

TEXAS REGISTER

IN THIS ISSUE

Volume 19, Number 88 December 2, 1994

Page 9419-9567

Office of the Attorney General Requests for Opinions

RQ-752.....	9429
RQ-753.....	9429
RQ-754.....	9429
RQ-755.....	9429
RQ-756.....	9429
RQ-757.....	9429
RQ-758.....	9429
RQ-759.....	9429

Texas Ethics Commission Opinions Requests

AOR-261.....	9431
AOR-262.....	9431
AOR-263.....	9431

Opinions

BAO-232 (AOR-260).....	9431
------------------------	------

Emergency Sections

Texas State Board of Social Worker Examiners

Social Worker Licensure

22 TAC §§781.101, 781.102.....	9433
22 TAC §§781.201-781.208.....	9433
22 TAC §§781.201-781.217.....	9433
22 TAC §§781.301-781.305.....	9433
22 TAC §§781.301-781.313, 781.315.....	9433
22 TAC §§781.401-781.410.....	9433
22 TAC §§781.501-781.514.....	9434
22 TAC §§781.601-781.608.....	9434
22 TAC §§781.701, 781.102, 781.104-781.106.....	9434
22 TAC §§781.701-781.707.....	9434

Texas State Soil and Water Conservation Board

Agricultural and Silvicultural Water Quality Management

31 TAC §§523.3, 523.6.....	9434
----------------------------	------

Contents Continued Inside



The Texas Register is printed on recycled paper



a section of the
Office of the
Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

Secretary of State
Ronald Kirk

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Roberta Knight
Jill S. Ledbetter

TAC Editor
Dana Blanton

TAC Typographer
Madeline Christian

Documents Section
Supervisor
Patty Webster

Document Editors

Open Meetings Clerk
Jamie Alworth

Production Section
Supervisor
Ann Franklin

Production Editors/
Typographers
Carla Carter
Roy Felts
Mimi Sanchez

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* Director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

How to Use the Texas Register

Information Available: The 11 sections of the *Texas Register* represent various facets of state government Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3 "

How to Research. The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

Texas Youth Commission

Admission and Placement

37 TAC §§5.23 9435

Proposed Sections

Texas Department of Agriculture

Marketing and Development Division

4 TAC §§17.81, 17.85, 17.86 9437

Railroad Commission of Texas

Liquefied Petroleum Gas Division

16 TAC §9.6 9438

Public Utility Commission of Texas

Substantive Rules

16 TAC §23.6 9438

Texas Department of Licensing and Regulation

Air Conditioning and Refrigeration Contractor License Law

16 TAC §§75.10, 75.21, 75.70 9439

Texas State Board of Pharmacy

General Provisions

22 TAC §281.24, §281.25 9440

Texas State Board of Public Accountancy

Professional Conduct

22 TAC §501.47 9442

Certification as a CPA

22 TAC §511.168 9442

22 TAC §511.169 9443

Licenses

22 TAC §515.3 9443

22 TAC §515.9 9443

Texas Department of Health

Health Planning and Resource Development

25 TAC §13.51 9444

County Indigent Health Care Program

25 TAC §14.501 9446

Primary Health Care Services Program

25 TAC §39.41 9448

25 TAC §§39.41-39.50 9448

Home and Community Support Services Agencies

25 TAC §§115.6, §115.7 9450

Emergency Medical Care

25 TAC §157.101 9455

25 TAC §157.101-157.113 9454

25 TAC §157.121 9456

Texas Department of Insurance

Corporate and Financial

28 TAC §7.64 9457

Texas Natural Resource Conservation Commission

Enforcement

30 TAC §§337.1-337.6 9466

30 TAC §§337.1-337.10 9466

30 TAC §§337.21-337.58 9468

30 TAC §§337.37-337.40 9474

30 TAC §§337.51-337.54 9474

30 TAC §§337.71 9474

Texas State Soil and Water Conservation Board

Agricultural and Silvicultural Water Quality Management

31 TAC §523.3, §523.6 9475

Texas Commission on Fire Protection

Fire Suppression

37 TAC §§423.201, 423.203, 423.205, 423.207 9475

Certification Curriculum Manual

37 TAC §443.5 9477

Standards for Volunteer Certification

37 TAC §§471.1, 471.3, 471.5 9477

Volunteer Fire Inspector

37 TAC §§478.1, 478.3, 478.5, 478.7 9479

Examinations for Volunteer Fire Fighter Certification

37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11
.....9480

37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11,
479.13.....9481

Texas Department of Human Services

Medicaid Eligibility

40 TAC §15.430, §15.4329483

40 TAC §15.475.....9484

Community Care for Aged and Disabled

40 TAC §48.6003, 48.6005, 48.6030.....9484

Withdrawn Sections

Texas State Board of Plumbing Examiners

Treatment and Disposal of Graywater

22 TAC §§366.1-366.49487

Texas Natural Resource Conservation Commission

Applications Processing

30 TAC §281.43.....9487

Texas Department of Human Services

Adult Day Care Facilities

40 TAC §98.121.....9487

Adopted Sections

Texas Department of Agriculture

Consumer Services Division

4 TAC §15.11.....9489

Marketing and Development Division

4 TAC §17.20.....9489

Texas Animal Health Commission

Exotic Livestock and Fowl

4 TAC §36.1, §36.2.....9489

General Practice and Procedures

4 TAC §59.5.....9490

4 TAC §59.6.....9490

Public Utility Commission of Texas

Substantive Rules

16 TAC §23.11.....9490

Texas Department of Licensing and Regulation

Talent Agencies

16 TAC §§78.10, 78.20, 78.309492

Board of Nurse Examiners

Fees

22 TAC §223.29492

Texas State Board of Public Accountancy

Practice and Procedure

22 TAC §519.479493

Texas State Board of Social Worker Examiners

Social Worker Licensure

22 TAC §§781.101-781.106.....9496

22 TAC §§781.101, 781.102.....9496

22 TAC §§781.201-781.208.....9497

22 TAC §§781.201-781.217.....9497

22 TAC §§781.301-781.305.....9498

22 TAC §§781.301-781.315.....9498

22 TAC §§781.401-781.410.....9500

22 TAC §781.401, §781.402.....9500

22 TAC §§781.501-781.514.....9502

22 TAC §§781.601-781.608.....9504

22 TAC §§781.701-781.707.....9505

Texas Department of Health

Maternal and Child Health Services

25 TAC §37.1759507

25 TAC §37.1789507

HIV and STD Control

25 TAC §98.104, §98.1059507

25 TAC §98.1219507

Chronic Diseases

25 TAC §61.159507

Texas Department of Mental Health and Mental Retardation

Client (Patient) Care

25 TAC §§405.281-405.2979509

**Texas Natural Resource
Conservation Commission**

General Rules

30 TAC §101.30 9515

Commission on Jail Standards

County Correctional Centers

37 TAC §§260.1-260.8 9526
 37 TAC §§260.1-260.4 9526
 37 TAC §§260.20-260.95 9526
 37 TAC §§260.100-260.163 9526

Existing Construction Rules

37 TAC §§261.1-261.88 9526
 37 TAC §§261.100-260.171 9526
 37 TAC §§261.101-261.113, 261.115-261.183 9526
 37 TAC §§261.200-261.266 9526
 37 TAC §§261.300-261.361 9526
 37 TAC §§261.191-261.265 9526

Life Safety

37 TAC §§263.1-263.4 9526
 37 TAC §§263.1-263.3 9526
 37 TAC §§263.10-263.23 9526
 37 TAC §§263.10-263.21 9526
 37 TAC §§263.30-263.33 9526
 37 TAC §§263.40-263.44 9526
 37 TAC §§263.40-263.42 9526
 37 TAC §§263.50-263.57 9526
 37 TAC §§263.50-263.56 9526
 37 TAC §§263.70-263.71 9526
 37 TAC §§263.80-263.83 9526

**Texas Commission on Fire
Protection**

Fire Extinguisher Rules

37 TAC §§521.6, 521.7, 521.10, 521.21 9526

Fire Sprinkler Rules

37 TAC §§541.7, 541.13, 541.14, 541.18, 541.19, 541.20,
541.21, 541.22, 541.23 9526
 37 TAC §§541.19, 541.20-541.22 9526

**Texas Department of Human
Services**

Day Activity and Health Services

40 TAC §§50.1-50.5 9528

40 TAC §§50.101-50.105 9528
 40 TAC §50.201, §50.202 9528
 40 TAC §50.301, §50.302 9528
 40 TAC §§50.401-50.410 9528
 40 TAC §50.501, §50.502 9529
 40 TAC §50.601 9529
 40 TAC §§50.701-50.704 9530
 40 TAC §§50.801-50.803 9530
 40 TAC §§50.901-50.904 9530
 40 TAC §§50.1901-50.1903 9530
 40 TAC §§50.2901, 50.2903-50.2910 9530
 40 TAC §§50.3901-50.3915 9531
 40 TAC §50.4901, §50.4902 9531
 40 TAC §50.5901 9531

ADult Day Care Facilities

40 TAC §98.1, §98.2 9531
 40 TAC §§98.11-98.21 9531
 40 TAC §§98.15-98.18, 98.20 9531
 40 TAC §§98.41-98.44 9531
 40 TAC §98.42, §98.43 9531
 40 TAC §98.61 9531
 40 TAC §98.81, §98.82 9531
 40 TAC §§98.101, 98.102, 98.104 9531
 40 TAC §§98.102-98.105 9531
 40 TAC §98.121 9531
 40 TAC §§98.122-98.123 9531

Tables and Graphics Sections

Tables and Graphics 9533

Open Meetings Sections

Texas Department of Agriculture 9537
 Texas Commission on Alcohol and Drug Abuse 9537
 Texas Catastrophe Property Insurance Association 9538
 Coastal Coordination Council 9538
 Texas Department of Commerce 9538
 Texas Cosmetology Commission 9538
 Texas County and District Retirement System 9539
 Texas Commission for the Deaf and Hearing Impaired 9539
 Texas Diabetes Council 9539
 Texas Interagency Council on Early Childhood Intervention 9539
 Texas Education Agency 9539
 Advisory Commission on State Emergency Communications 9540
 Texas Employment Commission 9540
 Finance Commission of Texas 9540

Fire Fighters' Pension Commission.....	9540
General Land Office.....	9541
Interagency Council for Genetic Services	9541
Office of the Governor-Criminal Justice Division.....	9542
Texas Commission on Human Rights.....	9542
Texas Incentive and Productivity Commission.....	9542
Texas Department of Insurance	9542
Lamar University System.....	9542
Texas Board of Professional Land Surveying.....	9543
Texas Commission on Law Enforcement Officer Standards and Education.....	9543
Texas Department of Licensing and Regulation.....	9543
Texas Council on Offenders with Mental Impairments	9543
Texas Natural Resource Conservation Commission.....	9544
Texas Board of Nursing Facility Administrators.....	9544
Texas State Board of Physical Therapy Examiners.....	9545
Public Utility Commission of Texas.....	9545
Railroad Commission of Texas.....	9546
Texas Real Estate Commission.....	9546
Texas Senate	9547
Council on Sex Offender Treatment.....	9547
The Texas A&M University System.....	9547
Texas Southern University.....	9548
Texas Department of Transportation	9548
Texas Turnpike Authority.....	9549
University of Texas at Arlington	9549
The University of Texas Health Center at Tyler.....	9549
Texas Workers' Compensation Research Center.....	9549
Texas Youth Commission.....	9549
Regional Meetings	9550

In Addition Sections

Texas Department of Agriculture

Egg Penalty Matrix	9553
--------------------------	------

**Office of Consumer Credit
Commissioner**

Notice of Rate Ceilings.....	9557
------------------------------	------

**Texas Environmental Awareness
Network**

Notice of Monthly Meeting	9557
---------------------------------	------

Texas Department of Health

Emergency Cease and Desist Order	9557
--	------

Licensing Actions for Radioactive Materials	9557
---	------

Notice of Intent to Revoke Certificates of Registra- tion.....	9562
---	------

Notice of Intent to Revoke Radioactive Material Li- censes.....	9562
--	------

Notice of Rescission of a Complaint	9562
---	------

Public Hearing on LoneSTAR Select Contracting Pro- gram.....	9563
---	------

**Texas Department of Housing and
Community Affairs**

Notice of Public Hearing	9563
--------------------------------	------

**Texas Department of Human
Services**

Request for Information.....	9563
------------------------------	------

Texas Department of Insurance

Correction of Error	9564
---------------------------	------

Notices of Public Hearing.....	9564
--------------------------------	------

**Texas Commission on Jail
Standards**

Consultant Contract Award	9565
---------------------------------	------

**Texas Natural Resource Conservation
Commission**

Notices of Award.....	9565
-----------------------	------

Public Notice	9565
---------------------	------

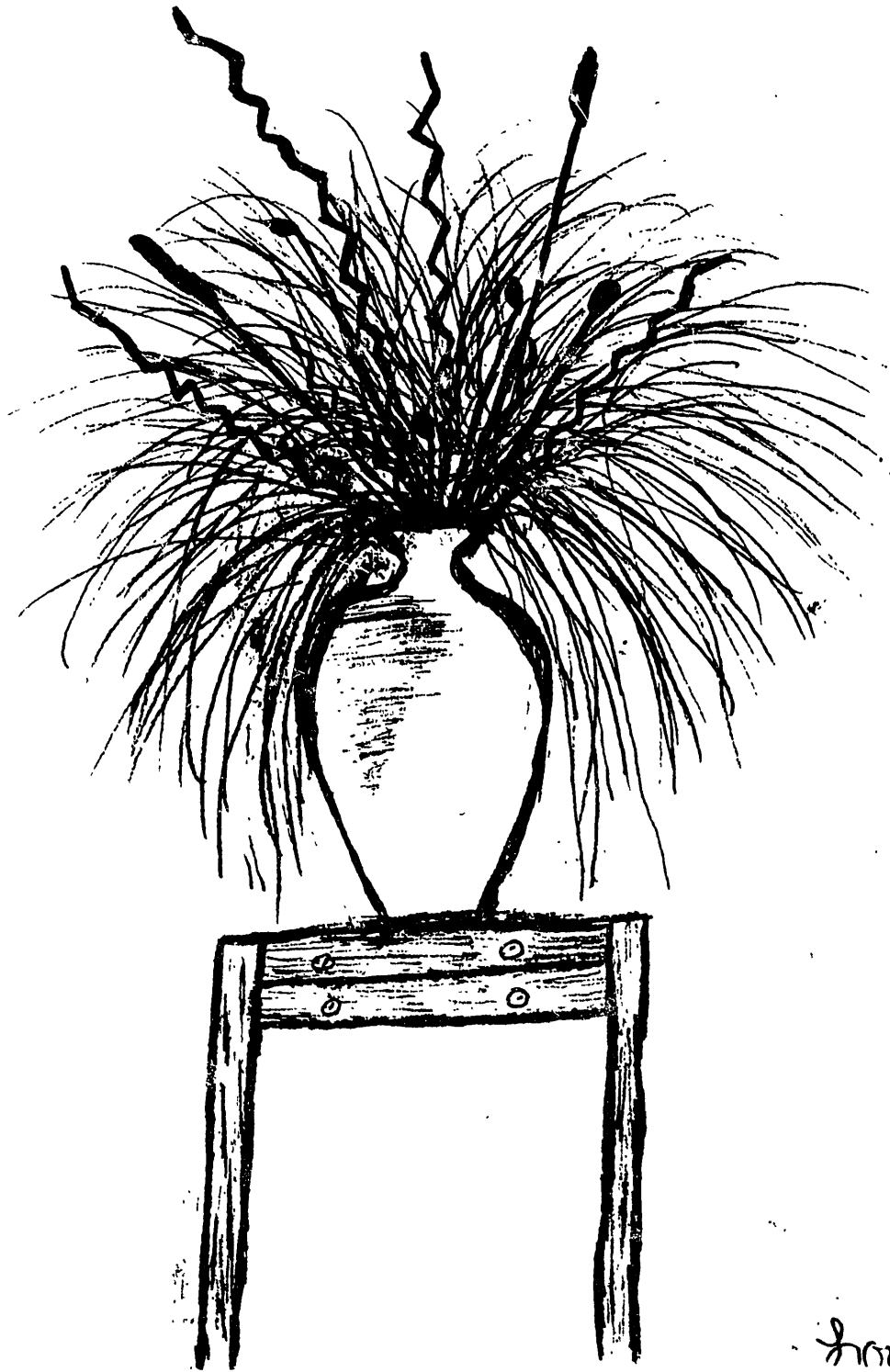
Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commis- sion Substantive Rule 23.27	9566
--	------

Public Notice of Workshop	9566
---------------------------------	------

Requests Comments on INtraLATA Dialing Parity.....	9566
--	------

Name: Lorena Carmona
Grade: 6
School: Bovina Middle School, Bovina ISD

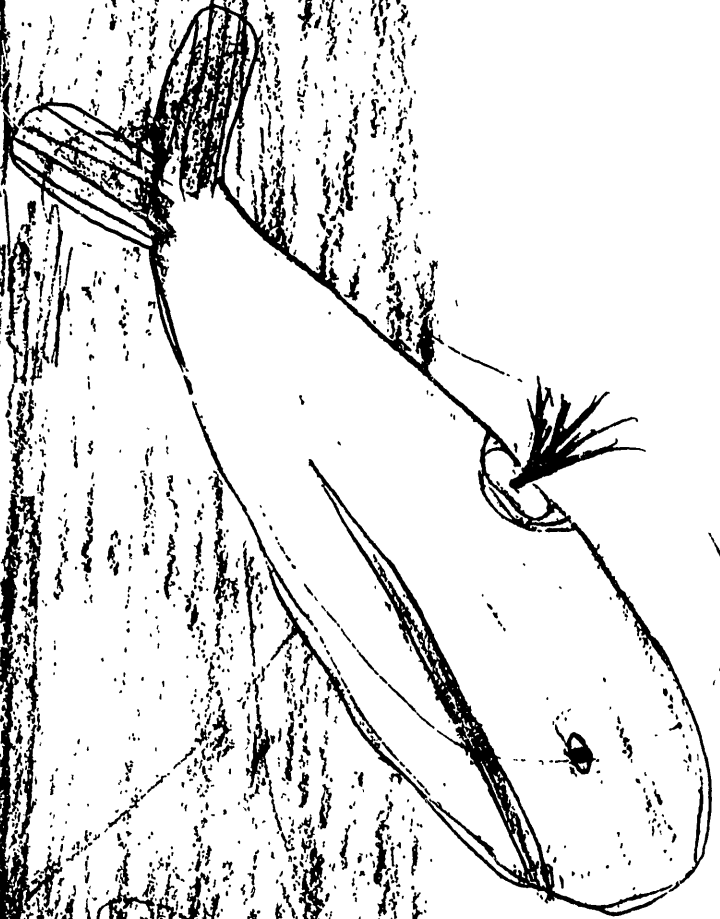


Lorena Carmona

Name: Tina Cervantes

Grade: 6

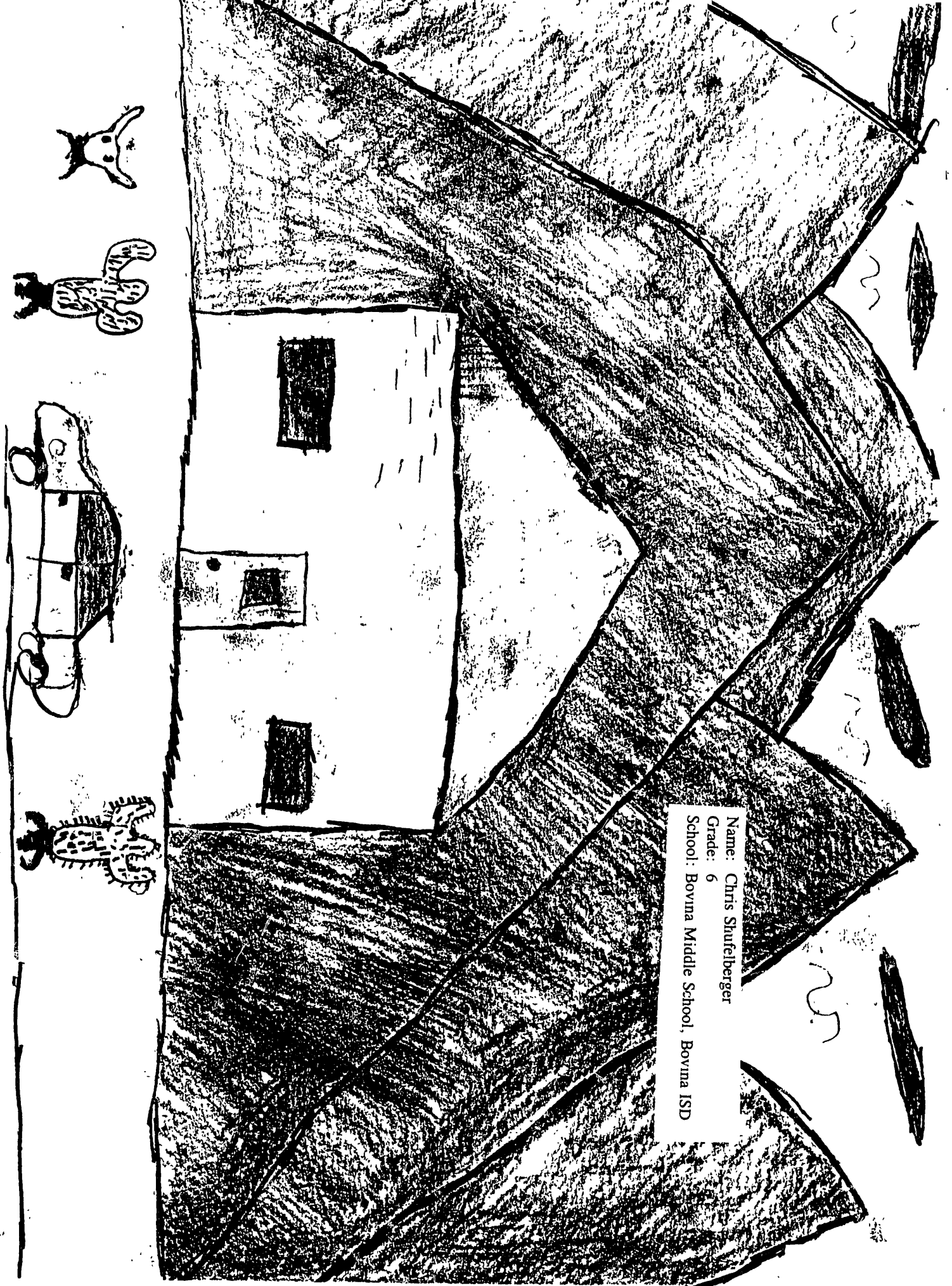
School: Bovina Middle School, Bovina ISD



Tina Cervantes 1/4



Name: Krycia Morris
Grade: 6
School: Bovina Middle School, Bovina ISD



Name: Chris Shufelberger
Grade: 6
School: Bovina Middle School, Bovina ISD

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.

