(C) ....outlined in paragraph (3) of this subsection,....

On page 2241 §291.36(e)(2)(H)(ii)

The phrase "or signed" should be added so that the clause reads:

"(ii) All original prescriptions for dangerous drugs carried out, or signed, by an advanced practice nurse or physician assistant in accordance with...."

On page 2241 §291.36(e)(2)(H)(ii)(II)

The phrase "if the prescription is carried out" should be added so the subclause reads:

"(II) name, address, telephone number, and if the prescription is carried out, the original signature of the practitioner;"

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Texas Department of Protective and Regulatory Services

Correction of Error

The Texas Department of Protective and Regulatory Services proposed new §§720.24-720.60. The rules appeared in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2035).

The introductory phrase was not published and, therefore, the section was misnumbered.

The new section should read:

"§720.35. General Personnel Requirements. General personnel requirements are that

(1) the child-placing agency must reassign or remove from direct contact with clients any employee, volunteer, or foster parent against whom any of the following legal decisions are returned:

(A) an indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act;

(B) an indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency; and

(C) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(2) such reassignment or removal, as described in paragraph (1) of this subsection, must remain in effect pending resolution of the charges.

(3) no one may serve as a staff, volunteer, or foster parent having contact with clients, or be approved as an adoptive parent, who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Texas Department of Protective and Regulatory Services' (TDPRS's) Director of Licensing has ruled that proof of rehabilitation has been established.

(4) no one may serve as a staff, volunteer, or foster parent having contact with clients or be approved as an adoptive parent for whom "reason to believe" (or a comparable determination in another state) has been determined for child abuse or neglect, unless TDPRS's Director of Licensing determines that such service is acceptable.

(5) the agency must report any occurrences under paragraphs (1)-(3) of this section to TDPRS's Licensing Division by the end of the first workday after learning of the occurrence.

(6) persons whose behavior or health status presents a danger to clients must not be allowed at the child-placing agency or at homes verified by the agency.

(7) before having contact with children in care, staff, volunteers, foster parents, foster family household members, and employees in foster family homes must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities.

(8) the child-placing agency must have a personnel file for each employee, volunteer, and foster parent whose work relates to child-placing activities, work with birth parents, and children in care. Each file must contain the following:

(A) date of employment;

(B) documentation that the person meets the qualifications for the position;

(C) tuberculosis test reports, if required, for persons having contact with children;

(D) criminal background check and child abuse/neglect report information system check reports;

(E) documentation that the person meets training requirements; and

(F) date and reason for separation, if applicable.

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Public Utility Commission of Texas

Notice of Application for Reciprocal Rate Change

Notice is given to the public of filing with the Public Utility Commission of Texas an application on March 13, 1996, for reciprocal approval of a rate decrease pursuant to the Public Utility Regulatory Act (PURA), Texas Civil Statutes, Article 1446c-O, (Vernon Supp. 96). The following is a summary of the application.

Docket Title and Number: Application of Farmers' Electric Cooperative, Inc. for Reciprocal Approval of a Rate Decrease pursuant to Public Utility Commission Procedure Rule 22.263(d). Docket Number 15520.

The Application: Farmers Electric Cooperative, Inc. is a rural electric cooperative corporation operating principally in the state of New Mexico, serving less than 1,000 customers in the state of Texas. Pursuant to Rule 22. 263(d) which provides for reciprocity of final orders between states, Farmers' requests approval to implement a rate decrease recently approved by the New Mexico Public Utility Commission for its Texas customers.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf on or before April 25, 1996.

Issued in Austin, Texas, on March 29, 1996.

TRD-9604439 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 29, 1996

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Dallas City Government in Dallas, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Dallas City Government in Dallas, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15571.

The Application. Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for Dallas City Government. The geographic service market for this specific service is the Dallas, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 2, 1996.

TRD-9604570 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 2, 1996

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Notice of Workshop

The staff of the Public Utility Commission of Texas will hold a public workshop on Project Number 14360, a rulemaking relating to Imputation, on Thursday, April 18, 1996, from 9:00 a.m. to 12:00 p.m. at the Commission offices. This rulemaking is in response to §3.454 of the Public Utility Regulatory Act of 1995 which requires that the commission adopt rules governing the imputation of

the price of a telecommunications service not later than December 1, 1996. All interested parties are invited to attend.