Requests for Opinions

(RQ-752). Request from Max Werkenthin, University of Texas System, Office of General Counsel, 201 West Seventh Street, Austin, Texas 78701-2981, concerning whether scientific data generated by university researchers is "public information" subject to the Texas Open Records Act, chapter 552 of the Government Code, and related questions.

(RQ-753). Request from Leonard W. Peck, Jr., Assistant General Counsel, Legal Affairs Division, P.O. Box 99, Huntsville, Texas 77342-0099, concerning availability under the Open Records Act in conjunction with the federal Americans with Disabilities Act of certain personnel forms of applicants for employment with the Texas Department of Criminal Justice.

(RQ-754). Request from Lionel R. Meno, Commissioner of Education, Texas Educa-

tion Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning use by a school district of the catalogue purchase procedure authorized by Texas Civil Statutes, Article 601b, §3.081.

(RQ-755). Request from Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether particular telephone conversations between members of a city council contravene the Open Meetings Act, chapter 551, Government Code, and related question.

(RQ-756). Request from Honorable Tim R. Taylor, Titus County Attorney, 100 West First, Suite 203, Mount Pleasant, Texas 75455, concerning responsibility for a county's payroll.

(RQ-757). Request from Honorable Tim Curry, Tarrant County Criminal Attorney, Justice Center, 401 West Belknap, Fort

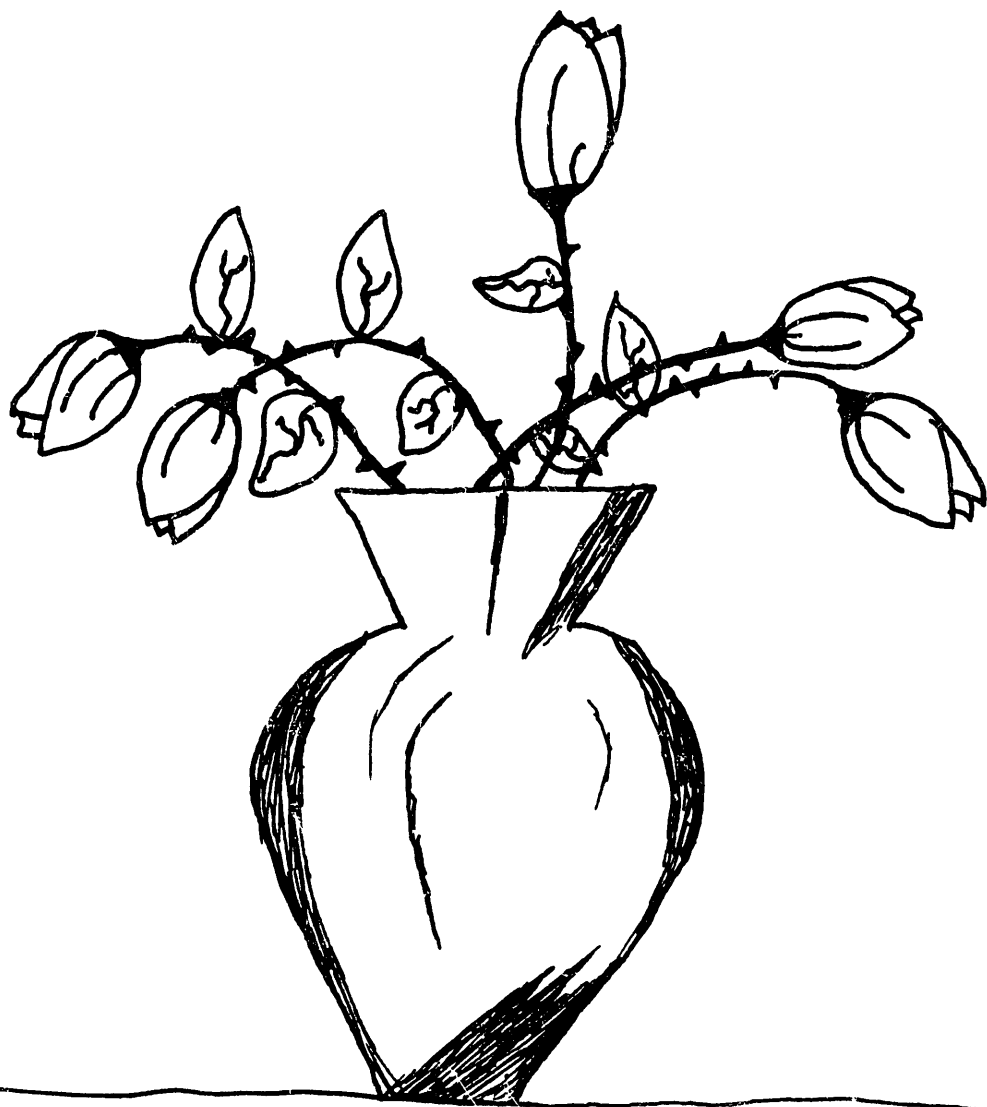
Worth, Texas 76196-0201, concerning whether a district clerk may require an advance deposit of fees for service of process by a sheriff or constable, and related questions.

(RQ-758). Request from Honorable James D. Ross, Midland County Auditor, 200 West Wall, Midland, Texas 79701, concerning authority of a commissioners court to appoint a "purchasing coordinator," and related questions.

(RQ-759). Request from D. August Boto, Cook County Attorney, Third Floor, Courthouse, Gainesville, Texas 76240, concerning whether §552.103 of the Government Code exempts from disclosure the state's prosecutorial file in a case in which the defendant was placed on deferred adjudication.

TRD-9451178

◆ ◆ ◆



Name: Lauren Duncan
Grade: 6
School: Devine Middle School, Devine ISD

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Texas Ethics Commission Opinions Requests

AOR-261. The Ethics Commission has been asked to consider whether the revolving door provisions in the Government Code, §572.054, apply to former employees of the Texas Natural Resource Conservation Commission.

AOR-262. The Texas Ethics Commission has been asked whether the Election Code, §253.034, which places a moratorium on certain political contributions before and during the regular legislative session, applies to a member of the State Board of Education.

AOR-263. The Texas Ethics Commission has been asked to consider whether a member of the Texas Legislature may "accept the gratis use of legislative district office space in a county-owned building offered

by Resolution of the County Commissioners of a county within the district the legislator represents."

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451361

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: November 23, 1994

Opinions

EAO-232 (AOR-260). Applicability of revolving door provisions of the Government Code to a former officer or employee of a regulatory agency representing a nonprofit entity or governmental body.

Summary of Opinion. The revolving door provisions of the Government Code do not prohibit a former officer or employee of a regulatory agency from working for a nonprofit entity or governmental body after ceasing employment with the agency. Nor does it prohibit a former officer or employee of a regulatory agency from performing work for a law firm on behalf of a nonprofit entity or governmental body.

Government Code, §572.054 does not prohibit a former employee of a state agency from communicating to the legislature in regard to statutes affecting the agency.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on November 17, 1994.

TRD-9451362

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: November 23, 1994



*Robby
Byrd*

Name: Robby Byrd
Grade: 9
School: Sabine High School, Sabine ISD

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.

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

TITLE 22. EXAMINING BOARDS

Part XXXIV. Texas State Board of Social Worker Examiners

Chapter 781. Social Worker Licensure

Subchapter A. General Provisions

• 22 TAC §781.101, §781.102

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of new §781.101 and §781.102, for a 15-day period effective November 28, 1994. The text of new §781.101 and §781.102 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5413).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451284 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

Application Process

• 22 TAC §§781.201-781.208

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of repealed §§781.201-781.208, for a 15-day period effective November 28, 1994. The text of repealed §§781.201-781.208 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5414).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451285 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

Subchapter B. The Board

• 22 TAC §§781.201-781.217

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of new §§781.201-781.217, for a 15-day period effective November 28, 1994. The text of new §§781.201-781.217 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5414).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451286 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

Certificate Expiration and Renewal

• 22 TAC §§781.301-781.305

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of repealed §§781.301-781.305, for a 15-day period effective November 28, 1994. The text of repealed §§781.301-781.305 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5416).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451287 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

Subchapter C. Licenses and Licensing Process

• 22 TAC §§781.301-781.313, 781.315

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of new §§781.301-781.313, and 781.315, for a 15-day period effective November 28, 1994. The text of new §§781.301-781.313, and 781.315 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5417).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451288 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

Administrative Actions

• 22 TAC §§781.401-781.410

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of repealed §§781.401-781.410, for a 15-day period effective November 28, 1994. The text of repealed §§781.401-781.410 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5420).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451289 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

◆ ◆ ◆
Subchapter E. License Renewal and Continuing Education

• 22 TAC §§781.501-781.514

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of new §§781.501-781.514, for a 15-day period effective November 28, 1994. The text of new §§781.501-781.514 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5421).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451290 Catherine Glancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

◆ ◆ ◆
Subchapter F. Complaints and Violations

• 22 TAC §§781.601-781.608

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of new §§781.601-781.608, for a 15-day period effective November 28, 1994. The text of new §§781.601-781.608 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5424).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451291 Catherine Glancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

◆ ◆ ◆
Certification Requirements

• 22 TAC §§781.701, 781.102,
781.104-781.106

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of repealed §§781.701, 781.102, 781.104-781.106, for a 15-day period effective November 28, 1994. The text of repealed §§781.701, 781.102, 781.104-781.106 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5413).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451283 Catherine Glancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

◆ ◆ ◆
Subchapter G. Formal Hearings

• 22 TAC §§781.701-781.707

The Texas State Board of Social Worker Examiners is renewing the effectiveness of the emergency adoption of new §§781.701-781.707, for a 15-day period effective November 28, 1994. The text of new §§781.701-781.707 was originally published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5426).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451282 Catherine Glancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: November 28, 1994

Expiration date: December 13, 1994

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

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVII. Texas Soil and Water Conservation Board

Chapter 523. Agricultural and Silvicultural Water Quality Management

• 31 TAC §523.3, §523.6

The Texas State Soil and Water Conservation Board adopts on an emergency basis amendments to §523.3 and §523.6 to correct deficiencies discovered during the first year of operation.

The emergency exists because the program is being held inactive until corrections to the program are made.

The amendments are adopted on an emergency basis under the Agricultural Code, Title 7, Chapter 201, §201.020, which authorizes the State Soil and Water Conservation Board to adopt rules as necessary for the performance of its functions and §201.026, which provides authorization for the Board to establish nonpoint source pollution abatement programs.

§523.3. Water Quality Management Plans.

(a) A water quality management plan is a site specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof which when implemented will achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local soil and water conservation district and Texas Natural Resource Conservation Commission to be consistent with state water quality standards. To be certified, a water quality management plan must cover all lands whether contiguous or non-contiguous that constitute an operating unit for agricultural or silvicultural purposes.

(b) Process for obtaining a Water Quality Management Plan.

(1) Landowners and operators may request the development of a plan or plan modification by the local soil and water conservation district. Landowners and operators, following consultation with their soil and water conservation district, will be encouraged and aided in working with the district in the preparation of a plan or plan modification based on standards adopted by the State Board to prevent or abate their nonpoint source pollution.

(2) The soil and water conservation district will determine the priority of plan development or plan modification and subsequently cause the development and approval of the plan or plan modification.

(3) (No change.)

(4) When determined to be consistent with state water quality standards, taking into account the state of existing technology, economic feasibility and water quality needs, the State Board will certify the plan or plan modification.

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

(e) Implementation schedule.

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

(5) The State Board in consultation with the local soil and water conservation districts may withdraw certification of a water quality management plan that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and provided a reasonable period of time to implement the water quality management plan according to the schedule or a modified schedule approved by the soil and water conservation district.

(6) The holder of a certified water quality management plan shall no-

tify the local soil and water conservation district in the event he or she deviates from the implementation schedule.

(f) (No change.)

§523.6. *Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures.*

(a) (No change.)

(b) Definitions—For the purposes of these rules the following definitions shall apply.

(1)-(10) (No change.)

(11) Maintenance agreement—A written agreement between the eligible person and the SWCD wherein the eligible person(s) [person] agrees, as a condition of the receipt of State cost share funds, to implement and maintain all [the applied conservation land improvement] measure(s) in the certified resource management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified resource management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the practice [for a period of time] as established by the State Board or for a period of two years after the certified resource management plan is completely implemented, whichever period of time is longer [and outlined in the applicable resource management plan].

(12)-(15)(No change.)

(16) Resource management plan—A site specific blueprint for implementation of soil and water conservation land improvement measures. It [also] includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.

(17) (No change.)

(18) State Board—The Texas State Soil and Water Conservation Board organized pursuant to the provisions of the Agriculture Code of Texas, Chapter 201.

[(19) Operating Unit—All the lands owned and/or operated by the applicant as an independent unit within a SWCD.]

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

(f) Cost-Share Assistance Processing Procedures.

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

(5) Maintenance Agreement. As a condition for receipt of cost-share assistance, the person(s) [person] receiving the assistance shall agree to implement and maintain all [approved] measures in the certified resource management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified resource management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the cost-shared practice(s) [each measure] as established by the State Board or for a period of two years after the certified resource management plan is completely implemented, whichever period of time is longer [and outlined in the applicable resource management plan]. Completion of the maintenance agreement and signature of the eligible person is required prior to payment.

(6)-(10) (No change.)

(g) Maintenance of Practices.

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

(5) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where a conservation land treatment measure(s) has been applied using cost-share assistance and the expected life assigned the practice has not expired, the participant, heir(s), or buyer(s) respectively, must agree to maintain the practice(s) or the participant, heir(s) or the buyer by agreement with seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board on a case by case basis in consultation with the soil and water conservation district may grant a waiver to this requirement.

(h)-(i) (No change.)

Issued in Temple, Texas, on November 23, 1994.

TRD-9451440

Robert G. Buckley
Executive Director
Texas State Soil and
Water Conservation
Board

Effective date: November 28, 1994

Expiration date: March 28, 1995

For further information, please call: (817) 773-2250



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.23

The Texas Youth Commission (TYC) adopts on an emergency basis an amendment to §85.23, concerning classification.

This section is published as an emergency amendment in order to allow reclassification of delinquent youth committed to TYC to violent offender status when they assault TYC employees, TYC contract program employees, or volunteers with TYC programs. This change will assist in controlling continued assaults on employees and volunteers.

The amendment is adopted on an emergency basis under the Human Resources Code, §61.075, which provides the Texas Youth Commission authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

§85.23. Admission and Placement.

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

(c) Rules.

(1) Classifications.

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

(C) Type B—Violent Offender A type B violent offender is a youth whose classifying offense is the commission, attempted commission, aiding the commission, conspiracy to commit, or solicitation of one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition (Titles 5 and 7) for each offense in clauses (i)-(xvii) of this subparagraph in its entirety except where TYC policy limits the applicability to specific subsections or under the conditions named.

(i)-(xvii) (No change.)

(xviii) intentionally, knowingly, or recklessly causing bodily injury to a TYC: [staff member if the assault:]

(I) employee; [is incident to and in furtherance of an escape; or]

(II) contract program employee; or [involves the use of a deadly weapon; or]

(III) volunteer.
[causes serious bodily injury; or]

[(IV) appears from
evidence to have been the result of plan-
ning; or]

[(V) appears from ev-
idence to have been the result of concerted
action by more than one youth; or]

[(VI) is deliberate, un-
provoked, and causes bodily injury requir-
ing medical attention.]

(D)-(H) (No change.)

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

Issued in Austin, Texas, on November 23,
1994.

TRD-9451323 Steve Robinson
 Executive Director
 Texas Youth Commission

Effective date: November 23, 1994

Expiration date: March 23, 1995

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



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 17. Marketing and Development Division Standards for "NATURALLY TEXAS" Products

• 4 TAC §§17.81, 17.85, 17.86

The Texas Department of Agriculture (the department) proposes amendments to §§17.81, 17.85, and 17.86, concerning standards for "NATURALLY TEXAS" products and renewal of membership in the "NATURALLY TEXAS" program. Current §17.81 provides that all registration certificates expire one year from issuance. The proposed amendment provides that all registration certificates expire on December 31 of the year of issuance. Current §17.85 provides that renewal statements shall be sent to registrants thirty days prior to the expiration date of the certificate. The amendment provides that registration certificates shall be sent to registrants between January 1 and January 31 of each year, and that payments for renewal are due within thirty days of receipt of the billing statement. The amendment will further provide that failure to remit the registration fee within 60 days of the due date shall result in automatic termination of registration. The proposed amendment to §17.86 provides the annual registration fee shall be prorated for registrations that commence after January 1. The amendments are proposed in order to provide a consistent, uniform expiration date and more efficient renewal process.

Christie McClellan, director for fiber marketing, 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.

Mrs. McClellan 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 less confusion and greater efficiency and uniformity in the renewal process. The sections will also provide for greater consistency with the department's other promotional programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Christie McClellan, Director for Fiber Marketing, Texas Department of Agriculture, P.O. Box 585530, Dallas, Texas 75278. 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, §12.002, which provides the Texas Department of Agriculture with the authority to encourage the proper development of agriculture, horticulture, and related industries; Texas Agriculture Code, §12.016, which provides the department with general rulemaking authority; Texas Agriculture Code, §12.0175, which provides that if the department establishes a program to promote products grown in the state or products made from ingredients grown in the state, the department may set by rule and collect a fee from each producer that participates in the program; and Texas Government Code, §2001.004, which requires that the department adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Agriculture Code, §12.0175, is affected by the proposed amendments.

§17.81. Requirements for Use of the "NATURALLY TEXAS" Mark.

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

(g) If approved, applicants who are producers shall remit the required registration fee within 30 days of notification of approval. Pursuant to the Texas Agriculture Code Annotated, §12.0175 [12.017(a)] (Supp.), applicants who are not producers shall not be required to pay a registration fee.

(h) Upon receipt of the application and upon receipt of the registration fee (if required), the department shall mail to the registrant a certificate of registration, which shall expire on December 31 of the year of [one year from] issuance. The department shall also enclose copies of the mark, suitable for reproduction.

(i)-(p) (No change.)

§7.85. Procedure for Annual Registration of Persons Authorized To Use the "NATURALLY TEXAS" Mark.

(a) Between January 1 and January 31, annually, the department shall mail to each person previously registered to use the "NATURALLY TEXAS" promotional mark [Thirty days prior to a registrant's expiration date, the department shall mail to the registrant] a statement setting forth the amount due as an annual registration fee for producers. Nonproducers shall be required to verify that they remain exempt from payment of the registration fee.

(b) All payments for renewal of registration are due within 30 days of receipt of the billing statement [prior to the expiration date of the certificate of registration] .

(c) (No change.)

(d) Failure to remit the annual registration fee within 60 days of the due date shall result in automatic termination of registration.

§17.86. *Registration Fee.* Producers approved for the use of the "NATURALLY TEXAS" mark shall pay an annual fee of \$50 for the use of the mark. If the original registration period commences after January 1, the fee for that year shall be prorated to the next renewal date which is January 1 of the following year.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451260

Dolores Alvarado Hibbe
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: January 2, 1995

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

◆ ◆ ◆

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Appli- cability and Requirements

• 16 TAC §9.6

The Railroad Commission of Texas proposes an amendment to §9.6, relating to Examination and Course of Instruction. The section lists examination: general provisions and exemptions, discusses trainees, explains fees, renewal of certified status, and when and where courses of instruction will occur.