Issued in Austin, Texas, April 3, 1996.

TRD-9604837 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 5, 1996

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Notice of Workshop and Request for Comments

The Public Utility Commission of Texas plans to hold a workshop on April 30, 1996, as a part of its continuing project relating to electric industry restructuring in Texas (Project Number 15000). The topic of the April 30th workshop is "Market Structure II–Customer Choice and Distribution." The workshop will be held at 10:00 a.m. at the Commission's offices.

The Commission is interested in receiving comments from interested parties on these market structure issues. A list of specific questions is available from Lucila Etheridge at the Commission at (512) 458-0327. Due to the breadth of the workshop questions, not all issues or questions will be addressed in panels at the workshop. Some issues will only be addressed in the written comments. Staff will determine which issues are most appropriate for panels after review of the written comments, and additional issues may be added as warranted.

Interested persons may provide the Commission with 15 copies of their written responses to those questions by filing them with the filing clerk of the Commission at 7800 Shoal Creek Boulevard, Austin, Texas 78757. As the list of questions is lengthy, it is not necessary to respond to every question; parties should focus their responses on issues of particular concern. In their responses, parties should include a two page executive summary of the response. In addition, parties should indicate whether they would like to participate in any panels at the workshop and which questions they would most like to address.

Responses are to be filed by April 22nd, and should refer to Project Number 15000. Parties should also file an electronic copy of the responses with Lucila Etheridge of the Office of Policy Development (512) 458-0327, preferably in Microsoft for Windows Word6 format (alternatively in a DOS compatible text format). Parties to this project wishing to exchange copies of their responses with other responding parties should notify Ms. Etheridge at the Commission by close of business on April 18th. Parties should contact Ms. Etheridge on April 19th regarding the number of copies needed for the exchange. The Commission will coordinate the exchange of responses on the filing date, April 22nd. Each participating party will bring the appropriate number of copies of their response to the Commission offices for the exchange on the 22nd.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604516 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 1, 1996

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Public Notices

On March 28, 1996, Southwestern Bell Telephone Company (SWB) filed notice to file LRIC studies pursuant to Substantive Rule §23.91 for Extended Area Service in Project Numbers 12475 and 12481, Applications of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Workplans Pursuant to Substantive Rule 23.91. SWB expects to file these studies on April 8, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by May 17, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604517 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 1, 1996

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On March 28, 1996, GTE Southwest, Inc. (GTE-SW) filed notice to file LRIC studies pursuant to Substantive Rule §23.91 for Call Park, Circular Hunting, Voice/Data Protection, Multiple Classes of Service, Last/Saved Number Redial, Business Group Speed Calling 30, Uniform Call Distribution, Executive Busy Override, Call Forwarding-Incoming Only, Code Restriction and Diversion, Off-Hook Queuing, Remote Access to Features, On-Hook Queuing, Calling Forwarding-Within Group and Call Forwarding Busy/No Answer Split service in Project Numbers 12475 and 12481, Applications of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Workplans Pursuant to Substantive Rule 23.91. GTE-SW expects to file these studies on April 8, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by May 17, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604518 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 1, 1996

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Request for Arbitrators

The Public Utility Commission of Texas (Commission) is seeking interested persons who are knowledgeable in electric utility matters to serve on arbitration panels for arbitration conducted under 16 TAC §23.67(s). The Commission is also seeking interested attorneys experienced in arbitra-

tion who may be available to chair the arbitration panels. Section 23.67 requires the secretary of the commission to maintain a commission-approved list of qualified persons to serve on arbitration panels and a separate list of attorneys who may be available to chair panels. The rule also provides that the commission shall approve the fee schedule to be charged by all panel members.

Persons who wish to be considered for inclusion on the lists should submit a letter to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. The letter should state the list for which the person wishes to be considered and the qualifications for being included. The deadline for submission of letters is April 17, 1996.

Issued in Austin, Texas, on April 2, 1996.