Thomas D. Petru, Director, Liquefied Petroleum Gas Division, has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the section will be more thoroughly trained LP-gas licensees, resulting in a significant increase in safety and quality of services provided. There is an anticipated economic cost to small businesses and to individuals who are required to attend the training for licensing. The anticipated economic cost arises from possible loss or postponement of work due to the increased length of the course, and transportation, meals, and lodging expenses; due to the nature of the provisions, the exact amount of these costs cannot be determined. Such expenses are likely to be different for each applicant for license because of personal preferences relating to meals and lodging, whether lodging will be required, and whether the individuals attending the course will travel to and from Austin during weekend breaks.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the code affected by the proposed amendment: Texas Natural Resources Code.

§9.6. Examination and Course of Instruction.

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

(f) Course of instruction.

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

(3) The Category B course of instruction referenced in Table 1 of this section shall be held in Austin or any other facility of the Railroad Commission of Texas at times to be determined by the commission, and shall be a minimum of 120 [40] hours of classroom instruction.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451242

Mary Rose McDonald
Assistant Director, Legal
Division, Gas
Utilities/L.P. Gas
Railroad Commission of
Texas

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 463-7008

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

General Rules

• 16 TAC §23.6

The Public Utility Commission of Texas proposes new §23.6, concerning the Spanish language. The rule requires utilities to provide notices and other communications in Spanish in certain counties and on a system-wide basis. The purpose of the rule is to provide to the Spanish-speaking population information regarding the utility's services and other information available to English-speaking customers.

Joyce Gonzalez, Assistant General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the rule.

Ms. Gonzalez also has determined that, for each year of the first five years the proposed rule is in effect, the public benefits anticipated as a result of enforcing the rule include improved communication and customer service to the Spanish-speaking population in Texas. There will be no effect on small businesses resulting from the enforcement of this section. The economic cost of complying with the amendments as proposed is unknown at this time. The Commission encourages commenters to furnish cost information along with supporting documents indicating the cost of establishing the necessary procedures designed to inform the Spanish-speaking portion of the Texas population of the services to which they subscribe. Specifically, the Commission encourages comments as to whether

administering the rule would be more economical on a system-wide basis or on an "applicable county" basis.

Ms. Gonzalez also has determined that for each of the first five years the proposed amendment is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the rule.

Written comments (13 copies) on the proposal may be submitted to John M. Rendrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 45 days after publication. Comments should refer to Project Number 12708.

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

Cross index to statute, article or code: Texas Civil Statutes, Article 1446c, §16 and §18.

§23.6. Spanish Language Requirements.

(a) Application. This section applies to each utility that serves an applicable county as defined in subsection (b)(3) of this section and that is either a local exchange carrier (LEC), as the term is defined by §23.61 of this title (relating to Telephone Utilities), or an electric utility subject to the original jurisdiction of the commission over rates.

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

(1) Spanish speaking persons—Persons who speak any dialect of the Spanish language exclusively or as their principal language.

(2) Spanish language translation—Any dialect of Spanish that a utility believes reflects the dialect of the community it serves, subject to commission approval.

(3) Applicable county—A county where the number of Spanish-speaking persons (as defined in paragraph (1) of this subsection) is 2,000 or more according to the 1990 U.S. Census of Population (Bureau of the Census, U.S. Department of Commerce, *Census of Population and Housing*, 1990).

(c) Statement to customers. Each utility that is subject to the requirements of this section shall, within 30 days of the effective date of this section, notify each of its customers, on a system-wide basis, and shall, upon the effective date of this section, provide to each new customer at the time service is initiated, a simple, non-technical statement in English and Spanish informing the customer that the utility will provide bills and all notices in the Spanish language

upon the customer's written or oral request. An annual bill insert shall also be provided, in both English and Spanish, stating that bills and notices are available in Spanish from the utility, both by mail and at the utility's offices.

(1) All Spanish language bills shall comply with the requirements of §23.45 of this title (relating to Billing).

(2) Each utility that is subject to the requirements of this section shall include in any published or mailed notice to customers on a system-wide basis, a brief statement, printed in bold letters, in Spanish, that includes a general description of the contents of the notice and informs customers that the notice will be provided in Spanish, either orally or in writing, upon request, by calling a specific number as identified in the notice. The notice shall also inform customers that the number identified in the notice will be answered by a Spanish-speaking operator.

(d) Bilingual service representatives. Each utility that is subject to the requirements of this section shall make accessible to each of its customers system-wide, a toll-free number through which the customer may reach a bilingual (English and Spanish) service representative.

(e) Bilingual repair representatives. Each utility that is subject to the requirements of this section shall make accessible to each of its customers system-wide, a toll-free number through which the customer may reach a bilingual (English and Spanish) repair representative.

(f) Customer complaints. Each utility that is subject to the requirements of this section shall, upon receipt of a complaint in Spanish, respond in the Spanish language. Such responses shall comply with the requirements of §23.41 of this title (relating to Customer Relations).

(g) Balloting. Balloting required in relation to any service shall be performed in both the English and Spanish languages system-wide by each utility subject to the requirements of this section.

(h) Meters. Electric utilities that are subject to the requirements of this section shall make all services specified in section §23.47 of this title (relating to Meters) available in the Spanish language upon request.

(i) Effective Date. This section takes effect on June 1, 1995.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451335

John M. Renrow
Secretary of the
Commission
Public Utility Commission
of Texas

Proposed date of adoption: January 16, 1995

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

Part IV. Texas Department of Licensing and Regulation

Chapter 75. Air Conditioning and Refrigeration Contractor License Law

• 16 TAC §§75.10, 75.21, 75.70

The Texas Department of Licensing and Regulation proposes amendments to §§75.10, 75.21, and 75.70, concerning licensing for air conditioning and refrigeration contractors. The definition of "air conditioning and refrigeration subcontractor" has been amended and new definitions of "cheating" and "employee" are added to §75.10 to clarify those terms in relation to air conditioning and refrigeration contractors; a new paragraph is added to §75.21 to make cheating on an examination grounds for denial of a license; subsection (c) of §75.70 is amended to limit subcontracting of all work requiring a license under the Act to licensed persons, firms, or corporations; and subsection (j) of §75.70 is amended to allow nationally placed advertising to contain a statement that license numbers are available on request instead of all applicable license numbers.

James D. Brush, II, Director, Policies and Standards Division, 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. Brush also has determined that for each year of the first five years the sections are in effect the public benefit will be much greater protection for the consumer by requiring all work requiring an air conditioning and refrigeration license under the Act be performed by qualified license holders. The cost for compliance for small businesses is that some licensed contractors who have been subcontracting work requiring a license under the Act to unlicensed individuals or firms will have to either hire employees, or use subcontractors who are licensed themselves. If the licensed contractor chooses to hire an employee who owns his own truck and tools, the cost per employee would be minimal. If he chooses to provide the truck and tools for the employee, the cost per employee would be at least \$20,000. The anticipated economic cost to persons who are required to comply with the sections as proposed is the same as for small businesses if the individual is operating as a contractor.

The amendments are proposed under Texas Civil Statutes, Article 8861, which authorizes the department to license and regulate air conditioning and refrigeration contractors.

The following is the Article that is affected by this rule: Rule 75.10, Article 8861, §3, Rule 75.21, Article 8861, §5, Rule 75.70, Article 8861, §3B.

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

Air conditioning and refrigeration subcontractor—A person or firm contracting with a licensed air conditioning contractor for a [any] portion of work requiring a license under the Act. The subcontractor contracts to do a job according to his own methods, and is subject to the contractor's control only as to the end product or final result of his work. Responsibility for the work lies with the licensed contractor.

Cheating—Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception while taking a qualification examination.

Employee—An individual who performs tasks assigned him by his employer. The employer controls and directs the employee in the details and means by which the work is done to accomplish the tasks. The employee is subject to deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal, and being simultaneously an employee of a temporary employment agency, a staff leasing agency, or other employer does not affect his status as an employee.

§75.21. Licensing Requirements—Examinations.

(a)-(j) (No change.)

(k) Cheating on an examination is grounds for denial of a license.

§75.70. Responsibilities of the Licensee.

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

(c) Work requiring a license under the Act [Service work] may not be subcontracted to an unlicensed person, firm or corporation.

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

(j) All advertising by contractors requiring a license under the Act designed to solicit business shall include the contractor's license number. Advertising which requires the license number shall include printed material, television ads, newspaper ads, yellow pages, business cards, billboards, solicitations, proposals, quotations, and invoices. Other items for the purpose of attracting business, other than promotional items of value such as ball caps, tee shirts, and other gifts, must include the license

number. Yellow page listings that do not contain any information except the name, address, and telephone number are not required to contain the contractor's license number. In nationally placed television advertising, a statement indicating that license numbers are available upon request may be used in lieu of the contractor's license number. Letterheads and printed forms for office use are not required to have the license number included. Signs located outside [at] the contractor's permanent business location are not required to have the license number displayed.

(k)-(l) (No change.)

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451196

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 463-7357

◆ ◆ ◆
**TITLE 22. EXAMINING
BOARDS**
**Part XV. Texas State
Board of Pharmacy**
**Chapter 281. General
Provisions**

• **22 TAC §281.24. §281.25**

The Texas State Board of Pharmacy proposes amendments to §281.24 and §281.25, concerning Grounds for Discipline for a Pharmacist's License and Grounds for Discipline for a Pharmacy License. The amendment to §281.24, if adopted, will expand the grounds for discipline of a pharmacist's licenses concerning violation of exam security and to include the failure to respond to a continuing education audit and clarify the paragraphs regarding diversion of prescription drugs/samples and violation of the Pharmacy Act, Controlled Substances Act and Dangerous Act. The amendment to §281.25 will clarify the paragraph concerning the diversion of prescription drugs/samples.

Fred S. Brinkley, Jr., R.Ph., M.B.A., 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. Brinkley also has determined that for each year of the first five-year period the sections will be in effect the public benefit anticipated as a result of enforcing the sec-

tions will be the protection of the health and safety of the citizens of Texas through the regulation of the practice of pharmacy. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The amendments are proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1), §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and §26(a)(2), which states that the Board shall define "unprofessional conduct" in the rules.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§281.24. Grounds for Discipline for a Pharmacist License.

(a) For the purposes of the Act, §26(a), unprofessional conduct shall include, but not be limited to:

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

(6) refusing or failing to keep, maintain or furnish any record, notification or information required by this Act, the Controlled Substances Act, [or] Dangerous Drug Act, or any rule adopted pursuant to these Acts;

(7) -(17) (No change.)

(18) engaging in conduct that subverts or attempts to subvert any examination or examination process required for a license to practice pharmacy. Conduct that subverts or attempts to subvert the pharmacist licensing examination process includes, but is not limited to:

(A) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the board or questions contained in a question pool of any examination administered by the board;

(B) copying or attempting to copy another candidate's answers to any questions on any examination required for a license to practice pharmacy;

(C) obtaining or attempting to obtain confidential examination materials compiled by testing services or the Board;

(D) impersonating or acting as a proxy for another in any examination required for a license to practice pharmacy;

(E) requesting or allowing another to impersonate or act as a proxy in any examination required for a license to practice pharmacy; or

(F) violating or attempting to violate the security of examination materials or the examination process in any manner;

(19)-(26) (No change.)

(27) the sale, purchase, or trade or the offer to sell, purchase, or trade off[.]

[(A)] prescription drug samples; provided however, this subdivision does not apply to:

(A)[(i)] prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's out-dated drugs;

(B)[(ii)] prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(C) [(iii)] prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(i)[(I)] the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(ii)[(II)] the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government; and

(iii)[(III)] the samples are for dispensing or provision at no charge to patients of such health care entity.

[(B)] prescription drugs:

(i) sold for export use only;

(ii) purchased by a public or private hospital or other health care entity; or

(iii) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3);

[(C) subparagraph (B) of this paragraph does not apply to:

[(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

[(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (B)(iii) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

[(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

[(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

[(D) misbranded prescription drugs;

[(E) prescription drugs beyond the manufacturer's expiration date; or]

(28) the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3);

(D) provided that subparagraphs (A)-(C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (B)(iii)

of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law;

(29) the sale, purchase, or trade or the offer to sell, purchase, or trade of:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date;

(30)[(28)] failure to repay a guaranteed student loan, as provided in the Texas Education Code 57.491; or

(31) failure to respond and to provide all requested records within the time specified in an audit of continuing education records under §295.8 of this title (relating to Continuing Education Requirements).

§281.25. *Grounds for Discipline for a Pharmacy License.* For the purposes of subdivision (9) of subsection (b) of §26 of the Act, a pharmacy fails to establish and maintain effective controls against diversion of prescription drugs when:

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

(3) during the time an individual's license to practice pharmacy is revoked, canceled, or suspended, the pharmacy employs or allows such individual access to prescription drugs; [or]

(4) the pharmacy possesses or engages in the sale, purchase, or trade or the offer to sell, purchase, or trade [;]

[(A)] prescription drug samples; provided however, this subparagraph does not apply to:

(A)[(i)] prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's outdated drugs;

(B)[(ii)] prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(C) [(iii)] prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(i)[(I)] the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(ii)[(II)] the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government; and

(iii)[(III)] the samples are for dispensing or provision at no charge to patients of such health care entity.

[(B) prescription drugs:

(i) sold for export use only;

(ii) purchased by a public or private hospital or other health care entity; or

(iii) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3) and possessed by a pharmacy other than one owned by the charitable organization;

[(C) subparagraph (B) of this paragraph does not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (B)(iii) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in

or interruptions of regular distribution schedules;

(D) misbranded prescription drugs;

(E) prescription drugs beyond the manufacturer's expiration date unless removed from dispensing stock and quarantined.]

(5) the pharmacy possesses or engages in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3) and possessed by a pharmacy other than one owned by the charitable organization;

(D) provided that subparagraphs (A)-(C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (B)(iii) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law; or

(6) the sale, purchase, or trade or the offer to sell, purchase, or trade of:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451443

Fred S. Brinkley, Jr.,
R.Ph., M.B.A.
Executive
Director/Secretary
Texas State Board of
Pharmacy

Proposed date of adoption: January 31, 1995

For further information, please call: (512) 832-0661

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

**Chapter 501. Professional
Conduct**

◆ ◆ ◆
**Other Responsibilities and
Practices**

• 22 TAC §501.47

The Texas State Board of Public Accountancy proposes an amendment to §501.47, concerning Firm Names.

The proposed amendment clarifies what words may not be included in a firm's name.

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 rule on firm names. 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, 78701-3942.

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.

§501.47. Firm Names.

(a) (No change.)

(b) A professional or firm name or designation will be considered to be misleading if:

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

(6) the name includes the designation "and company," ["and company"] "company," "associates" or "and associates" or abbreviations thereof unless there are at least two licensees involved in the practice;

(7)-(9) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on November 11, 1994.

TRD-9451235

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 505-5566

◆ ◆ ◆
**Chapter 511. Certification as a
CPA**

Certification

• 22 TAC §511.168

The Texas State Board of Public Accountancy proposes an amendment to §511.168, concerning Reinstatement of a Certificate.

The proposed amendment is necessary due to proposed new §515.9 concerning the collection of license fees following disciplinary action.

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 better understanding of when previous years' license fees are not assessed. 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, 78701-3942.

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.

tancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §9, which authorizes the board to assess and collect license fees, and §21, which authorizes the board to revoke or suspend certificates and licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 9, and 21.

§511.168. Reinstatement of a Certificate.

(a) (No change.)

(b) An individual relinquishing the certificate may not apply for reinstatement, but may apply for the issuance of a new certificate upon the completion of all requirements for the issuance of such certificate.

(c) Prior to reinstatement of the certificate all [previous and current] fees and penalties, if any, must be paid in full and the applicant must show proof of completion of all required continuing professional education courses.

(d) An individual who has practiced and resided outside of Texas and who meets all the following requirements may be reinstated:

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

(5) The individual pays the current year's fees and provides the Board satisfactory evidence of successful completion of 120 hours of continuing professional education in technical courses obtained within the three-year period [12 months] of the application for reinstatement.

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

Issued in Austin, Texas, on November 11, 1994.

TRD-9451238 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 505-5566

• 22 TAC §511.169

The Texas State Board of Public Accountancy proposes an amendment to §511.169, concerning Reinstatement of a Registration.

The proposed amendment is necessary due to proposed new §515.9 concerning the collection of license fees following disciplinary action.

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 better understanding of when previous years' license fees are not assessed. 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, 78701-3942

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, and §9, which authorizes the board to assess and collect license fees, and §21, which authorizes the board to revoke or suspend certificates and licenses.

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 9, and 21

§511.169. Reinstatement of a Registration.

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

(c) Prior to reinstatement of the registration all [previous] fees and penalties, if any, must be paid in full and the applicant must show proof of completion of all required continuing professional education courses.

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

Issued in Austin, Texas, on November 11, 1994.

TRD-9451238 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 2, 1995

For further information, please call (512) 505-5566

Chapter 515. Licenses

• 22 TAC §515.3

The Texas State Board of Public Accountancy proposes an amendment to §515.3, concerning License Renewal for Individuals and Practice Units

The proposed amendment adds subsection (f) which requires a practice unit to notify the Board of the quality review date assigned by a sponsor before the practice unit's license may be renewed.

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 the Board will have increased control over quality review schedules and dates. 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, 78701-3942

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, and §15B, which authorizes the board to provide for a quality review program by rule.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §15B.

§515.3. License Renewal for Individuals and Practice Units.

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

(f) A practice unit's license shall not be renewed unless the practice unit has notified the Board of the quality review date assigned by a sponsoring organization which has been approved by the Board.

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

Issued in Austin, Texas, on November 11, 1994.

TRD-9451237 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 505-5566

Collection of License Fees Following Disciplinary Action

• 22 TAC §515.9

The Texas State Board of Public Accountancy proposes new §515.9, concerning the collection of license fees following disciplinary action

The proposed new rule makes it clear that license fees are not assessed for license years during which a certificate or license was revoked or suspended

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 better understanding of when previous years' license fees are not assessed. 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. Fandel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The new rule 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, §9, which authorizes the board to assess and collect license fees, and §21, which authorizes the board to revoke or suspend certificates and licenses

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 9, and 21.

§515.9. Collection of License Fees following Disciplinary Action.

(a) A certificate, registration or temporary permit holder whose certificate, license, registration, or temporary permit has been suspended or revoked by the board for failure to comply with the Board's Rules of Professional Conduct, exclusive of §501.25 (relating to Mandatory Continuing Professional Education), will not be assessed license fees or penalties for the licensing years during which the certificate, license, registration, or temporary permit was suspended or revoked.

(b) A certificate, registration or temporary permit holder whose certificate, license, registration, or temporary permit has been suspended or revoked for failure to comply with the Board's Rules of Professional Conduct, exclusive of §501.25 (relating to Mandatory Continuing Professional Education), will pay prorated license year fees for that portion of the license period for which reinstatement of the certificate, license, registration, or temporary permit is sought.

(c) There will be no refund of any paid fees for any remaining time during the license year the suspension or revocation occurs.

(d) If the certificate, license, registration or temporary permit was suspended or revoked for non-payment of annual license fees or failure to comply with §501.25 of this title (relating to Mandatory Continuing Professional Education), upon written application the executive director will decide on an individual basis whether the fees and penalties must be paid for the

license years of suspension or revocation and whether any fee exemption is applicable.

(e) It is the responsibility of the certificate, registration or temporary permit holder whose certificate, license, registration or temporary permit is suspended to apply to the board for the issuance of a certificate, license, registration or temporary permit upon termination of suspension.

(f) This section does not address continuing professional education requirements. See Chapter 523 of this title (relating to Continuing Professional Education) for other requirements prior to issuance of an annual license.

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

Issued in Austin, Texas, on November 11, 1994.

TRD-9451239

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 505-5566

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 13. Health Planning and Resource Development

Advisory Committee

• 25 TAC §13.51

The Texas Department of Health (department) proposes new §13.51, concerning the Hospital Data Advisory Committee. The proposed new section covers applicable law, purpose, tasks, review and duration, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, reimbursement of members' expenses, and the section's effective date.

In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The present advisory committee, the Hospital Data Advisory Committee, was established in 1986. Upon review by the department, the committee's structure has been revised to reflect the changes in composition required by amendments to the authorizing legislation.

Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, has deter-

mined that for the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of administering the section as proposed.

Ms. McDonald also has determined that for each of the first five years the section is in effect, the public benefits anticipated are the department's continuing compliance with Texas Civil Statutes, Article 6252-33 concerning state agency advisory committees, and the department's continuing access to the committee's advice concerning hospital reporting requirements and interpretation and evaluation of the data received. There are no anticipated economic costs to small or large businesses or individuals who are required to comply with the section as proposed, and no effect on local employment is anticipated.

Written comments on the proposed addition may be submitted to Dora McDonald, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Telephone inquiries also may be made to Dora McDonald at (512) 458-7261. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the 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.

The new section will affect Health and Safety Code, Chapter 311.

§13.51. Hospital Data Advisory Committee.

(a) The committee. The Hospital Data Advisory Committee shall be appointed under and governed by this section. The Texas Board of Health (board) is required to establish the committee by the Texas Health and Safety Code, Chapter 311, Subchapter C, Hospital Data Reporting and Collection System.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board on hospital reporting requirements and on interpretation and evaluation of the data received.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the hospital data reporting and collection system.

(2) The committee shall advise the board concerning the interpretation and evaluation of:

- (A) hospital financial data;
 - (B) hospital utilization data;
 - (C) patient discharge data;
- and
- (D) mental health and chemical dependency data.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By May 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 19 members appointed by the board, as follows:

- (1) five members of the hospital industry;
- (2) one member of private business;
- (3) two members of the insurance industry;
- (4) six members of state agencies, as follows:

(A) the Texas Department of Human Services;

(B) the Employees Retirement System of Texas;

(C) the Texas Department of Mental Health and Mental Retardation;

(D) the Texas Commission on Alcohol and Drug Abuse;

(E) and the Texas Department of Insurance;

(5) two members of consumer organizations;

(6) one member of the State-wide Health Coordinating Council; and

(7) two ex-officio members of the Texas state legislature.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members

will expire on December 31 of each even-numbered year beginning in 1996.

(2) If a vacancy occurs, an individual shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer.

(1) Each officer shall serve a two-year term of office.

(2) The presiding officer shall preside at all committee meetings at which he or she attends, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may refer to its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The full committee shall meet at least two times each year.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Department staff shall make meeting arrangements and shall contact committee members to determine availability for a meeting date and place.

(3) Each committee meeting shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each committee member shall be informed of a committee meeting at least five working days prior to the meeting.

(5) A simple majority of committee members shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only at a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because the member is either ill, disabled, or absent from at least three consecutive committee meetings.

(3) The validity of a committee is not affected if the action is being taken when a ground for removal of a member exists.

(4) The attendance records of committee members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Department staff shall provide administrative support for the committee

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any committee action must be approved with a quorum present and by a majority vote of the members present.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Department staff shall take minutes of each committee meeting. A draft of the minutes shall be transmitted to the members for review prior to the next committee meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittee. The committee may establish subcommittees as neces-

sary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each of its meetings or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each May. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451446

Susan K Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: January 2, 1995

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

Chapter 14. County Indigent Health Care Program

Subchapter F. Advisory Committee

• 25 TAC §14.501

The Texas Department of Health (department) proposes new §14.501, concerning the Indigent Health Care Advisory Committee. The proposed new section covers applicable law, purpose, tasks, review and duration, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, and reimbursement of members' expenses.

In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The present advisory committee, the Indigent Health Care Advisory Committee, was established in 1989. Upon review by the department, rules have been prepared for adoption by the board.

Gary Bego, Budget Director, Health Care Financing, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of administering the section as proposed.

Mr. Bego also has determined that for each year of the first five years the section will be in effect, the public benefits anticipated are the department's continued access to the committee's advice concerning the Indigent Health Care Program's operation and delivery of services. There are no anticipated eco-

nomic costs to small businesses who are required to comply with the section as proposed. There will be no costs to persons. There will be no anticipated effect on local employment.

Written comments on the proposed rule may be submitted to Bonnie Magers, Program Specialist, Indigent Health Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168. Telephone inquiries also may be made to Bonnie Magers at (512) 338-6458. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function; and under Health and Safety Code, §12.001, which provides the 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.

The new section will affect Health and Safety Code, Chapter 61.

§14.501. Indigent Health Care Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Indigent Health Care Advisory Committee.

(2) The Texas Human Resources Code, Chapter 22 allows the Texas Board of Health (board) to establish the committee.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of the Indigent Health Care Program.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the Indigent Health Care Program.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of eleven members con-

sisting of two consumer and nine nonconsumer representatives appointed by the board.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties with-

out discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with

the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451301 Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Earliest possible date of adoption. January 2, 1995

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

Chapter 39. Primary Health Care Services Program

The Texas Department of Health (department) proposes repeal of §§39.41-39.50 and new §39.41, concerning the new Community Oriented Primary Care Advisory Committee, which replaces the State Primary Care Program Advisory Committee. The proposed repeals and new section cover authorization, purpose, membership, officers, meetings, quorum, subcommittees, parliamentary procedures, minutes, and public participation.

The repealed sections and new section are proposed for the following reasons. In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued,

modified, consolidated with other committees, or abolished. The State Primary Care Program Advisory Committee was established in 1985 by the Board of Health. Upon review by the department, the committee's name has been changed, and its structure has been revised to create a better balance between consumer and nonconsumer representatives, and to better balance gender, minority, and geographic representation.

John H. Dombroski, Director of Programs and Contracts, Bureau of Community Oriented Primary Care, has determined that for the first five-year period the sections will be in effect, there will be no fiscal implications for state or local government as a result of administering the sections as proposed.

Mr. Dombroski also has determined that for each of the first five years the sections are in effect, the public benefits anticipated are the department's continuing compliance with Texas Civil Statutes, Article 6252-33 concerning state agency advisory committees, and the department's continuing access of the committee's advice concerning the implementation and development of local community oriented primary care infrastructure. There are no anticipated economic costs to small or large businesses or individuals who are required to comply with the sections as proposed, and no effect on local employment is anticipated.

Written 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 78756-3168, telephone (512) 458-7771. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

State Primary Care Program Advisory Committee

• 25 TAC §§39.41-39.50

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

The repeals and new section are proposed under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, under Health and Safety Code, §31.017(b), which authorizes the Texas Board of Health (board) to appoint a state-wide advisory committee for the COPC program; and under Health and Safety Code, §12.001(b), which provides the 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.

The repeals and new section will affect Health and Safety Code, Chapter 31.

§39.41 Authorization

§39.42 Purpose

§39.43 Membership.

§39.44 Officers.

§39.45 Meetings.

§39.46 Quorum.

§39.47 Subcommittees.

§39.48 Parliamentary Procedure.

§39.49 Minutes.

§39.50 Public Participation.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451447 Susan K Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption January 2, 1995

For further information, please call (512) 458-7771

Advisory Committee [State Primary Care Program Advisory Committee]

• 25 TAC §39.41

The new section is proposed under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function, under Health and Safety Code, §31.017(b), which authorizes the Texas Board of Health (board) to appoint a state-wide advisory committee for the COPC program, and under Health and Safety Code, §12.001(b), which provides the 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.

The new section will affect Health and Safety Code, Chapter 31.

§39.41 Community Oriented Primary Care Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Community Oriented Primary Care Advisory Committee.

(2) The Texas Primary Care Act allows the Texas Board of Health (board) to establish the committee.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in planning, coordinating, and administering the development of a community-based comprehensive system of primary care, encompassing a full spectrum of psychosocial, preventive, acute/urgent, case management, and dental services.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to implementation of state primary care program activities.

(2) The committee shall:

(A) evaluate existing services and unmet community needs in developing primary care networks including services and providers;

(B) review the primary care plan(s);

(C) evaluate ongoing program efforts;

(D) define and prioritize both short-range and long-range goals and objectives for primary care activities; and

(E) review criteria and standards for primary care program implementation.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By July 1, 1999, the Board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The membership of the committee shall reflect the populations to be served by the program, with equal consideration of regional, ethnic, and gender distribution, and shall emphasize primary care provider and community-oriented representation.

(1) The board shall appoint members of the committee.

(2) The committee shall be composed of 12 members, which shall include:

(A) three consumer members, including at least two of whom are past or current consumers of services, and one business representative; and

(B) nine nonconsumer members as follows;

(i) Two primary care physicians, one practicing in a rural area and one practicing in an underserved area;

(ii) One representative of a local health department;

(iii) One representative of a federally funded community health center;

(iv) One representative of a hospital;

(v) One educator or faculty member who trains primary care providers or a representative of an institution of higher education or a school of public health;

(vi) One member with expertise in health care finance;

(vii) One practicing professional nurse; and

(viii) One practicing physician assistant or nurse practitioner.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms with the terms of four members expiring August 31 of each even-numbered year beginning in 1996.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31 of each year.

(1) Each officer shall serve one-year terms and shall be eligible for reelection for one additional term.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may refer to its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which they are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot:

(A) discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(B) is absent from more than half of the committee and subcommittee meetings during a calendar year; or

(C) is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statements by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall include:

(A) a list of the meeting dates of the committee and any subcommittees;

(B) the attendance records of its members;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee has accomplished the tasks given to the committee by the board;

(E) the status of any rules which were recommended by the committee to the board;

(F) anticipated activities of the committee for the next year; and

(G) any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding 12 months and shall be filed with the board each July. The report shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) Committee members may not be reimbursed for compensatory per diem by the department unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not be reimbursed for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not be reimbursed for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451448

Susan K. Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: January 2, 1995

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

◆ ◆ ◆
Chapter 115. Home and
Community Support Services
Agencies

Subchapter A. General Provisions

• 25 TAC §115.6, §115.7

The Texas Department of Health (department) proposes new §115.6 and §115.7, concerning the Home and Community Support Services Advisory Committee and the Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee. The new proposed sections implement Texas Civil Statutes, Article 6252-33 (Senate Bill 383, Acts of the 73rd Legislature, Regular Session, 1993) which requires the department to adopt rules relating to the purpose and tasks of each advisory committee and the manner in which committees will report to the department.

The proposed new sections will establish rule language which describes the tasks of the advisory committees, member composition, members' terms of office, election of officers, meeting times, meeting minutes, meeting attendance requirements, meeting procedures, departmental staff support, establishment of subcommittees, statements made by members, reports to the board, and reimbursement for expenses. Since the latter committee also advises the Board of Nurse Examiners, that board will also need to con-

sider adopting rules as required by Texas Civil Statutes, Article 6252-33.

Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the proposed new sections are in effect there will be minimal fiscal implications for state government as a result of enforcing or administering the sections. For the Home and Community Support Services Advisory Committee the cost is estimated at \$1,400 per meeting with an anticipated one meeting per year. The Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee is a new committee. Reimbursable expenses are estimated at \$520 per meeting if all members are present with an anticipated one meeting per year. There are no anticipated costs for local government.

Ms. Underwood also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased accessibility to the public, industry representatives and other interested parties relating to committee activities. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed, and no fiscal impact on small businesses or local employment.

Comments on the new sections may be submitted to Nance Stearman, R.N., M.S. N., Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6752. Comments will be accepted for 30 days after publication of the new sections in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 6252-33 relating to agency review of advisory committees; the Health and Safety Code, §142.012, which provides the Texas Board of Health (board) with the authority to adopt rules to establish and enforce minimum standards for the licensing of home and community support services agencies; and the 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 rules affect the Health and Safety Code, Chapter 142 and Texas Civil Statutes, Article 6252-33.

§115.6. Home and Community Support Services Advisory Committee.

(a) The committee. The Home and Community Support Services Advisory Committee shall be governed by this section. The committee is established under the Health and Safety Code, §142.015.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the Texas Board of Health (board) in the area of home and community support services agencies.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the licensing of home and community support services agencies.

(2) The committee shall make recommendations relating to the memorandum of understanding required by the Health and Safety Code, §142.009(k).

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 13 members.

(1) The composition of the committee shall include three consumer representatives and ten nonconsumer representatives.

(2) The members of the committee are appointed by the governor as follows:

(A) three consumer representatives;

(B) two representatives of agencies that are licensed to provide certified home health services;

(C) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(D) three representatives of agencies that are licensed to provide hospice services with one representative appointed from:

(i) a community-based non-profit provider of hospice services;

(ii) a community-based proprietary provider of hospice services; and

(iii) a hospital-based provider of hospice services; and

(E) three representatives of agencies that are licensed to provide personal assistance services.

(g) Terms of office. The term of office of each member shall be two years.

(1) Members shall be appointed for staggered terms so that the terms of seven members will expire on January 31 of each even-numbered year and the terms of six members will expire on January 31 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31 of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or any three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee

meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the members' duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

§115.7. Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(2) The Health and Safety Code, §142.016(b) allows the Texas Board of Health (board) and the Board of Nurse Examiners (BNE) to jointly establish and appoint the committee.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board and the BNE in the area of defining certain tasks or services provided by home and community support services agencies.

(d) Tasks.

(1) The committee shall advise the board and the BNE concerning the development, modification, and renewal of a memorandum of understanding (MOU) governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing.

(2) The committee shall carry out any other tasks given to the committee by the board and the BNE.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of ten members jointly appointed by the board and the BNE. The members of the committee shall be appointed as follows:

(1) one representative from the BNE and one representative from the Texas Department of Health (department);

(2) one representative from the Texas Department of Mental Health and Mental Retardation;

(3) one representative from the Texas Department of Human Services;

(4) one representative from the Texas Nurses Association;

(5) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(6) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(7) one representative of the Texas Respite Resource Network or its successor; and

(8) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on January 31 of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The representatives from the department and the BNE will serve as co-chairmen of the committee.

(1) The co-chairmen shall preside at all committee meetings at which they are in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board.

(2) The co-chairmen may serve as ex-officio members of any subcommittee of the committee.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff, BNE staff, and either the cochairmen or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The cochairmen may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify a co-chairman or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the co-chairmen shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the cochairmen.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The co-chairmen shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The co-chairmen may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its

members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate proceeding 12 months and shall be filed with the board each January. It shall be signed by the co-chairmen and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official business

(1) No compensatory per diem shall be paid to committee members unless required by law

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451302 Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Earliest possible date of adoption: January 2, 1995

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

Chapter 157. Emergency Medical Care

The Texas Department of Health (department) proposes the repeal of existing §§157.101-157.113; new §157.101; and an amendment to §157.121, concerning emergency medical services. Specifically the sections cover the new Emergency Health Care Advisory Committee. The new advisory committee will provide advice to the Texas Board of Health (board) on emergency health care issues. The new committee replaces the existing Texas Emergency Medical Services Advisory Council (TEMSAC), the Trauma Technical Advisory Committee (TTAC), and the Pediatric Emergency Medical Services Advisory Committee (PEMSAC), requiring the department to repeal existing §§157.101-157.113 and to modify §157.121(c) to delete the reference to TTAC.

The repeals, new section, and amendment will comply with Texas Civil Statutes, Article 6252-33, which requires the department to evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The department has three committees that advise the department on emergency medical services (EMS) including pediatric patients and hospital administrative and operational considerations relating to EMS/trauma systems development and facility designation and any other tasks assigned by the board. The consolidation of the committees' functions is proposed to promote efficiency, decrease duplication, and promote objectivity.

Gene Weatherall, Bureau Chief, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications to state government as a result of administering and enforcing these sections. The effect on state government will be an estimated savings of \$15,000 each year of the first five years. There will be no effect on local government.

Mr. Weatherall also has determined that, for each year of the first five years the sections as proposed are in effect, the public benefit anticipated is increased efficiency and a decrease in duplication and the saving of resources. There will be no effect on small businesses, individuals or local employment.

Comments on the proposed amendments may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 834-6740. Comments will be accepted for 90 days after publication of the amendments in the *Texas Register*.

[Texas] Emergency Health Care [Medical Services] Advisory Committee [Council]

• 25 TAC §§157.101-157.113

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

The repeals are proposed under the Health and Safety Code, §11.016, which provides the Texas Board of Health with the authority to appoint advisory committees; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The codes and/or articles affected are: Health and Safety Code, Chapter 773, including §§773.006, 773.118, and 773.172; and Health and Safety Code, §11.016 and §12.001

§157.101 Purpose

§157.102 Meetings

§157.103 Quorum

§157.104 Voting

§157.105 Rules for Order.

§157.106. Agenda.

§157.107 Minutes

§157.108. Elections

§157.109 Officers

§157.110 Committees.

§157.111 Transaction of Official Business.

§157.112. Official Records.

§157.113. Attendance

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451298 Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption: February 20, 1995

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

• 25 TAC §157.101

The new section is proposed under the Health and Safety Code, §11.016, which provides the Texas Board of Health with the authority to appoint advisory committees; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The codes and/or articles affected are: Health and Safety Code, Chapter 773, including §§773.006, 773.118, and 773.172; and Health and Safety Code, §11.016 and §12.001.

§157.101. *Emergency Health Care Advisory Committee.*

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Emergency Health Care Advisory Committee.

(2) The new advisory committee is promulgated under the provisions of Health and Safety Code, §11.016, which states the Texas Board of Health (board) may appoint advisory committees.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the following areas:

(1) needs of emergency medical services (EMS) in the state to include the specialized needs of pediatric patients; and

(2) hospital administrative and operational considerations relating to EMS/trauma systems development and facility designation.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to EMS, EMS/Trauma systems development, and the specialized needs of the emergency pediatric patient.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By May 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 12 members appointed by the board as follows:

(1) four shall be consumer members; and

(2) eight shall be non-consumer members as follows:

(A) an emergency physician;

(B) a provider of prehospital emergency medical services;

(C) an emergency medical technician (EMT), emergency medical technician-intermediate (EMT-I) or emergency medical technician-paramedic (EMT-P);

(D) an emergency nurse;

(E) a pediatrician;

(F) a trauma surgeon,

(G) a trauma nurse; and

(H) a facility administrator.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of members will expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed by the board to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of every year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall:

(A) preside at all committee meetings at which he or she is in attendance;

(B) call meetings in accordance with this section;

(C) appoint subcommittees of the committee as necessary;

(D) cause proper reports to be made to the board; and

(E) may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet at least twice annually and as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department

staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees

(1) There shall be established three standing subcommittees.

(A) The standing subcommittees shall consist of the pediatric subcommittee, the trauma subcommittee, and the emergency medical services subcommittee.

(B) Standing subcommittees shall have goals and objectives reviewed biennially to determine appropriateness of subcommittee structure and continuation.

(2) The committee may establish additional subcommittees as necessary to assist the committee in carrying out its duties.

(3) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint non-members of the committee to serve on subcommittees.

(4) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(5) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to the board. The committee shall file an annual written report with the board.

(1) The report shall list

(A) the meeting dates of the committee and any subcommittees,

(B) the attendance records of its members,

(C) a brief description of actions taken by the committee;

(D) a description of how the committee has accomplished the tasks given to the committee by the board,

(E) the status of any rules which were recommended by the committee to the board,

(F) anticipated activities of the committee for the next year, and

(G) any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A non-member of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451299

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

Proposed date of adoption: February 20, 1995.

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

◆ ◆ ◆
**Emergency Medical Services
Trauma Systems**

• 25 TAC §157.121

The amendment is proposed under the Health and Safety Code, §11.016, which provides the Texas Board of Health with the authority to appoint advisory committees, and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The codes and/or articles affected are: Health and Safety Code, Chapter 773, including §§773.006, 773.118, and 773.172; and Health and Safety Code, §11.016 and §12.001.

§157.121. Purpose.

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

(c) The Bureau of Emergency Management and the Emergency Health Care Advisory Committee [TTAC] shall review these sections every three years

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

Issued in Austin, Texas, on November 22, 1994

TRD-9451300 Susan K Støeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption February 20, 1995

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

◆ ◆ ◆
TITLE 28. INSURANCE
Part I. Texas Department
of Insurance

Chapter 7. Corporate and
Financial

Subchapter A. Examination
and Corporate Custodian and
Tax

• **28 TAC §7.64**

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

The Texas Department of Insurance proposes the repeal of §7.64, concerning the annual statement blanks, instructions, and other forms used by insurers and certain other entities regulated by the Texas Department of Insurance to report their financial condition and business operations and activities for calendar year 1985. The repeal of this section is necessary to eliminate unnecessary provisions and to enable the Texas Department of Insurance simultaneously to adopt new §7.64, which replaces the repealed section with other provisions concerning the filing requirements for annual and quarterly statements and other reporting forms for calendar year 1994 and 1995. Notification of the proposed new section which replaces this repealed section appears elsewhere in this issue of the *Texas Register*

Woody Pogue, associate commissioner for the financial program, has determined that, for the first five-year period the repeal of the section is in effect, there will be no fiscal implications for state or local government. There will be no effect on local employment or local economy.

Mr. Pogue also has determined that for each year of the first five years the repeal of the section is in effect, the public benefit anticipated as a result of the repeal will be more efficient administrative regulation of insurance. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director-Financial Monitoring Activity, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk

The repeal is proposed under the Insurance Code, Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, 23.26, 1.03A, and Texas Government Code, §§2001.004-2001.038. The Insurance Code, Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 23.02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application. Texas Government Code, §§2001.004-2001.038, authorize and require each state agency to adopt rules of practice

setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

The following are the articles of the Insurance Code that are affected by this section: Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, 23.26.

§7.64. Annual Statement Blanks, Instructions, and Other Forms, 1984 Operations

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

Issued in Austin, Texas, on November 28, 1994

TRD-9451442 D J Powers
Chief Clerk and General
Counsel
Texas Department of
Insurance

Earliest possible date of adoption January 2, 1995

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

◆ ◆ ◆
The Texas Department of Insurance proposes new §7.64, concerning annual and quarterly statement blanks, other reporting forms, diskettes and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes. These statement blanks, other reporting forms, and diskettes are required for reporting, in 1995, the financial condition and business operations and activities conducted during the 1994 and 1995 calendar years. The proposal of new §7.64 is simultaneous with the proposed repeal of present §7.64, concerning the 1985 annual statement filings. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. The new section defines terms relevant to the statement blanks and reporting forms, provides the dates by which certain reports are to be filed, and adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities, and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners as directed. The department has filed with the Office of the Secretary of State, Texas Register Division, copies of the annual and quarterly statement blanks, other reporting forms, and manuals proposed for adoption by reference. Other copies are available for inspection in the office of the Financial Monitoring Activity of the

Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas.