TRD-9604569 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 2, 1996

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Texas Racing Commission

Notice of Application Period

The Texas Racing Commission announces that the Commission will accept applications for Class 2, Class 3, and Class 4 racetrack licenses for Nacogdoches County. Under the Texas Racing Commission rules, the Commission may designate an application period of not more than 60 days in which applications for a racetrack license may be filed. On April 1, 1996, the Texas Racing Commission's Horse Racing Section established three new 60-day application periods. The first designated period begins at 8:00 a.m., May 15, 1996, and ends at 5:00 p.m., July 13, 1996. The second designated period begins at 8:00 a.m., July 14, 1996, and ends at 5:00 p.m., September 11, 1996. The third designated application period begins at 8:00 a.m., September 12, 1996, and ends at 5:00 p.m., November 11, 1996. For more information, contact Jean Cook, Texas Racing Commission, P.O. Box 12080, Capitol Station, Austin, Texas 78711-2080, (512) 833-6699, FAX (512) 833- 6907 or at 8505 Cross Park Drive, #110, Austin, Texas 78754-4594.

Issued in Austin, Texas on April 2, 1996.

TRD-9604583 Paula Cochran Carter
General Counsel
Texas Racing Commission

Filed: April 2, 1996

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Texas Department of Transportation

Notice of Awards

In accordance with the Government Code, Chapter 2254, Subchapter A, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services. The request for qualifications for professional engineering services was published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7419, 7420 and 7421).

The consultant will provide professional engineering services for the design and construction administration phases for the following:

TxDOT Project: 9621HEBRN, County of Jim Hogg. The engineering firm for these services is: Alpha Engineering. The total value of the contract is $47, 565. The contract period started on February 28, 1996, and will continue until completion of the project.

TxDOT Project: 9616, County of San Patricio. The engineering firm for these services is: KSA Engineers. The total value of the contract is $32,875. The contract period started on March 1, 1996, and will continue until completion of the project.

TxDOT Project: 9622CISCO, City of Cisco. The engineering firm for these services is: Hibbs & Todd, Inc. The total value of the contract is $33,000. The contract period started on March 15, 1996, and will continue until completion of the project.

TxDOT Project: 9615CASTR, City of Castroville. The engineering firm for these services is: KSA Engineers. The total value of the contract is $161,225. The contract period started on March 1, 1996, and will continue until completion of the project.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604520 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: April 1, 1996

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Notice of Award

In accordance with the Chapter 2254, Subchapter A, of Government Code, the Texas Department of Transportation publishes this notice of award for a professional services contract. The request for qualifications for professional engineering services was published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7421). The consultant(s) will provide professional engineering services for the design and construction administration phases for the following contract(s).

TxDOT Project: 9621PTMNS, Willacy County Navigation District. The engineering firm for these services is: Espey, Huston & Associates, Inc. The total value of the contract is $22,574, and the contract period starts on March 27, 1996, until the completion of the project.

TxDOT Project: 9611LIVIN, City of Livingston. The engineering firm for these services is: The Brannon Corporation. The total value of the contract is $50,000, and the contract period starts on March 25, 1996, until the completion of the project.

Issued in Austin, Texas, April 3, 1996.

TRD-9604879 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: April 8, 1996

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In accordance with the Government Code, Chapter 2254, Subchapter A, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services. The request for qualifications for professional engineering services was published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7419, 7420 and 7421).

The consultant will provide professional engineering services for the design and construction administration phases for the following:

TxDOT Project: 9605PLAIN, County of Yoakum. The engineering firm for these services is: West Texas Consultants, Inc. The total value of the contract is $85,309.50. The contract period started on March 21, 1996, and will continue until completion of the project.

TxDOT Project: 9613, Fayette County. The engineering firm for these services is: Befco Engineering, Inc. The total value of the contract is $91, 300. The contract period started on March 20, 1996, and will continue until completion of the project.

TxDOT Project: 9608SWEET, City of Sweetwater. The engineering firm for these services is: Parkhill, Smith & Cooper, Inc. The total value of the contract is $82,224.73. The contract period started on March 18, 1996, and will continue until completion of the project.

TxDOT Project: 9608COCTY, City of Colorado City. The engineering firm for these services is: Jacob & Martin. The total value of the contract is $42,816. The contract period started on March 1, 1996, and will continue until completion of the project.

TxDOT Project: 9619MARSH, County of Harrison. The engineering firm for these services is: PSA Engineering. The total value of the contract is $15,385. The contract period started on March 26, 1996, and will continue until completion of the project.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604521 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: April 1, 1996

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In accordance with the Government Code, Chapter 2254, Subchapter A, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services. The request for qualifications for professional engineering services was published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7418).

The consultant will provide professional engineering services for the design and construction administration phases for the following:

TxDOT Project: 9618CORSI, City of Corsicana. The engineering firm for these services is: PDR Engineers. The total value of the contract is $72,175. The contract period started on March 18, 1996, and will continue until completion of the project.

Issued in Austin, Texas, on April 1, 1996.

TRD-9604522 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: April 1, 1996

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Request for Proposals

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Number 04-645P5001: To perform bridge scour evaluations in seventeen counties within the Amarillo District. The providers will be evaluated and selected based on their knowledge and experience in performing bridge scour evaluations.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (806) 356-3263, or hand-delivered to TxDOT, Amarillo District Office, Attention: Ron Johnston, 5715 Canyon Drive, Amarillo, Texas 79110, or mailed to P.O. Box 2708, Amarillo, Texas 79105-2708. Letters of interest will be received until 5:00 p.m. on Friday, April 26, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and refer to Contract Number 04-645P5001. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet). TxDOT will not issue Request for Proposal packet without receipt of letter of interest.

Pre-proposal Meeting: A pre-proposal meeting will be held on Monday, May 6, 1996, at the TxDOT Amarillo District Office, 5715 Canyon Drive, Amarillo, Texas 79110 beginning at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting).

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or serves such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Ron Johnston, at (806) 356-3253 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for Contract Number 04-645P5001 will be accepted until 5:00 p.m. on Friday, May 24, 1996 at the TxDOT Amarillo District Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Ron Johnston, at (806) 356-3253 or Fax (806) 356-3263.

Issued in Austin, Texas, April 3, 1996.

TRD-9604878 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: April 8, 1996

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University of Houston System

Request For Proposals For Various Audits

Notice of Invitation–Endowment Audit: The University of Houston System seeks proposals from qualified CPA firms to examine financial statements of its endowment fund in accordance with applicable generally accepted auditing standards; appropriate program audit guides; and the financial and compliance elements of the Standards for Audit of Governmental Organizations, Programs, Activities and

Functions , issued by the Comptroller General of the United States (GAO).

Background information: The System's Endowment consists of approximately 500 separate funds that are invested for the purpose of generating income which may be spent in accordance with individual donor requests or restrictions. At August 31, 1995, the book value of the Endowment was $185,242, 373 and the market value was $249,699,633. There are five Endowment funds valued in excess of $15 million each, and 28 additional funds valued in excess of $1 million. These funds represent 79% of the total Endowment fund.

Project: The annual audit shall be for the institution's fiscal year which ends August 31. Work to be performed shall consist of, but not be limited to: a) a review of assets, purchases, and sales, b) a review of cash receipts, new donations, interest, dividends, and earnings distribution, c) a review of expenditures for compliance with donor restrictions, and d) a review of the calculation of investment manager performance prepared by an endowment asset consultant. The audit may commence the third week of September, 1996, and should be completed by the third week of November, 1996.

Notice of Invitation–Television Station Audit: The University of Houston System seeks proposals from qualified CPA firms to perform a financial audit of the University operated television station, KUHT-TV, program in accordance with the Corporation for Public Broadcasting (CPB) Annual Financial Report Handbook of Instructions and the Corporation for Public Broadcasting Principles of Accounting and Financial Reporting for Public Telecommunications Entities , and all applicable generally accepted auditing standards. The audit shall include reliance on the audited financial statements of the KUHT-TV affiliate, the Association for Community Television.

Background information: Television Station KUHT-TV had total revenues in Fiscal Year 1995 of $8,084,657 and total expenditures of $8,175,373. The station's total assets for Fiscal Year 1995 were $10,608,981 with total liabilities of $4,981,695. As of March, 1996, the approximate number of employees was 90.