A. W. Pogue, associate commissioner for the financial program, has determined that there will be fiscal implications as a result of enforcing or administering this section. The effect on state government for the first five-year period the rule will be in effect will be fees paid by the state government to the National Association of Insurance Commissioners for filing requirements of this section when those fees are not paid by such insurers. There will be no effect on local government for the first five-year period the rule will be in effect. For small businesses and larger businesses, the cost of compliance with this section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost of completing the diskette filings depends on the method of compliance the regulated entity selects. If a regulated entity elects to purchase electronic data processing equipment and to prepare diskettes internally, the anticipated maximum cost of compliance would be \$7,500 for the first year, and \$1,200 for each of the next four years. If a regulated entity chooses to use an independent consultant or vendor to prepare diskettes adequate to comply with the requirements of this section, the anticipated possible economic cost of compliance would be between \$600 and \$3,500 for each year of the first five years that the proposed section is in effect, with the exact cost depending on the fee schedule of the independent consultant or vendor whom the regulated entity chooses to utilize. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by this section.

Mr. Pogue also has determined that, for each year of the first five years this section, as proposed, is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The anticipated economic cost to insurers and other regulated entities required to comply with this proposed section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost will depend on each company's record-keeping practices, type of operations, and the method of complying with diskette filing requirements selected by the regulated entity as described in the Fiscal Note.

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to D. J. Powers, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director-Financial Monitoring Activity, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public

hearing on this proposal should be submitted separately to the Chief Clerk's Office.

The new section is proposed under the Insurance Code, Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, 23.26, 1.03A, and Texas Government Code, §§2001.004-2001.038. The Insurance Code, Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 23.02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application. Texas Government Code, §§2001.004-2001.038, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed section affects the filing of the annual statement, other reporting forms, and diskettes to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

The following are the articles of the Insurance Code that are affected by this rule. §7.64—The Insurance Code, Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, and 23.26.

§7.64. *Requirements for filing the 1994 Annual and 1995 Quarterly Statements, Other Reporting Forms, and Diskettes.*

(a) *Scope.* This section provides insurers and other regulated entities with the filing requirements for the 1994 annual statement, 1995 quarterly statements, other reporting forms, and diskettes necessary to

report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; and non-profit legal services corporations. The commissioner of insurance adopts by reference the 1994 annual and 1995 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the Texas Department of Insurance, Financial Monitoring Activity, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the National Association of Insurance Commissioners (NAIC), using the appropriate annual and quarterly statement blanks, other reporting forms and machine-readable diskettes and following the applicable instructions as outlined in subsections (c)-(l) of this section.

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

(1) *Association edition—Blanks and forms promulgated by the National Association of Insurance Commissioners.*

(2) *Commissioner—The commissioner of insurance appointed under the Insurance Code, Article 1.09.*

(3) *Department—The Texas Department of Insurance.*

(4) *Insurer—A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.*

(5) *NAIC—The National Association of Insurance Commissioners.*

(6) *Texas edition—Blanks and forms promulgated by the commissioner of insurance.*

(c) *Filing requirements for life, accident and health insurers.* Each life, life

and accident, life and health, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, and group hospital services corporation shall complete and file the following blanks, forms, and diskettes for the 1994 calendar year and the first three quarters of the 1995 calendar year. The forms, reports and diskettes identified in paragraphs (1)(A)(1)(L); (2)(A)-(C); and (3)(A) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Life, Accident and Health, except as provided by paragraph (4) of this subsection. The diskettes identified in paragraph (3)(B) and (C) shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Life/Health, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed with the department and the NAIC include the following:

(A) Annual Statement (association edition, Form 1 or Form 11 with a blue colored cover), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995);

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S with a green colored cover) (required of companies maintaining separate accounts), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995);

(C) Trusteed Surplus Statement (association edition, Life, Accident and Health Supplement) (required of the U.S. branch of an alien insurer), 9 inch x 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1995;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1995 (stipulated premium insurance companies, May 1, 1995);

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995

(stipulated premium insurance companies, April 1, 1995), in addition to the Long-Term Care Experience Reporting Form included in the annual statement required by subparagraph (A) of this paragraph;

(F) Schedule DS (association edition) (required of companies that have included equity in the undistributed income of consolidated subsidiaries in its net gain/(loss) from operations), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995);

(G) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), 9 inch x 14 inch size, to be filed on or before May 1, 1995;

(H) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1995 (stipulated premium insurance companies, May 1, 1995);

(I) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 9 inch x 14 inch size, to be filed on or before June 30, 1995;

(J) Adjustments to the Life, Health & Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 9 inch x 14 inch size, to be filed on or before June 30, 1995;

(K) Life and Accident and Health Quarterly Statement (association edition) (required of companies filing Form 1), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1995. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(L) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion), to be attached to each annual and quarterly statement required by paragraph (1)(A) and (J) of this subsection; and

(M) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection

(2) Reports to be filed only with the department.

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(B) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before June 30, 1995;

(C) Supplemental Compensation Exhibit (association edition) 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(D) Annual Statement (Texas edition, green) (required of companies writing prepaid legal business in 1994), 8-1/2 inch x 14 inch size, to be filed on or before March 1, 1995;

(E) Affidavit in Lieu of Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business that did not write such business in 1994), to be filed on or before March 1, 1995;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995);

(G) Analysis of Surplus, for life, accident and health insurers, to be filed

on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995);

(H) TX Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1995 (stipulated premium companies, April 1, 1995 and, for those stipulated premium companies subject to quarterly reporting in accordance with paragraph (1)(J) of this subsection, May 15, August 15, and November 15, 1995);

(I) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1995 (stipulated premium companies, April 1, 1995); and

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995);

(B) machine-readable diskettes containing computerized annual statement data (required of companies filing annual statement Form 1), to be filed on or before March 1, 1995 (stipulated premium insurance companies, April 1, 1995); and

(C) machine-readable diskettes containing computerized quarterly statement data (required of companies filing annual statement Form 1), to be filed on or before May 15, August 15, and November 15, 1995. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file diskettes with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection

(A) Since Texas domestic companies have historically not been required to establish Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC.

(B) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code

(d) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed on a Form 2 for the 1993 calendar year, and domestic joint underwriting associations shall complete and file the following blanks, forms, and diskettes for the 1994 calendar year and the first three quarters of the 1995 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(K); (2)(A)-(C); and (3)(A)-(C) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Property and Casualty, except as provided by paragraph (4) of this subsection. The diskettes identified in paragraph (3)(B) and (C) of this subsection shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Property/Casualty, except as provided by paragraph (4) of this section.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 2 with a yellow col-

ored cover), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(B) Trusteed Surplus Statement (association edition, Property and Casualty Supplement) (required of the U.S. branch of an alien insurer), 9 inch x 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1995;

(C) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1995;

(D) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995, in addition to the Long-Term Care Experience Reporting Form required by subparagraph (E) of this subsection;

(E) Long-Term Care Experience Reporting Form (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1995;

(F) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(G) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(H) Insurance Expense Exhibit (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed in duplicate on or before April 1, 1995; and

(I) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or health business), 9 inch x 14 inch size, to be filed on or before May 1, 1995;

(J) Fire and Casualty Quarterly Statement (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1995; and

(K) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this subsection

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995,

(B) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before June 30, 1995;

(C) Supplemental Compensation Exhibit (association edition) 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(D) Annual Statement (Texas edition, green) (required of companies writing prepaid legal business), 8-1/2 inch x 14 inch size, to be filed on or before March 1, 1995;

(E) Affidavit in Lieu of Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business that did not write such business in 1994), to be filed on or before March 1, 1995;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1995;

(G) Analysis of Surplus, for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1995;

(H) Supplement for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page sixteen of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1995;

(I) Supplement A for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page eight of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1995.

(J) TX Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1995, and

(K) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page six of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1995, and

(L) Form ALT/P/WC, Application for Alternative Excess Statutory Over Statement Reserves for Workers' Compensation (required of deductible plan workers' compensation writers if applying for an alternative basis of calculating the excess statutory over statement reserves for workers' compensation business), to be filed on or before January 31, 1995

(3) Reports and diskettes to be filed only with the NAIC

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1995;

(B) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1995; and

(C) machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1995.

(4) The following provisions shall apply to all filings required by paragraphs (1)-(3) of this subsection

(A) No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed; provided, however, any company that claimed loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, as of December 31, 1991, shall be allowed to claim such reserve discounts at the applicable percentage. The applicable percentage for claiming such loss reserve discounts shall be 100% for 1992, 75% for 1993, 50% for 1994, 25% for 1995, 0% for 1996 and subsequent years. In no event shall the dollar amount of discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, claimed as of December 31, 1991, and subject to the applicable percentage, be increased as of December 31, 1992 and thereafter. The commissioner shall have the authority to determine the appropriateness of, and may disapprove, discounts taken as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims.

(B) The commissioner shall have the authority to determine the appropriateness of, and may disapprove, anticipated salvage and subrogation.

(C) Because SB1, acts of the 71st Texas Legislature, effective January 1, 1991, may have had a dramatic effect on the pricing and loss ratios for workers' compensation business written in the State of Texas, some insurers may be exempt from establishing the entire excess of statutory reserves over statement reserves, also known as the Schedule P penalty reserve, as would otherwise be required by the NAIC Annual Statement Instructions, Property and Casualty. Specifically, Texas domestic insurers that wrote workers' compensation in Texas, but no state other than Texas, in years 1992, 1993, and 1994 and whose loss experience prior to 1992 would require the establishment of a Schedule P penalty reserve using a loss ratio greater than 65% may calculate the reserve based on a loss ratio of 65%. The exemption herein described shall only be for the 1994 annual and 1995 interim financial statements. Reserving in this manner is intended to be consistent with the regulatory desire to attain competitive rates for workers' compensation written in Texas.

(D) Insurers meeting certain eligibility criteria and not claiming the exemption provided in subparagraph (C) of this subsection may apply for approval of an alternative basis of calculating the Excess of Statutory Over Statement Reserve, also known as the Schedule P penalty reserve, for workers' compensation business. The application for an alternative basis for calculating this reserve applies only to workers' compensation business written pursuant to deductible plans authorized by Texas Insurance Code, Article 5.55C.

(i) Eligibility is generally available to insurers that are domiciled or commercially domiciled in Texas and that demonstrate that their standard premium, prior to application of deductible credits, written pursuant to deductible plans was at least 80% of total standard premium for all workers' compensation business for each of the years for which an alternative calculation is requested.

(ii) To apply for an alternative basis of calculating the penalty reserve, an eligible insurer must complete Form ALT/P/WC, Application for Alternative Excess of Statutory Over Statement Reserve for Worker's Compensation. Forms may be obtained from the Financial Monitoring Activity of the Department of Insurance, MC 303-1A, P.O. Box 149099, Austin, Texas 78714-9099, (512) 322-5002. Completed applications must be filed with the department on or before January 31, 1995.

(iii) The Texas Department of Insurance may grant an exception or alternative to requiring the full Schedule P penalty reserve for workers' compensation business, if, in the department's opinion, such treatment is warranted based on the insurer's application. Insurers that do not obtain the prior written approval of the department for an alternative basis of calculating the Schedule P penalty reserve as provided in the subparagraph shall calculate the penalty reserve in accordance with the current NAIC Annual Statement Instruction, Property and Casualty.

(E) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this section and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this section shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(e) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes for the 1994 calendar year and the first three quarters of the 1995 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(H); (2)(A)-(C); and (3)(A) and (B) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Fraternal, except as provided by paragraph (4) of this subsection. The diskettes identified in paragraph (3)(B) of this subsection shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Fraternal, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 4 with a brown colored cover), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(C) Trusteed Surplus Statement (association edition, Fraternal Supplement) (required of the U.S. branch of an alien insurer), 9 inch x 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1995;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1995;

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995, in addition to the Long-Term Care Experience Reporting Form included in the annual statement required in paragraph (1)(A) of this subsection; and

(F) Interest Sensitive Life Insurance Products Report (association edi-

tion) (required of companies writing interest sensitive products), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1995.

(G) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion, to be attached to each annual statement required by paragraph (1)(A); and

(H) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all companies), to be attached to the annual statement required by subparagraph (A) of this subsection

(2) Reports to be filed only with the department:

(A) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before June 30, 1995;

(B) Supplemental Compensation Exhibit (association edition) 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(C) Fraternal Quarterly Statement (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1995;

(D) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1995;

(E) Analysis of Surplus, for fraternal benefit societies, to be filed on or before March 1, 1995, and

(F) Fraternal Benefit Societies-Supplement to Valuation Report, to be filed on or before June 30, 1995.

(G) TX Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile

and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1995;

(H) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page nine of the annual statement as required by subparagraph (A) of this subsection), to be filed on or before March 1, 1995; and

(I) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion, to be attached to each quarterly statement required by subparagraph (C) of this subsection.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1995; and

(B) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1995.

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Since Texas domestic companies have historically not been required to establish Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC.

(B) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall

take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(f) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 1994 calendar year and the first three quarters of the 1995 calendar year. The reports and forms identified in paragraphs (1)(A) and (B); (2)(A) and (B); and (3) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Title, except as otherwise provided by this section. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 9 with a salmon colored cover), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1995.

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1995;

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), 9 inch x 14 inch size, to be filed on or before March 1, 1995;

(B) Title Quarterly Statement (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1995;

(C) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1995; and

(D) Analysis of Surplus, for title insurers, to be filed on or before March 1, 1995.

(E) TX Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1995;

(F) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page five of the annual statement as required in paragraph (1)(A) of this subsection), to be filed on or before March 1, 1995; and

(3) Reports to be filed only with the NAIC. Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1995.

(g) Requirements for health maintenance organizations. Each health maintenance organization shall complete and file the following blanks and forms for the 1994 calendar year and the first three quarters of the 1995 calendar year with the department only. The forms or reports identified in paragraphs (1)-(5) of this subsection shall be completed in accordance with the current NAIC Annual Statements Instructions, Health Maintenance Organizations, except as otherwise provided by this section. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Annual Statement (association edition, HMO), 8-1/2 inch x 14 inch size, to be filed on or before March 1, 1995;

(2) Management's Discussion and Analysis, (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations,

changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1995;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all health maintenance organizations), to be attached to the annual statement required by paragraph (1)(A) of this subsection,

(4) Supplemental Compensation Exhibit (association edition), 9 inch x 14 inch size, to be filed on or before March 1, 1995,

(5) HMO Quarterly Statement (association edition), 8-1/2 inch x 14 inch size, to be filed on or before May 15, August 15 and November 15, 1995;

(6) HMO Supplement, 8-1/2 inch x 14 inch size, to be filed on or before March 1, 1995;

(7) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1995; and

(8) Exhibit Z, 8-1/2 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1995;

(9) TX Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1995.

(h) Requirements for farm mutual insurers not subject to the provisions of subsection (d) of this section. Each farm mutual insurance company shall file the following completed blanks and forms for the 1994 calendar year with the department only:

(1) Annual statement (Texas edition, tan), 8-1/2 inch x 14 inch size, to be filed on or before March 1, 1995;

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1995;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items), to be attached to the annual statement required by paragraph (1) of this subsection, unless otherwise exempted.

(i) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies

Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1994 calendar year with the department only:

(1) Annual Statement (Texas edition, orange), 8-1/2 inch x 14 inch size, to be filed on or before April 1, 1995, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, 7, and 19. All other pages are required;

(2) Texas Overhead Assessment Form, to be filed on or before April 1, 1995;

(3) Release of Contribution Form, to be filed on or before April 1, 1995;

(4) 3-1/2% Chamberlain Reserve Table (Reserve Valuation), to be filed on or before April 1, 1995;

(5) Reserve Summary (1956 Chamberlain Table 3-1/2%), to be filed on or before April 1, 1995,

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year, to be filed on or before April 1, 1995; and

(7) Summary of Inventory of Insurance In Force by Age and Calculation of Net Premiums, to be filed on or before April 1, 1995.

(j) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation shall file the following completed blanks and forms for the 1994 calendar year only with the department only:

(1) Annual Statement (Texas edition, green), 8-1/2 inch x 14 inch size, to be filed on or before March 1, 1995; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1995.

(k) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a Certificate of Authority issued under Texas Insurance Code, Article 8.24, shall complete and file the following blanks and forms for the 1994 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Property and Casualty, except as provided by this section. An actuarial opinion is not required. In the event of a conflict between the Insurance Code, any currently existing depart-

mental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition, Form 2 with a yellow colored cover), 12 inch x 19 inch size, provided, however, only pages 1-4, 14, 18, and 97 are required to be completed, to be filed on or before March 1, 1995;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1995;

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the current year's annual statement, to be filed on or before June 30, 1995; and

(4) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1995.

(l) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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

Issued in Austin, Texas, on November 28, 1994.

TRD-9451441

D. J. Powers
Chief Clerk and General
Counsel
Texas Department of
Insurance

Earliest possible date of adoption: January 2, 1995

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

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY
Part I. Texas Natural Resource Conservation Commission

Chapter 337. Enforcement

The Texas Natural Resource Conservation Commission (TNRCC) proposes the repeal of

§§337 1-337 6, 337 31-337 40, 337 51-337 54 and new §§337 1-337 10, 337 21-337 58, and 337 71, concerning the TNRCC's procedural rules governing enforcement generally, enforcement hearings, and water rights enforcement, respectively

The proposed repeal of §§337 1-337 6, 337 31-337 40 and 337 51-337 54 is required by, and premised upon, the adoption of the new §§337 1-337 6, 337 21-337 58, and 337 71 that will serve as the procedural rules for TNRCC enforcement generally, the TNRCC's contested enforcement case hearings, and the TNRCC's mandatory enforcement hearings, respectively

The proposed repeal of §§337 51-337 54 serves regulatory efficiency because these sections merely restate the procedural requirements enunciated in Texas Water Code, §11301 et seq

The new sections can be described as follows:

Section 337 1 states the purpose of chapter 337

Section 337 2 describes how those sections, from within Title 30 of the Texas Administrative Code, that have been incorporated by reference, within the new sections, should be construed

Section 337.3 provides definitions of terms that are used in the new sections

Section 337 4 describes how pleadings and other written instruments that are required to be filed by the new sections should be filed

Section 337 5 describes the method for computing time under this chapter, and does so by incorporating the provisions of 30 TAC §263.14.

Section 337 6 states that the executive director of the TNRCC is authorized to seek judicial enforcement in courts of competent jurisdiction, by referring the matter to the Texas attorney general's office

Section 337.7 describes the relevance of enforcement orders as a part of a person's compliance history for the purpose of commission proceedings

Section 337 8 describes the powers of the commission in holding enforcement hearings

Section 337.9 permits the commission to adopt guidelines which are neither rules nor precedents but rather announce the manner in which the agency tentatively expects to exercise its discretion in future proceedings

Section 337 10 requires the commission to compile and publish an annual enforcement report

Section 337 21 states that the authority to hold contested enforcement case hearings, unless otherwise ordered by the commission, is delegated to the office of hearings examiners, and that the authority shall be vested in the office of hearings examiners when the respondent invokes the right to an evidentiary hearing

Section 337 22 describes the remedies available to the commission in enforcement proceedings conducted pursuant to the new sections

Section 337 23 provides for initiation of an enforcement action by filing of the executive director's preliminary report ("EDPR"), and describes what must be included therein

Section 337 24 states the requirements for pleadings, other than the EDPR, that are filed in a contested enforcement case. This section also provides for the amendment of an EDPR by the filing of a petition, and for the filing of a petition where an EDPR is not statutorily required

Section 337 25 describes the notice requirements that must be complied with upon the filing of an EDPR, including service requirements and proof of notice

Section 337 26 describes the notice requirements that must be complied with upon the filing of a petition that initiates an enforcement action

Section 337 27 describes the notice requirements that must be complied with upon the filing of any notice or pleading, other than the initial pleading in an enforcement action

Section 337 28 provides that a respondent may file an answer to an EDPR or petition, which initiates an enforcement action, in which the respondent may either consent to the imposition of penalties and injunctive relief or request a contested enforcement case hearing

Section 337 29 describes the manner in which the executive director may seek and the commission may issue a default order against a respondent who fails to timely file an answer, who fails to appear at a contested enforcement case hearing, or who fails to comply with discovery requests.

Section 337 30 provides that the executive director and a respondent may enter into an agreed order to settle a contested enforcement case, states the definition of "issuance date" of the agreed order, and describes the procedure for bringing the agreed order before the commission for consideration.

Section 337 31 describes the assumption of jurisdiction over a contested enforcement case by the office of hearings examiners, and the duties of the hearings examiner in controlling and managing the contested enforcement case.