Project: The annual audit shall be for the institution's fiscal year which ends August 31. Work to be performed shall consist of, but not be limited to: a) a review of all assets, liabilities, revenues, and expenditures for or in behalf of the institution's television station, including those by any outside organization or group of individuals, b) a review of the internal control structure as it relates to the television station, and c) reporting requirements of the CPB. The audit may commence the third week of September, 1996, and should be completed not later than the third week of January, 1997.

Notice of Invitation - Radio Station Audit: The University of Houston seeks proposals from qualified CPA firms to perform a financial audit of the University operated Radio Station, KUHF-FM, program in accordance with the Corporation for Public Broadcasting (CPB) Annual Financial Report Handbook of Instructions and the Corporation for Public Broadcasting Principles of Accounting and Financial Reporting for Public Telecommunications Entities and all applicable generally accepted auditing standards.

Background information: Radio Station KUHF-FM had total revenues in Fiscal Year 1995 of $2,240,788 and total expenditures of $2,219,225. The radio station's total assets in Fiscal Year 1995 were $1,188,101 and total liabilities of $115,135. As of March, 1996, the approximate number of employees was 30.

Project: The annual audit shall be for the institution's fiscal year which ends August 31. Work to be performed shall consist of, but not be limited to: a) a review of all assets, liabilities, revenues, and expenditures for or in behalf of the institution's television station, including those by any outside organization or group of individuals, b) a review of the internal control structure as it relates to the radio station, and c) reporting requirements of the CPB. The audit may commence the third week of September, 1996, and should be completed not later than the third week of January, 1997.

Notice of Invitation - Intercollegiate Athletic Program Audit: The University of Houston seeks proposals from qualified CPA firms to perform a financial audit of the University of Houston Intercollegiate Athletic program in accordance with the National Collegiate Athletic Association (NCAA) Financial Audit Guidelines and all applicable generally accepted auditing standards. The auditor shall also review for compliance with the requirements of the Higher Education Reauthorization Act.

Background information: The Intercollegiate Athletic Department had total revenues in Fiscal Year 1995 of $13,412,684 and total expenditures of $13,716, 836. The department's total assets in Fiscal Year 1995 were $461,973 and total liabilities of $461,204. As of March, 1996 the approximate number of employees was 130.

Project: The annual audit shall be for the institution's fiscal year which ends August 31. Work to be performed shall consist of, but not be limited to: a) a review of all revenues and expenditures for or in behalf of the institution's intercollegiate athletic program, including those by any outside organization or group of individuals, b) a review of the internal control structure as it relates to the intercollegiate athletic program, and c) auditing and reporting requirements of the NCAA. The audit may commence the third week of September, 1996, and should be completed not later than the third week of December, 1996.

Selection Criteria: The criteria for selection shall be based on information provided in the firm's audit proposal. The System intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested auditing services at fair and reasonable prices. The acceptance of a proposal will not be made solely on the basis of lowest cost, although cost will weigh heavily in the evaluation process. Although firms are not required to submit proposals for a multi-program audit, it is anticipated that such a proposal would result in a cost benefit to the System. The System encourages proposals which provide for a multiple year engagement. Acceptance of a proposal will be contingent upon approval of the System Board of Regents.

Procedure: Interested firms should submit a proposal which describes the scope of services and the deliverables to be provided. Each firm is requested to submit a summary of its qualifications to perform each audit and a brief resume of the proposed partner and manager in charge of the engagement. The proposal should state the hourly rates and estimated total hours of each classification of personnel to be used and an estimate of the total cost of the audit.

Proposals, plus four copies, should be submitted, in writing, no later than 5:00 PM, on April 29, 1996, to Don F. Guyton, Director of Internal Auditing, at the following

address: Don F. Guyton, University of Houston System, Internal Auditing Department, 4211 Elgin, Room 106 Houston, Texas 77204-1851, (713) 743-8000, Fax Number: (713) 743-8015, E-mail: dguyton@uh.edu

Any questions regarding this proposal, including any requests for a complete copy of the Request For Proposal, should be directed to Mr. Guyton. The University reserves the right to reject any and all proposals submitted and to request additional information from all proposers.

Issued in Austin, Texas, on April 5, 1996.

TRD-9604872 Linda Bright
Vice Chancellor of Administration and Finance
University of Houston System

Filed: April 5, 1996

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