Section 337 32 provides that the executive director may consolidate or sever contested enforcement cases and that the hearings examiner may sever contested enforcement cases if the respondent would be unduly prejudiced without such a severance

Section 337 33 allows the hearings examiner to grant a continuance in the interest of justice, and describes the requirements for a motion for continuance

Section 337 34 permits the office of hearings examiners to hold a preliminary hearing, describes what action may be taken at such a hearing, and requires that the hearings examiner propose an order that recites the actions taken at the hearing

Section 337 35 describes the duties of the chief clerk in notifying the respondent of the date of a contested enforcement case hearing

Section 337 36, which is essentially identical to 30 TAC §267 3, describes the rights of the parties in contested enforcement case hearings

Section 337.37 describes the procedures under which discovery may be conducted in a contested enforcement case; sets out the forms that discovery may take; describes the scope of discovery, provides for protective orders from discovery, makes all discovery compellable, and incorporates by reference other sections of Title 30 of the Texas Administrative Code dealing with various issues concerning the procedures that control depositions in contested enforcement cases

Section 337 38 describes the sanctions that a hearings examiner may levy upon a party who abuses the discovery process in a contested enforcement case, who fails to properly identify his/her witnesses pursuant to a discovery schedule, or who fails to comply with requirements concerning the use of prefiled testimony

Section 337 39 provides the procedures under which a motion for summary judgment may be filed, responded to by an opposing party and considered and ruled upon by the hearings examiner

Section 337.40 states that no interlocutory appeals may be made to the commission by a party to a contested enforcement case. The section does permit the hearings examiner to certify a question to the commission regarding commission policy, jurisdiction or the imposition of a sanction by the hearings examiner

Section 337 41 permits the office of hearings examiners to hold a final prehearing conference; describes the purposes of the conference; permits a hearings examiner to order the parties to file a joint prehearing order; and provides for sanctions which may be levied against a party who fails to adequately participate in the conference

Section 337 42 describes the requirements for exhibits that are sought to be introduced by any party in a contested enforcement case hearing.

Section 337.43 states that the parties to a contested enforcement case may file a joint motion requesting that the case be removed from the office of hearings examiners' active docket for the purpose of engaging in and completing settlement negotiations to dispose of all or part of the case. The section states that the case will be returned to the active docket upon the written request of any party, and that the any party may request, at that time, that the hearings examiner issue a revised prehearing/discovery schedule.

Section 337.44, which is essentially identical to 30 TAC §267 9, states that agreements between the parties must be in writing to be considered by the hearings examiner, unless it is announced at the hearing on the record.

Section 337 45 describes the presentation of evidence in a contested enforcement case, and includes provisions for the hearings examiner to take official notice of matters; for the use of prefiled testimony; and for the use of subpoena with respect to witnesses and documents

Section 337.46 describes the burden of proof placed on the executive director in contested enforcement cases

Section 337.47 sets forth the order of presentation and the right to rebuttal in contested enforcement cases

Section 337.48, which is essentially identical to 30 TAC §267.25, permits the hearings examiner to allow or direct oral argument at the conclusion of the hearing, and states that the hearings examiner may require that the parties submit written briefs instead of or in addition to the use of oral argument

Section 337.49, which is essentially identical to 30 TAC §267.26, permits the hearings examiner to require that the parties submit proposed findings of fact and conclusions of law

Section 337.50 describes the burden of proof placed on a respondent who asserts an inability to pay a recommended penalty or challenges the executive director's decision regarding the amount of penalty necessary to deter future violations, describes the respondent's burden of producing financial records that would be potentially relevant to such an assertion or challenge, and describes the consequences of failing to produce such records

Section 337.51 describes the requirements that a hearings examiner must meet in drafting his/her proposal for decision, and describes how the hearings examiner should arrive at a recommendation of an administrative penalty

Section 337.52, which is essentially identical to 30 TAC §269.5, provides that a party may waive his/her right to review the proposal for decision

Section 337.53, which is based on 30 TAC §269.6, permits any party to file exceptions and replies to exceptions to a proposal for decision

Section 337.54, which is based on 30 TAC §269.7, allows the hearings examiner to amend the proposal for decision in response to any pleadings filed by the parties.

Section 337.55, which is based on 30 TAC §269.9, allows the commission to order the hearings examiner to reopen the record for further proceedings on specific issues.

Section 337.56 describes the commission's review of the hearings examiner's proposal for decision, the factors that the commission should base its decision upon, and how the commission should arrive at a recommendation of an administrative penalty

Section 337.57 describes the requirements for the notice of enforcement orders or decisions of the commission.

Section 337.58 describes the requirements for appealing administrative penalties and for suspending the enforcement of a penalty while seeking judicial review. The section also provides for the reimbursement of the person assessed a penalty if the final appellate determination is in favor of the person assessed.

Section 337.71 describes the basis for a mandatory enforcement hearing, premised on

the existence of substantial noncompliance or an emergency. The section also describes the notice requirements that are applicable in a mandatory enforcement hearing, and the actions the commission may take at the completion of the hearing

Stephen Mirick, Division of Budget and Planning, has determined that, for the first five-year period these sections, as proposed, are in effect, there are no significant fiscal implications anticipated for state or local government or small businesses as a result of enforcement or administration of the sections

Mr. Mirick also has determined that for the first five years these sections, as proposed, are in effect, the public benefit anticipated as a result of administration of and compliance with these sections will be more efficient and effective enforcement of the environmental laws, rules and regulations that are within the jurisdiction of the TNRCC. There are no known costs anticipated to any persons required to comply with these sections, as proposed

Comments on this proposal may be submitted to Glen Grunberger, Enforcement Coordination and Litigation Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The deadline for the submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*

Subchapter A. Enforcement

Generally

• 30 TAC §§337.1-337.6

(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Water Code, §§5.103 and 5.105, which provide the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas

There are no other codes or statutes that will be affected by the enforcement of these regulations

§337.1 Enforcement Orders

§337.2 Hearings on Violations

§337.3 Legal Proceedings

§337.4 Complaint File

§337.5 Confidentiality of Enforcement Information

§337.6 Force Majeure

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

Issued in Austin, Texas, on November 22, 1994

TRD-9451374

Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption January 2, 1995

For further information, please call. (512) 239-4640

• 30 TAC §§337.1-337.10

The new sections are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission

§337.1 Purpose. The purpose of this chapter is to provide a procedural system governing enforcement actions before the commission, particularly for contested enforcement cases. In the event that some part or parts of these rules cannot be interpreted as consistent with the Texas Water Code, the Texas Health and Safety Code, or the Administrative Procedure Act, V.T.C.A. Government Code, Sec. 2001, et seq. ("Administrative Procedure Act"), or where applicable parts of those statutes are not specifically included in these rules, the referenced statutes shall control.

§337.2 Construction of Sections Incorporated by Reference. For purposes of this chapter only, where rules from other chapters of this code have been incorporated by reference, these rules shall be construed in a manner that makes their terms consistent with the provisions of this chapter and accomplishes their application to the enforcement proceedings described in this chapter. Where reference within incorporated sections is made to proceedings or matters not applicable to enforcement proceedings in this chapter, or to other administrative rules which have not expressly been incorporated into this chapter, these shall be given no effect.

§337.3 Definitions. Unless specifically defined in this chapter, all terms used in these rules bear the same definitions ascribed by the Texas Water Code, the Texas Health and Safety Code, the Administrative Procedure Act, the Rules of Procedure of the Texas Natural Resource Conservation Commission and the substantive regulations promulgated by the Texas Natural Resource Conservation Commission. The terms specifically defined for the purposes of this chapter are as follows:

Contested Enforcement Case—An action in which the executive director seeks an enforcement order and the respondent, where having a right to do so, contests the issuance of the order by requesting an evidentiary hearing.

Contested Enforcement Case Hearing—The evidentiary hearing on the merits in a contested enforcement case, presided over by the office of hearings examiners.

EDPR—A pleading filed by the executive director seeking an enforcement order against a respondent and upon which a default order may be granted by the commission. EDPR is synonymous with "executive director's preliminary report," and is further defined in §337.23 of this title (relating to Executive Director's Preliminary Report ("EDPR")).

Enforcement Action—A legal action initiated by the executive director seeking an enforcement order.

Enforcement Hearings—Any hearing, whether required by law, or ordered based upon the discretion of the commission, held as a prerequisite by the commission to issuance of an enforcement order. Enforcement Hearings include, but are not limited to, hearings before the commission concerning actions brought pursuant to the Texas Health and Safety Code, §§361.301-361.303, 361.272, 361.252, 382.088, and 382.023; the Texas Water Code, §§26.136, 5.117, 13.4151, 27.1015, and 28.067.

Enforcement Order—Any commission order enforcing or directing compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders, state or federal; which the commission is entitled by law to enforce or with which the commission is entitled by law to compel compliance.

Parties—The parties to a contested enforcement case hearing shall include the Executive Director, the Respondent(s), and the Public Interest Counsel. Although the Public Interest Counsel has the statutory right to be a party to any proceeding before the commission, he/she shall only be considered an active party in those cases in which he/she has filed a Notice of Active Participation.

Person—An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Petition—The instrument by which the Executive Director states a cause of action for an enforcement order against a respondent. When an EDPR is filed and issued in accordance with the general requirements of §337.23 of this title (relating to Executive Director's Preliminary Report ("EDPR")), such EDPR and notice constitute a petition, as do amended EDPR's and amended or supplemental petitions.

Pleadings—Any written petition, answer, motion or other written instrument,

except exhibits, including an "EDPR," filed with the commission or the office of hearings examiners in a contested enforcement case; further defined in §337.24 of this title (relating to Pleadings Other than EDPR).

Respondent—A person against whom the executive director is seeking an enforcement order.

§337.4. Filing of Written Instruments. Any pleading required by this chapter to be filed, unless presented orally during a hearing, shall be filed with the chief clerk with a copy to the hearings examiner where one is presiding in the case. Written decisions, rulings, or orders by the commission or a hearings examiner shall be filed with the chief clerk.

§337.5. Computation of Time. As defined by §263.14 of this title (relating to Computation of Time), regarding computation of time, is hereby incorporated by reference.

§337.6. Judicial Civil Enforcement. The executive director is authorized to institute or cause to be instituted, in courts of competent jurisdiction, legal proceedings to enforce and compel compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders, state or federal; which the commission is entitled or required by law to enforce or with which the commission is entitled or required by law to compel compliance. Such legal proceedings may be initiated at any time by the executive director by a letter from the executive director referring the matter to the Texas attorney general's office and requesting that the attorney general take action on behalf of the commission.

§337.7. Enforcement Orders as Part of Compliance History. Any enforcement order, as described in §337.3 of this title (relating to Definitions) regardless of whether arrived at through a contested enforcement case hearing, agreement of the parties, or ex parte; shall be considered a part of the compliance history of the person against whom the order is directed, and shall be admissible as evidence of compliance history at any commission proceeding where compliance history is relevant by statute or regulation. For purposes of this subsection, the term, "Compliance history" shall be considered synonymous with the terms "history of non-compliance," "record of environmental violations," or other terms having essentially the same meaning.

§337.8. Enforcement Hearings. If required by law, an enforcement hearing shall be held prior to commission issuance of any final enforcement order. In other cases, the commission may, on its own motion, or

upon the request of the executive director, hold a hearing prior to issuing a final enforcement order. When the commission holds a hearing prior to issuance of an enforcement order, the commission may receive pertinent and relevant evidence from any party who appears at the hearing, may compel the attendance of witnesses, shall make findings of fact and conclusions of law and is authorized to issue orders. The commission may provide that any enforcement hearing be held by the office of hearings examiners under rules prescribed by the commission, including the rules established by this chapter for contested enforcement cases.

§337.9. Enforcement Guidelines. The commission may adopt, in appropriate circumstances, enforcement guidelines which are neither rules nor precedents but rather announce the manner in which the agency tentatively expects to exercise its discretion in future proceedings. These guidelines do not establish rules which the public is required to obey or with which it is to avoid conflict. These guidelines do not convey any rights or impose any obligations on members of the public. These guidelines will be available to the public under the terms of the Texas Open Records Act, Texas Civil Statutes, Article 6252-17(a) (Vernon's Supplement 1992).

§337.10. Enforcement Report. TNRCC shall prepare an annual report of enforcement actions, covering the previous fiscal year. This report shall include, at a minimum, the following:

- (1) the number of complaints received by the agency, indicating the distribution of those complaints geographically;
- (2) an estimate of the total number of facilities subject to inspection by the agency, categorized by region and program area.
- (3) a list of facilities actually inspected, giving location and program area conducting the inspection;
- (4) number of cases referred from Regions to Central Office for enforcement, categorized by Region;
- (5) number of cases resolved informally (without issuance of an agency order), categorized by Regional Offices and Central Office;
- (6) a listing of all orders issued, including names of respondents, location of facility covered by the order, program(s) covered by the order, and amount of administrative penalty assessed (including whether any amount was deferred and, if an amount was deferred pursuant to approval of a supplemental environmental project, a description of the project);

(7) a calculation of the total, average, and mean of administrative penalties assessed, excluding deferred penalties, with an additional categorization of these numbers by program area;

(8) the number of permit revocations, suspensions, or amendments issued resulting from enforcement actions; and

(9) the average number of regional inspectors employed.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451371

Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 239-4640

Subchapter B. Contested Enforcement Case Hearings

• 30 TAC §§337.21-337.58

The new sections are proposed under Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§337.21. Contested Enforcement Case Hearings to be Held by Office of Hearings Examiners. In a contested enforcement case, unless otherwise ordered by the commission, the office of hearings examiners shall have the delegated authority to preside over the case proceedings in accordance with the rules of this chapter. The authority to preside over the case proceedings shall be vested in the office of hearings examiners when a respondent invokes his/her right to an evidentiary hearing, and it shall not be necessary in such cases for the parties to appear before the commission to request, or for the commission to so order, a remand. In cases based upon EDPR's, this invocation of right to hearing occurs when the respondent files a timely answer to the EDPR requesting a hearing.

§337.22. Remedies. Remedies available to the commission in enforcement actions conducted pursuant to these rules include all those found in the Texas Water Code, the

Texas Health and Safety Code, and the Administrative Procedure Act. Nothing herein shall be construed to preclude the executive director from seeking any remedy in law or equity not specifically mentioned in these rules.

§337.23. Executive Director's Preliminary Report ("EDPR").

(a) Any enforcement action brought under these rules may be initiated by the EDPR being filed by the executive director.

(b) The EDPR shall include a brief statement of the nature of the violation, the statute or statutes violated, the facts relied upon by the executive director in concluding that a violation has occurred, a recommendation that an administrative penalty be assessed, the amount of the recommended penalty and an analysis of the factors required in the relevant statute to be considered by the commission in determining the amount of the penalty. This EDPR may be superseded by a petition as provided in §337.24(d) of this title (relating to Pleadings Other Than EDPR).

§337.24. Pleadings Other than EDPR.

(a) In a contested enforcement case, all pleadings for which no other form is prescribed shall contain:

- (1) the name of the party seeking to bring about or prevent action by the commission;
- (2) the names of all other known parties;
- (3) a concise statement of the facts and the law relied upon by the pleader;
- (4) a prayer stating the type of relief, action, or order desired by the pleader;
- (5) any other matter required by statute;
- (6) a certificate in accordance with §337.27(b) of this title (relating to Service of Notice and Pleadings), showing service; and
- (7) the signature of the submitting party or the party's authorized representative.

(b) All pleadings shall include the docket number assigned the case by the Chief Clerk and shall be served on the parties in accordance with §337.27 of this title.

(c) Parties may file pleadings, supplemental or amended, at such time as not to operate as an unfair surprise to the opposite party, up to seven days prior to the hearing. Amendments after that time will be at the discretion of the hearings examiner.

(d) Petitions. The executive director may amend an EDPR by filing a petition, in which the executive director may make such changes as the law allows, including but not limited to changes in the following: the amount of the penalty, up to the maximum allowable by statute, the violations alleged to include any or all violations which are not precluded by law from being brought, the number of days of occurrence of previously alleged violations, and the injunctive relief (or remedial ordering provisions) sought. The right to change the violations alleged, includes the right to add causes of action based on statutes within the Commission's jurisdiction other than the one or ones upon which the EDPR in the case was based.

(e) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency.

§337.25. Petitions which Initiate a Cause of Action.

(a) Generally. Where there is no statutory requirement that a preliminary report be filed, the executive director may file a petition as the instrument for initiating an enforcement action.

(b) Service. Where enforcement actions are initiated with a petition, as per this section, and there is a statutory requirement that the respondent be given notice, the petition shall be filed and notice given as if it were an EDPR, in accordance with §337.26 of this title (relating to Notice of EDPR).

§337.26. Notice of EDPR.

(a) General requirements. Not later than the tenth day after the date on which the EDPR is issued, the executive director shall give written notice of the EDPR to the person charged therein. The EDPR is considered "issued" when it is filed with the Office of the Chief Clerk. Notice shall consist of a copy of the EDPR, a statement of the amount of the penalty recommended, if any, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Timeliness and method of service. Notice shall be timely served if:

(1) sent to the respondent by registered or certified mail, return receipt requested, no later than the tenth day after the date on which the EDPR is issued; or

(2) delivered to the respondent, in person, with the date of delivery endorsed thereon.

(c) Service by publication. Where the executive director has been unable to

deliver notice to the respondent through reasonable attempts to serve respondent by the methods described in subsection (b) of this section, notice may be effected by publishing in a newspaper of general circulation in the county of the last known business or residential address of the respondent, for a period of seven consecutive days, the following:

- (1) the name of the person charged;
- (2) a brief summary of the charges;
- (3) a statement of the amount of the penalty recommended, if any;
- (4) a statement that injunctive or remedial relief is sought; and
- (5) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Proof of notice. Where proof of notice of the EDPR is relevant, such as at a hearing for default judgment, a certificate by a party or an attorney of record or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. In addition the executive director may offer live testimony as well as such other documentary evidence as permitted by the presiding officer, showing that the notice has been perfected. Nothing herein shall preclude any party from offering proof that the notice was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United State Postal Service, and upon so finding, the presiding officer may extend the time for taking the action required of such party or grant such other relief as it deems just.

§337.27. Service of Notice and Pleadings.

(a) Method. Every notice required by this chapter, and every pleading filed pursuant to this chapter, other than the initial pleading in an enforcement action, unless presented during a hearing or otherwise expressly provided for in these rules, shall be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be. Delivery may be accomplished either in person or by agent, courier-receipted delivery, certified or registered mail, or intra- or inter-agency mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the hearings examiner in his/her discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office

or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day, unless otherwise agreed upon by the parties. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or telephonic document transfer, three days shall be added to the prescribed period. The party or attorney of record shall certify to the commission or the hearings examiner, as the case may be, compliance with this section in writing over signature and on the filed instrument.

(b) Proof. Where proof of service of notice or a written instrument is relevant, the executive director may offer proof in accordance with §337.26(d) of this title (relating to Notice of EDPR).

§337.28. Answer.

(a) A respondent may file a pleading, entitled an "answer," either consenting to the imposition of the penalties and injunctive relief recommended in the EDPR, or requesting a contested enforcement case hearing. Any answer must be filed no later than the 20th day after the date on which notice of an EDPR is received. Failure to file the answer by the 20th day after the date on which notice of EDPR is received may result in a default order, as described in §337.29 of this title (relating to Default Order), being issued against respondent.

(b) If the person charged consents to the EDPR including the recommended penalty, the answer shall affirmatively so state.

§337.29. Default Order.

(a) How and when. If any respondent to an EDPR or petition initiating an enforcement action fails to timely file an answer as required by §337.28 of this subchapter, the executive director may make a motion that a default order be entered against the respondent. The executive director may support the motion with such documentary evidence, including affidavits, exhibits and pleadings, and oral testimony to demonstrate that the respondent received proper notice, under §337.25 or §337.26 of this title (relating to Petitions which Initiate a Cause of action and Notice of EDPR), of the pleading initiating the cause of action; and that the respondent failed to timely file an answer under §337.28 of this title (relating to Answer), and that the respondent is liable for the violations asserted in the cause of action. The executive director may also present documentary evidence and oral testimony regarding the amount of penalties that should be assessed against the respon-

dent. In the motion for default order, or at the hearing on the motion, the executive director may also ask for additional penalties for violations alleged in the EDPR or petition, which have continued from the time of the filing of the EDPR or petition, up to the date of the default order. If the executive director recommends additional penalties for continuing violations, he shall briefly describe, either orally or in writing, the continuing violations and the evidence, circumstantial or otherwise, that forms the basis for the allegation that the violations are in fact continuing. The commission may grant the relief recommended in the EDPR or petition, or such other amount as may be justified by the evidence presented by the executive director.

(b) Failure to appear at hearing. Even though some or all of the parties fail to appear at a contested enforcement case hearing in person or through their duly authorized representatives, the commission may consider fully and dispose of the matter pending if notice has been given in accordance with law.

(c) Failure to comply with discovery. If a respondent does not comply with discovery, the hearings examiner may recommend, and the commission may enter, a default order against the respondent.

(d) Upon issuance of a default order, notice of such order shall be given to the respondent according to the provisions of §337.28 of this title.

§337.30. Agreed Orders.

(a) The executive director and the respondent may reach an agreement, or settlement, in an enforcement action such that an agreed order is recommended to the commission for approval and issuance. In such an agreed order, the respondent may agree to: admit to none, any, or all of the violations alleged in any EDPR or petition in the case; assessment of a specific administrative penalty; remedial ordering provisions; or any combination of the above. In order to have legal effect as an order of the commission, and in any case in which penalties are assessed, an agreed order must be approved and issued by the commission.

(b) The issuance date of an Agreed Order shall be the date upon which the order is signed indicating commission approval.

(c) When an agreement is reached, the case may then be set for consideration of an agreed order on the commission's agenda as soon as practicable, without need for a proposal for decision from the presiding officer, or hearings examiner.

§337.31. Office of Hearings Examiner/Jurisdiction. Upon receipt of a request for a

hearing in a contested enforcement case, the office of hearings examiners shall assume jurisdiction over the contested case, and shall assign a hearings examiner to hear the case. The hearings examiner shall control and manage the case and, if the parties fail to reach an agreed settlement, conduct a contested enforcement case hearing and issue a proposal for decision, according to the rules and procedures provided herein.

§337.32. Consolidation and Severance. The executive director may consolidate or sever contested enforcement cases or claims involving any person or persons against whom the executive director has a right to proceed, including the consolidation or severance of claims involving different media. The hearings examiner may sever contested enforcement cases or claims involving any number of parties, upon motion by any respondent, where the respondent can show that he/she would be unduly prejudiced if severance were not granted.

§337.33. Continuance. A motion for continuance of any contested enforcement case hearing shall be granted by the hearings examiner whenever justice may require. All motions for continuance must be supported by an affidavit or written motion by the person or persons having knowledge of the facts supporting the motion.

§337.34. Preliminary Hearing.

(a) To assist in the disposition of the enforcement action without undue expense or burden to the parties, the office of hearings examiners may, at the request of any party or on its own motion, direct the parties and their respective representatives to appear before it for a Preliminary Hearing to consider:

- (1) all pending motions;
- (2) amendments to the pleadings;
- (3) a scheduling order, which may include a statement of the discovery required by each party, the dates upon which discovery shall begin and end, the dates by which each party shall identify its experts and produce any reports by those experts, the date on which all supplementations of discovery are required, the date by which the parties must join any additional parties and amend any pleadings, the date by which all potentially dispositive motions must be filed, the date by which the final lists of witnesses and exhibits must be filed, the date by which all objections to witnesses and exhibits must be filed, the date of a final prehearing conference, the date upon which the hearing shall commence, and an estimate of the length of the hearing;

(4) the settlement of the enforcement action or any parts thereof; and

(5) such other matters as may aid in the disposition of the action.

(b) The hearings examiner shall make an order that recites the actions taken at the Preliminary Hearing, and such order shall control the subsequent course of the action, unless modified by the hearings examiner to prevent injustice.

§337.35. Notice of Contested Enforcement Case Hearing. For any contested enforcement case hearing, the chief clerk shall give notice to the parties in accordance with §2001.052 of the Administrative Procedure Act.

§337.36. Rights of Parties in Contested Enforcement Case Hearings. A party has the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all pleadings, motions, replies, and other filed documents; receive copies of all notices issued by the commission concerning the contested enforcement case to which he/she is a party; and, as directed by the hearings examiner, otherwise fully participate as a party in the contested enforcement case.

§337.37. Discovery.

(a) Discovery Generally. The hearings examiner may order that discovery be conducted in accordance with Rules 166b-169 of the Texas Rules of Civil Procedure, through a scheduling order as discussed in §337.34(a)(3) of this title (relating to Preliminary Hearing), so long as the Rules of Civil Procedure are interpreted in a manner consistent with this chapter, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act.

(b) Forms of Discovery. Parties may use any form of discovery provided in the Texas Rules of Civil Procedure or the Administrative Procedure Act. Discovery forms include requests for production of documents and other things for inspection, written interrogatories to a party, requests for admissions to a party, oral or written depositions, requests for entry upon and examination of real property, and motions for a mental and physical examination of a party or person under the legal control of a party.

(c) Scope of Discovery. Parties may obtain discovery regarding any matter which is relevant to the subject matter of the proceeding. It is not ground for objection that the information sought will be inadmissible at hearing, if the information sought appears reasonably calculated to

lead to the discovery of admissible evidence. Nor is it ground for objection that the discovery request involves an opinion or contention that relates to fact, the application of law to fact, or mixed questions of law and fact, but the hearings examiner, upon a party's motion, may order that such a request need not be answered until a later date.

(d) Protective Orders. On motion specifying the grounds and made by any person against or from whom discovery is sought, the hearings examiner may make a ruling in the interest of justice necessary to protect the person from undue burden, unnecessary expense, harassment or annoyance, or invasion of person, constitutional or property rights. Specifically, the hearings examiner may issue an order:

(1) that requested discovery not be sought in whole or in part, or that the extent or subject of discovery be limited, or that it not be undertaken at the time or place specified;

(2) that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the hearings examiner;

(3) that results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted. However, in considering such an order, no order or decision issued by the hearings examiner or the commission may be sealed and other records filed pursuant to contested enforcement case procedures shall be presumed to be open to the general public. That presumption of openness may be overcome only upon a showing of all of the following:

(A) a specific, serious and substantial interest which clearly outweighs:

(i) this presumption of openness; and

(ii) any probable adverse effect that sealing will have upon the general public health or safety;

(B) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted; and

(C) sealing of the records in question can be achieved in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a (Vernon Supplement 1992).

(e) Discovery compellable. The hearings examiner may compel any form of discovery if a party to a contested enforcement case fails to comply with appropriate rules. A party may file a motion to compel

discovery at least ten days prior to hearing. Motions to compel discovery may be filed less than ten days prior to a hearing upon a showing of good cause.

(f) Incorporation of other rules. In addition to the foregoing subsections relating to discovery, §265.37(c) and (f); and §§265.42-265.49 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses; Depositions; Issuance of Commission to Take Deposition; Witness Shall Comply with Discovery; Non-Stenographic Recording; Deposition by Telephone; Failure of Party or Witness to Attend or to Serve Subpoena; Expenses; Deposition Examination, Cross-Examination and Objections, Submission to Witness; Changes; Signing, and Use of Deposition Transcripts in Commission Proceedings).

§337.38. Abuse of Discovery; Sanctions.

(a) Sections 265.50-265.51 of this title (relating to Abuse of Discovery; Sanctions and Sanctions for failure to Serve or Deliver Copy of Pleadings and Motions), are hereby incorporated by reference.

(b) If a hearings examiner requires, or approves an agreement between the parties requiring that parties identify their witnesses according to a discovery schedule, the hearings examiner may impose as a sanction upon a party who violates such requirement, that the party be barred from calling any witness not properly identified.

(c) Absent good cause, a witness shall be barred from testifying about matters which were not identified by the sponsoring party in its witness list and amendments thereto, and/or in that witness' prefiled testimony, when election to prefile testimony has been noticed by the sponsoring party or when prefiled testimony has been directed by the examiner.

(d) In addition to the foregoing, if a respondent fails to comply with discovery procedures, the hearings examiner may issue a proposal for decision recommending a default judgment be rendered against the respondent, in accordance with §337.29 of this title (relating to Default Order).

§337.39. Summary Judgment.

(a) Motion. A party to an enforcement action may, at any time after the preliminary hearing as set forth in §337.34 of this title (relating to Preliminary Hearing) and up to at least 21 days prior to the date specified for an enforcement hearing, file a motion for a summary judgment in his/her favor upon all or any part of that action. The motion shall state the specific grounds justifying the summary judgment and shall include any supporting affidavits, based on personal knowledge, reciting all material

facts and any other available documentary evidence.

(b) Written Response. Upon the filing of a motion for summary judgment, any adverse party may, not later than seven days prior to the hearing upon the motion, file a written response and any opposing affidavits, based on personal knowledge.

(c) Oral testimony. No oral testimony shall be received at a hearing on the motion for summary judgment. At the discretion of the hearings examiner, oral argument of counsel may be presented on the motion. Judgment shall be rendered if the pleadings, admissions, affidavits, stipulations, and exhibits on file in the case at the time of the hearing show that, except as to the amount of penalties and the extent of any technical requirements, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the hearings examiner must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(d) Partial summary judgment. If a motion for summary judgment is denied, in whole or in part, the hearings examiner may, if practicable, ascertain what facts are not in dispute or are incontrovertible by examining the evidence filed, interrogating counsel and/or directing a conference. The hearings examiner may then make a ruling denying the motion and specifying what facts, if any, will be deemed established for all purposes in the enforcement hearing.

§337.40. *Interlocutory Appeals.* No interlocutory appeals may be made to the commission by a party to a contested enforcement case before a hearings examiner. However, at any time during a contested enforcement case, on a motion by a party, or on the hearings examiner's own motion, the office of hearings examiners may certify a question to the commission for guidance regarding commission policy, jurisdiction or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present his/her case.

§337.41. Final Prehearing Conference.

(a) Upon a request by any party, and at the discretion of the hearings examiner, the hearing examiner may order that the parties and/or their designated representatives appear before it for a final prehearing conference as close to the time

of an enforcement hearing as is reasonable under the circumstances. The purposes of such a conference are to:

(1) expedite the disposition of the enforcement action;

(2) establish the structure that will govern the enforcement hearing;

(3) improve the quality of the enforcement hearing; and

(4) facilitate the settlement of the enforcement action.

(b) The hearings examiner may order that the parties draft, in preparation for the final prehearing conference, a joint prehearing order, which, upon the hearings examiner's approval, will control the subsequent course of the enforcement hearing. This order shall be modified only to prevent manifest injustice.

(c) If a party or his/her representative fails to appear at a prehearing conference, is substantially unprepared to participate in the conference, or fails to participate in good faith, the hearings examiner, upon motion or on the hearings examiner's own initiative, may make such orders as are just, including those included in §337.38 of this title (relating to Abuse of Discovery; Sanctions).

§337.42. Exhibits.

(a) Exhibits sought to be introduced by a party in a contested enforcement case hearing shall not exceed 8-1/2 by 11 inches unless they are folded to the required size. Maps and drawings that are offered as exhibits shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(b) Each exhibit offered shall be tendered for identification and placed in the record. Copies shall be furnished to the hearings examiner, each of the parties, and the hearings reporter, unless the hearings examiner rules otherwise.

(c) If an exhibit has been identified, objected to and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party will have waived all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the offering party's objection to the exclusion of the exhibit.

§337.43. *Removing Case from Active Docket.* At any time, the parties to an enforcement action may agree to file a joint motion requesting that the action be removed from the office's active docket of actions, so as to allow the parties to engage in and complete settlement negotiations which will dis-

pose of all or part of the action. The action shall be returned to the active docket of actions upon the written request of any party. Upon the action's return to the active docket, any party may request that the hearings examiner issue a revised prehearing/discovery schedule to govern the timing of the enforcement hearing and the events leading up to that hearing.

§337.44. Agreements to be in Writing. No agreement between parties or their representatives affecting any pending matter will be considered by the hearings examiner unless it is in writing, signed by the parties, and filed as a part of the record; or is announced at the contested enforcement case hearing and entered of record.

§337.45. Presentation of Evidence.

(a) In addition to the following subsections relating to presentation of evidence, §§265.31-265.35 of this title (relating to Subpoena of Witnesses and for the Production of Documentary Evidence; Form of Subpoena; Witness Shall Attend Hearing; Evidence; and Additional Testimony), are hereby incorporated by reference.

(b) Oral testimony offered by any witness shall be under oath.

(c) The parties shall each have the right to call and examine witnesses, and to introduce exhibits. In a contested case, a party may conduct cross-examination required for a full and true disclosure of the facts. The rules of privilege shall be effective to the extent that they are otherwise required to be recognized by Texas statute.

(d) Official notice may be taken of any generally accepted technical or scientific matter within the commission's field of competence or any matter which may be judicially noticed by the courts of this state. Parties present at the hearing shall be informed of and given an opportunity to rebut the matters proposed to be noticed.

(e) Prefiled testimony. At the request of any party, or at the discretion of the hearings examiner, the hearings examiner may order that the parties introduce their witnesses' direct testimony through prefiled written questions and answers. If the hearings examiner so orders, the parties shall provide the pre-filed testimony for each witness it intends to present at the enforcement hearing to all other parties of record within a reasonable time prior to the presentation of the testimony of the witness at hearing, with such reasonable time period to be determined by the hearings examiner. The prefiled testimony of a witness shall not be admissible if the witness is not available at the hearing for cross-examination.

(f) Sections 265.31-265.33 of this title (relating to Subpoena of Witnesses and

for the Production of Documentary Evidence; Form of Subpoena; and Witness Shall Attend Hearing) are hereby incorporated by reference.

§337.46. Burden of Proof. The executive director shall have the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions.

§337.47. Order of Presentation. In all contested enforcement case hearings, the executive director shall have the right to open and close. After all parties have completed the presentation of their evidence, the hearings examiner may call upon any party for further material or relevant evidence upon any issue. In all cases, the executive director shall be allowed to close with its rebuttal. At the discretion of the hearings examiner, a party may present a re-rebuttal case when another party presents evidence which could not have been reasonably anticipated.

§337.48. Oral Argument. At the conclusion of the hearing, oral argument may be heard upon the request of the parties or upon the directive of the hearings examiner. Reasonable time limits may be established by the hearings examiner. The hearings examiner may require or accept written briefs in lieu of or in addition to oral argument.

§337.49. Findings of Fact and Conclusions of Law. The hearings examiner may request that the parties submit proposed findings of fact and conclusions of law separately stated.

§337.50. Financial Inability to Pay; Amount Necessary to Obtain Compliance.

(a) If any respondent, in response to an EDPR issued under Texas Water Code, §26.136(d) or any other pleading, asserts an inability to pay the penalty recommended in that pleading or challenges the executive director's decision regarding the amount of penalty which is necessary to deter future violations, that party shall have the burden of establishing that a lesser penalty is justified under that party's financial circumstances.

(b) A party asserting a claim under this section must produce all financial records that would be potentially relevant to that issue within thirty days of raising that claim, but no later than thirty days prior to the specified date for hearing without leave from the hearings examiner. The executive director is not required to make a discovery request for such financial records. The failure of the party raising such a claim to

provide all potentially relevant financial records within the time discussed in this subsection shall constitute a waiver of the claim.

§337.51. Proposal for Decision ("PFD").

(a) After closing the hearing record in any hearing contested enforcement case hearing, the hearings examiner shall file a written proposal for decision, which shall contain a statement of the reasons for the proposal, findings of fact and conclusions of law that support the proposal, rulings on any findings of fact and conclusions of law that have been submitted by the parties, a proposal for remedial relief (technical ordering provisions) where appropriate, and one of the following recommendations:

(1) that a violation has occurred and that a specific amount of penalties should be assessed;

(2) that a violation has occurred but that no penalty should be assessed; or

(3) that no violation has occurred.

(b) When recommending the assessment of an administrative penalty, the hearings examiner shall analyze each factor prescribed by the statute to be considered by the commission in determining the amount of the penalty. The hearings examiner shall recommend to the commission an appropriate penalty amount, based upon the evidence adduced at the hearing and the factors articulated in the applicable statutes.

(c) Weight to be given by the hearings examiner to individual statutory factors for determining penalty amount need not be equal and may vary depending on the facts of the particular case. The absence of evidence as to any particular factor does not negate the ability of the hearings examiner to arrive at a finding of an appropriate penalty based upon the totality of the circumstances, though such lack of evidence may be a factor in determining the penalty amount.

§337.52. Waiver of Right to Review Proposal for Decision. Any party may waive the right to review and comment upon the hearings examiner's proposal for decision. The waiver shall be in writing or stated on the record at the hearing.

§337.53. Pleadings Following Proposal for Decision. Unless right of review has been waived under §337.52 of this title (relating to Waiver of Right to Review Proposal for Decision), any party may, within ten days after the date of issuance of the proposal for decision, file exceptions or briefs. Any replies to such pleadings shall be filed within 20 days after the date of issuance of the

proposal for decision. These deadlines may be changed upon the written agreement of the parties.

§337.54. Amending the Proposal for Decision. The hearings examiner may file an amended proposal for decision in response to exceptions, replies or briefs submitted by the parties. The parties are not entitled to file exceptions or briefs in response to the amended proposal for decision, but may raise any issues before the commission as permitted by the commission at the time of oral presentation.

§337.55. Motion to Re-open the Record after Proposal for Decision. After the PFD has been filed in a contested enforcement case, along with any subsequent pleadings in accordance with §337.53 of this title (relating to Pleadings Following Proposal for Decision) and §337.54 of this title (relating to Amending the Proposal for Decision), the commission, on the motion of any party or on its own motion, may order the hearings examiner to reopen the record for further proceedings on specific issues in dispute. The commission's order shall include instructions as to the subject matter of further proceedings and the hearings examiner's duties in preparing supplemental materials or revised orders based upon those proceedings for the commission's final adoption.

§337.56. Commission's Decision after Contested Enforcement Case Hearing.

(a) After its receipt of the hearings examiner's proposal for decision, the commission shall review the proposal and shall issue a decision, which shall contain findings of fact and conclusions of law, rulings on any findings of fact and conclusions of law that have been submitted by the parties, and one of the following findings:

(1) that a violation has occurred and that a specific amount of penalties should be assessed;

(2) that a violation has occurred but that no penalty should be assessed; or

(3) that no violation has occurred.

(b) When assessing an administrative penalty, the commission shall analyze each factor prescribed by the statute to be considered by the commission in determining the amount of the penalty.

(c) Weight to be given by the commission to individual statutory factors for determining penalty amount need not be equal and may vary depending on the facts of the particular case. The absence of evidence as to any particular factor does not negate the ability of the commission to ar-

rive at a finding of an appropriate penalty based upon the totality of the circumstances, though such lack of evidence may be a factor in reducing or increasing the penalty amount.

§337.57. Notice of Decisions and Orders.

(a) Notice of enforcement orders and decisions. Notice of enforcement orders and decisions by the commission shall be given in accordance with the requirements of the Administrative Procedure Act, §2001.142.

(b) Effective date. Effective date of an order for purposes of compliance with terms and conditions therein, including deadlines, shall be the date on which service of notice of the order is achieved in accordance with the Administrative Procedure Act, §2001.142.

(c) Notice of Order Assessing Administrative Penalties. In addition to the requirements of §337.27(a) of this title (relating to Service of Notice and Pleadings), when the commission issues an enforcement order assessing an administrative penalty, notice of the order shall include: a copy of the order, a statement of the amount of the penalty, and a statement that the respondent has a right to judicial review of the order. In such cases, the chief clerk shall file notice of the commission's decision and order in the *Texas Register* not later than ten days after the date on which the decision is adopted.

(d) Publication of Proposed Agreed Order Assessing Administrative Penalties in the Amount of \$100,000 or More.

(1) The parties shall provide notice of proposed agreed orders assessing administrative penalties of \$100,000 or more against a respondent by publishing the proposed agreed order, along with a notice of opportunity to comment, in the *Texas Register* at least 30 days prior to the date on which the agreed order is set to be considered by the commission for approval and issuance. In addition, the respondent shall publish notice in a newspaper of general publication and distribution in the community where the subject of the enforcement action is located of the setting before the commission for consideration of the agreed order at least 21 days prior to the date of the setting.

(2) The executive director shall consider any written comments and may withdraw or withhold consent to the proposed order if the comments disclose facts or considerations that causes the executive director to believe that consent is inappropriate, improper, inadequate, or inconsistent with the Texas Health and Safety Code, The Texas Water Code, or the rules of the com-

mission. If changes to the proposed order arise from comments submitted pursuant to this section, further notice of such changes are not required to be published.

§337.58. Appeals of Orders Assessing Administrative Penalties.

(a) Within the 30-day period immediately following the day on which the commission's order is final, in accordance with the Administrative Procedure Act, the person charged with a penalty shall pay the penalty in full.

(b) The person assessed a penalty by the commission may suspend enforcement of the penalty while seeking judicial review by forwarding the amount of the penalty to the commission for placement in an escrow account or posting with the commission a supersedeas bond payable to the Texas Natural Resource Conservation Commission for the amount of the penalty, within the 30-day period immediately following the day on which the commission's order is final.

(c) In the event the person assessed fails to take any of the actions in subsections (a) and (b) of this section, the executive director upon approval of the commission may forward the matter to the attorney general for enforcement.

(d) In the event that the final appellate determination is against the person assessed a penalty, he or she shall pay the commission the full amount of the penalty, and the commission shall deposit the amount of the penalty in the state treasury to the credit of the general revenue fund.

(e) To the extent that the final appellate determination is in favor of the person assessed, he or she shall be absolved of liability for payment of that portion of the amount of the penalty as is required to comply with that determination, and the commission shall return that amount of the penalty assessed which is excessive according to that determination, or any amount of the supersedeas bond or escrow account filed with the commission for the purpose of suspending the enforcement of the penalty while seeking judicial review which is in excess of the final penalty determination with a certificate of its return.

(f) Any supersedeas bond or escrow account filed with the commission for the purpose of suspending the enforcement of the penalty while seeking judicial review of the final decision of the commission shall be drawn according to a form on file in the office of the chief clerk. Upon request, the chief clerk shall certify the receipt of the amount of any penalty received by the commission for the purpose of suspending the enforcement of the penalty while seeking judicial review.

(g) Additional procedures for appealing any enforcement orders or decisions of the commission are governed by the Administrative Procedure Act.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451370 Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 239-4640

◆ ◆ ◆
Subchapter B. Enforcement Hearings

• 30 TAC §§337.37-337.40

(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Water Code, §5.103 and §5.105, which provide the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§337.31. Propose.

§337.32. Remedies.

§337.33. Definitions.

§337.34. Substantial Noncompliance and Emergency Conditions.

§337.35. Emergencies.

§337.36. Preliminary Enforcement Report.

§337.37. Notice.

§337.38. Answer.

§337.39. Commission Action.

§337.40. Appeals of Administrative Penalties.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451373 Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 239-4640

◆ ◆ ◆
Subchapter C. Water Rights Enforcement

• 30 TAC §§337.51-337.54

(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Water Code, §5.103 and §5.105, which provide the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

§337.51. Show-Cause Enforcement Procedures.

§337.52. Notice.

§337.53. Enforcement of Commission Orders.

§337.54. Enforcement.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451372 Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 239-4640

◆ ◆ ◆
Subchapter C. Special Enforcement Proceedings

• 30 TAC §337.71

The new section is proposed under the Texas Water Code, §5.103 and §5.105, which provide the Texas Natural Resource Conserva-

tion Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§337.71. **Mandatory Enforcement Hearings.**

(a) The executive director shall monitor compliance with all permits and licenses issued by the commission. If the evidence available to the executive director through the monitoring process indicates that a permittee or licensee is in substantial noncompliance for a period of four consecutive months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance. A certificate of convenience and necessity is not considered to be a permit or license for the purpose of this section.

(1) The executive director may consider the magnitude and frequency of noncompliances with permit or license limitations and conditions in determining the existence of substantial noncompliance.

(2) "Substantial noncompliance" includes situations involving permit or license violations which cause or have the potential to cause a significant water quality problem in, or impairment of the uses of a receiving stream, groundwater or other water in the state, infringes upon the water rights of diverters or appropriators of water of the state, or results in a release or threat of release of hazardous waste to the environment, or any other set of circumstances which present a threat to public health or safety or the environment. This set of circumstances includes but is not limited to a failure to monitor operations or report information required by a permit or license regarding the operation of a facility without which the operator and/or the commission may be unable to adequately assess the performance of the facility and thereby assure that environmental harm or threats to public health have not occurred and will not occur. In addition, "substantial noncompliance" will be assessed in terms of the degree of deviation from any requirement of a permit or license independent of the harm or potential harm to the environment or to public health.

(3) An "emergency," for purposes of this subsection, involves an unforeseen set of circumstances which calls for immediate commission action due to an actual or potential hazard to public health and safety, or severe adverse impact on or to the uses of a receiving stream, groundwater or other water in the state. If the emergency is of sufficient gravity, the executive director shall report the emergency to the commis-

sion together with the information relating to the noncompliance and shall advise the commission of the necessity of seeking a temporary restraining order, temporary injunction, or any other remedy in equity or law necessary for the abatement of the condition or conditions causing or contributing to the emergency, if such remedy is authorized by statute.

(b) On receiving a report under subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report to the commission has been in substantial noncompliance with his or her permit or license. Notice for this hearing shall issue in accordance with §337.26(b) and (c) of this title (relating to Notice of EDPR), except that in the event that notice is performed under §337.26(c) of this title, by publication, the contents of that notice need only include the name of the respondent, a summary of the relief sought by the executive director, and the right of the person to a hearing if such exists.

(c) At the conclusion of the hearing, the commission shall issue an order stating one of the following:

(1) no violation of the permit or license has occurred;

(2) a violation of the permit or license has occurred but has been corrected and no further action is necessary to protect the public interest;

(3) the executive director is authorized to enter into a compliance agreement;

(4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by the Texas Water Code or the Texas Health and Safety Code; or

(5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee through the office of the attorney general.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451368 Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 239-4640

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVII. Texas State Soil and Water Conservation Board

Chapter 523. Agricultural and Silvicultural Water Quality Management

• 31 TAC §523.3, §523.6

(Editor's Note. The Texas State Soil and Water Conservation Board proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)

The Texas State Soil and Water Conservation Board proposes an amendment to §523.3, concerning development, approval, certification and implementation of water quality management plans on private property for prevention and abatement of agricultural and silvicultural nonpoint source pollution. The section defines a water quality management plan, establishes the process for setting criteria and for landowners to obtain water quality management plans and §523.6 concerning cost-share assistance program to provide incentive for the installation of soil and water conservation land improvement measures consistent with the purposes of controlling erosion, conserving water and/or protecting water quality.

Bill Neiser, Assistant Executive Director for Administration, has determined that for each of the next five years the section is in effect there will be fiscal implications as a result of administering the section.

Year 1—\$3,976,392

Year 2—\$2,587,122

Year 3—\$2,587,122

Year 4—\$2,587,122

Year 5—\$2,587,122

There are no anticipated fiscal implications to units of local government.

There are no anticipated economic costs.

There are no anticipated impacts on small businesses.

Comments on the proposal may be submitted to James M. Moore, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503-0658.

The amended section is proposed under the Agriculture Code, Title 7, Chapter 201, §201.020 which authorizes the Soil and Water Conservation Board to adopt rules as necessary for the performance of its function and §201.026 which provides authorization for the Board to establish nonpoint source pollution.

The following are the statutes that are affected by this rule: §523.3—Agriculture Code, §201.026(a), §523.6—Agriculture Code, §201, Subchapter I.

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 Temple, Texas, on November 23, 1994.

TRD-9451439 Robert G. Buckley
Executive Director
Texas State Soil and
Water Conservation
Board

Earliest possible date of adoption: January 2, 1995

For further information, please call: (817) 773-2250

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 423. Fire Suppression

Subchapter B. Minimum Standards For Aircraft Crash and Rescue Fire Protection Personnel

• 37 TAC §§423.201, 423.203, 423.205, 423.207

The Texas Commission on Fire Protection proposes amendments to §§423.201, 423.203, 423.205, and 423.207 concerning aircraft rescue and fire protection personnel certification. The amendment to §423.201 provides that aircraft rescue and fire protection personnel who also perform structure fire suppression duties must also be certified as structure fire protection personnel. The amendment to §423.203 deletes language concerning adoption by reference of the curriculum to accommodate the new certification curriculum approval process outlined in proposed new chapter 443 concerning the Certification Curriculum Manual. Finally, amendments to §423.205 and §423.207 add language allowing credit for higher levels of certification for old or new National Fire Academy courses.

Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, has determined that for each year of the first five years the sections as amended are in effect, there will be fiscal implications for state and local government. The commission will experience an estimated cost savings of approximately \$1,000 each year in reduced administrative costs from implementation of the revised curriculum approval process. In addition the commission may realize additional revenue from certificates of aircraft fire protection personnel as structure fire fighters of \$1,500 during the first year and \$100 each year thereafter. Local governments will experience increased costs of \$20 per person in certification fees, but may also realize savings of \$50 to \$2,000 per

individual seeking higher levels of certification as a result of granting credit for old or new National Fire Academy courses.

Mr. Fiero also has determined that for each year of the first five years the amended sections are in effect the public benefit anticipated as a result of enforcing or administering the amended sections will be that the public will be assured that aircraft rescue fire protection personnel that respond to structure fires on or off airport property are properly trained and the new curriculum approval process limiting curriculum changes to an annual basis will aid training academies in planning and budgeting.

There are no additional economic costs of compliance for small or large businesses. Individuals required to comply with the sections as amended whose employers do not pay for structure training may incur an additional \$600 to \$1, 200 in training costs.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions; and Texas Government Code, §419.038 which provides the commission with authority to adopt minimum standards for aircraft fire protection personnel certification.

Texas Government Code, §419.022 and §419.038 are affected by the amendments.

§423.201. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel.

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

(c) All personnel identified as aircraft rescue and fire protection personnel must be certified to at least the basic level by the commission within two years from their employment in an [a] aircraft crash and rescue fire protection personnel position.

(d)-(g) (No change.)

(h) Aircraft rescue and fire protection personnel who are assigned structure fire suppression duties must be certified, as a minimum, as basic structural fire protection personnel.

§423.203. Minimum Standards for Basic Aircraft Rescue and Fire Protection Personnel Certification.

(a) (No change.)

(b) In order to obtain basic aircraft rescue and fire protection personnel certification the individual must:

(1) (No change.)

(2) complete a training program specific to aircraft rescue and fire suppression consisting of one of the following:

(A) A commission approved [94 hour] basic aircraft rescue and fire suppression curriculum of at least 94 total hours as specified in Chapter 2 of the Commission Certification Curriculum Manual for Paid Fire Protection Personnel as approved by the commission in accordance with Chapter 443 of this title, (relating to Certification Curriculum Manual). This course must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title, (relating to Training Facilities; or

(B) An out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved [94-hour] basic aircraft rescue and fire suppression curriculum.

(C) A military training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved [94-hour] basic aircraft rescue and fire suppression curriculum.

(3) (No change.)

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

§423.205. Minimum Standards for Intermediate Aircraft Crash and Rescue Fire Protection Personnel Certification.

(a) Applicants for Intermediate Aircraft Crash and Rescue Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Aircraft Crash and Rescue Fire Protection Personnel Certification, as defined in 423.203 of this title (relating to Minimum Standards for Basic Aircraft Crash and Rescue Fire Protection Personnel Certification).

(2) acquire one of the following combinations of college education or training points, and the listed years of fire protection experience, which may include the training points and the years of experience used to qualify for all lower levels of Aircraft Crash and Rescue Fire Protection Personnel Certification:

(A) 20 training points and at least eight years of service; or

(B) 20 training points which includes at least 15 college semester hours

in fire science subjects and at least seven years of service; or

(C) 40 training points and at least six years of service; or

(D) 40 training points which includes at least 15 college semester hours in fire science subjects and at least five years of service; or

(E) An associates degree or 60 training points and at least four years of service; or

(F) An associate degree or 60 training points, either of which includes at least 15 college semester hours in fire science subjects and at least three years of service; or

(G) A baccalaureate degree or an associate degree in Fire Science or 120 training points and at least two years of service.

(3) As part of the training specified in paragraph (2) of this section, complete the courses listed in one of the following options:

(A) Option #1-Successfully complete six semester hours of fire science from an approved Fire Protection Degree Program from the following courses:

(i) Fire Administration I, or a course that meets the following course description—Organization and management of a fire department. Topics include budgeting, maintenance of records and reports, and management's of fire department officers. Personnel administration, distribution of equipment and personnel, and relations of government agencies to fire protection areas. Fire Service Leadership as viewed from the company officer's position; or

(ii) Fire Fighting Tactics and Strategy, or a course that meets the following course description—Essential elements in analyzing the nature of fire and determining the requirements to fight a fire. Efficient and effective utilization of manpower, equipment and apparatus. Pre-planning, conflagration problems, fire ground organization problem-solving related to fire ground decision making and attack tactics and strategy. Use of mutual aid and large scale command problems; or

(iii) Hazardous Materials I, or a course that meets the following course description—Characteristics and behavior of various materials that burn or react violently are studied. Flammable liquids, combustible solids, and gases are in-

cluded. Storage, transportation, and handling are covered. Emphasis is on emergency situations and methods of control.

(B) Option #2—Complete a minimum of 80 hours of instruction in any National Fire Academy resident program.

(C) Option #3—Complete a minimum of 80 hours in the following National Fire Academy off-campus courses:

(i) Incident Command System (ICS) (16 hours);

(ii) Initial Response to Hazardous Materials Incidents: Basic Concepts (12 hours) and Recognizing and Identifying Hazardous Materials (3 hours);

(iii) Initial Response to Hazardous Materials incidents: Concept Implementation (16 hours);

(iv) Instructional Techniques for Company Officers (12 hours);

(v) Fire Supervision—Increasing Team Effectiveness (12 hours);

(vi) Fire Supervision—Increasing Personal Effectiveness (12 hours);

(vii) Pesticide Challenge (12 hours);

(viii) Conducting Basic Fire Prevention Inspections (12 hours);

(ix) Fire/Arson Detection (12 hours);

(x) Managing Company Tactical Operations: Preparation (12 hours);

(xi) Managing Company Tactical Operations: Command Decision Making (12 hours);

(xii) Managing Company Tactical Operations: Tactics (12 hours);
NOTE: It is recommended, by the NFA, that the Managing Company Tactical Operations Series be taken in the sequence listed.

(D) Option #4—Successfully complete three semester hours of the courses listed in option #1 and 40 hours of the courses listed in option #3.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Aircraft Crash and Rescue Fire Protection Personnel Certification.

(c) If a National Fire Academy off campus course is discontinued and is replaced by a new course, the old or new course may be used towards requirements for certification.

(d) Non-traditional credit awarded at the college level, such as credit by experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification. Credit will not be given for repeating a course or courses of similar content.

§423.207. Minimum Standards for Advanced Aircraft Crash and Rescue Fire Protection Personnel Certification.

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

(c) If a National Fire Academy off campus course is discontinued and is replaced by a new course, the old or [National Fire Academy off campus courses that are discontinued and are replaced by a new course of equal or greater class hour, the] new course may be used towards requirements for certification.

(d) (No change.)

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451313 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 443. Certification Curriculum Manual

• 37 TAC §443.5

The Texas Commission on Fire Protection proposes new §443.5, concerning Effective Dates of Curricula or Changes to Curricula Required by Law or Rule. The proposed new section provides for annual changes only to curricula approved by the commission unless a safety consideration is found by the advisory committee.

Jim Fiero, Chairman, Paid Personnel Advisory Committee, has determined that for each year of the first five years the section as proposed is in effect, there will be no fiscal implications for state and local governments.

Mr. Fiero also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing or administering the new section will be that the annual implementation of curriculum changes will aid local governments in budgeting and planning for training costs. There are no additional economic

costs of compliance for small or large businesses or for persons required to comply with the new section.

Comments of the proposals may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel.

Texas Government Code, §419.022 will be affected by this proposal.

§443.5. Effective Date of New Curricula or Changes to Curricula Required by Law or Rule.

(a) New curricula will become effective on January 1 of the year following final approval by the commission.

(b) Changes to curricula will become effective on January 1 of the year following final approval by the commission.

(c) Changes to curricula which involve reference materials will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission, as recommended by the Fire Protection Personnel Advisory Committee, depending on the impact of the change will have on the curricula.

(d) Changes to curricula that involve a safety consideration as determined by the Fire Protection Personnel Advisory Committee shall become effective immediately following final approval by the commission.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451314 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 471. Standards For Volunteer Certification

• 37 TAC §§471.1, 471.3, 471.5

The Texas Commission on Fire Protection proposes amendments to §471.1 and §471.3,

and new §471.5, concerning standard for volunteer certification. The amendment to §471.1 changes the election of officers from the meeting following October 1st to the meeting following February 1st of each year and establish guidelines for effective dates of rule changes. The term volunteer fire fighter is changed to volunteer fire protection personnel throughout the sections. Finally, new §471.5 concerning definitions is added to replace a repealed section concerning the same subject matter to add a definition of "recognition of training," delete the definition of "module" and to omit the numbering of definitions.

Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, has determined that for each year of the first five years the new and amended sections are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the section as amended.

Mr. Yates also has determined that for each year of the first five years the new and amended sections are in effect the public benefit anticipated as a result of enforcing or administering the new and amended sections will be that election of officers for the Volunteer Fire Fighter Advisory Committee will coincide with new appointments; guidelines for effective dates will aid in budgeting and planning by local governments; and the certification rules will be expanded to include other disciplines of volunteer fire protection personnel providing protection to communities in Texas.

There will be no additional economic costs of compliance for small or large businesses or for persons required to comply with the new and amended sections.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments and new section are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

Texas Government Code, §419.071(e) is affected by the proposed amendment and new section.

§471.1. Procedures For Meetings.

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

(d) Officers. Officers of the committee shall consist of a chairperson, vice-chairperson and secretary. The committee shall elect its officers from the appointed members at the first regularly scheduled meeting following February [October] 1st of each year and as required upon the vacancies of such offices.

(e) All rules recommended by the Volunteer Fire Fighter Advisory Committee and finally adopted by the commission before May 1st, should go into effect January 1st, of the following year and rules recommended by the Volunteer Fire Fighter Advisory Committee and finally adopted after May 1st, should go into effect no sooner than one year from January 1st, of the following year, unless the committee recommends a sooner effective date for issues such as health and safety or undue hardship.

§471.3. Minimum Standards Set By The Commission.

(a) General Statement. It shall be clearly understood that the specified minimum standards herein described are designated as a minimum program. Participating entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for volunteer fire protection personnel [fighter] certification is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers the participating entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory personnel during or upon completion of the prescribed probationary period.

(b) Objectives. The objectives of the commission are to raise the level of competence of volunteer fire protection personnel [fighters] by establishing specified minimum standards within the scope of the Code creating the commission and outlining its duties and responsibilities. The commission has the authority to:

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

(5) certify persons as having qualified as volunteer marine fire protection personnel under such conditions as the commission may prescribe;

(6) certify persons as having qualified as volunteer aircraft crash and rescue fire protection personnel under such conditions as the commission may prescribe;

(7) certify persons as having qualified in one of the other categories of volunteer fire protection personnel under such conditions as the commission may prescribe;

(8) Promulgate voluntary [mandatory] minimum requirements for admission in each lowest level categories of volunteer fire protection personnel; and

(9) (No change.)

§471.5. Definitions. Certain definitions are used in describing the minimum standards and related requirements as specified by the commission. Definitions used include:

Accredited training—A curriculum or training program which carries written approval from the commission, credit hours that appear on an official transcript from an accredited college or university and any fire service training received from a nationally recognized source, i.e., The National Fire Academy.

Approved training—Any training which will be used toward any level of certification must be:

(A) taught at a commission approved training facility;

(B) taught through a commission approved training program; or

(C) submitted to the commission for approval prior to the commencement of the training. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course.

Assistant fire chief—The officer occupying the first position subordinate to the head of a fire department.

Chairman—The presiding officer of the commission.

Class hour—Defined as 50 minutes of instruction; also defined as a contact hour.

Code—The official legislation creating the commission.

College credits—Credits earned for studies satisfactorily completed at an accredited institution of higher learning in a program leading to an academic degree.

Commission—Texas Commission on Fire Protection.

Certified volunteer fire fighter—An individual who has successfully completed the requirements, as set forth in Chapter 473.

Committee—Volunteer Fire Fighter Advisory Committee

Coordinator—The official responsible for course curriculum, training facility, and/or school (other than fire department) by whatever title he/she may be called.

Department—A fire department which is a part of, or is administered by, a city, a political subdivision, and/or volunteer organization of the state which is responsible for fire prevention and protection, excluding industrial fire brigades.

Fire chief—The head of a fire department.

Fire fighter—A full-time employee of a fire department who has met the certification requirements.

Fully paid—An officer or employee is considered fully paid if the annual compensation, including benefits and reimbursement for expenses, is equal to or more than what the person would have received working 2,080 hours in a calendar year, at the federal minimum wage.

Full-time—An officer or employee is considered full time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purpose of this definition paid leave will be considered time worked.

Government entity—The local authority having jurisdiction as employer of full-time, full-paid fire protection personnel and/or volunteer fire fighter in a state agency, incorporated city, village, town or county, education institution or political subdivision.

High school—a school accredited as a high school by the Texas Education Agency or equivalent education agency.

Inactive status—When a certified volunteer fails to comply with the continuing education requirements as set forth in Chapter 485 and submit the required certification renewal fee as set forth in Chapter 481.

Instructor—An individual charged with the responsibility of conducting a training school and/or class under the provision of the Code.

Municipality—Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as herein defined.

Paid fire protection personnel—Any person who is a full-paid permanent employee of a government entity and who is assigned full-time duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft crash and rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto, excluding industrial fire brigades.

Part-time fire protection employee—An individual who is designated as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses.

A part-time fire protection employee may or may not be fully paid, but is not full time as defined in §421.5 of this title relating to Definitions.

Participating volunteer fire fighter—An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

Participating volunteer fire department—A fire department who voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

Recognition of training—A document issued by the Commission stating that an individual has completed the training requirements of a specific Phase level of the Basic Volunteer Fire Fighter Curriculum.

School—Any school, college, university, academy or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors and facilities.

Trainee—An individual who is enrolled in any approved fire service training program.

Training officer—The officer or supervisor by whatever he or she may be called, in charge of the fire department training programs.

Training points—One semester hour earned at any accredited college or university shall equal one training point or 20 class hours of accredited training other than college semester hours shall be equal to one training point.

Volunteer fire protection personnel—Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft crash and rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto, excluding industrial fire brigades.

Years of experience—Defined as full-time, full-paid service as an employee of a government entity, and/or active membership in a volunteer fire service organization, excluding industrial fire brigades. Certain definitions are used in describing the minimum standards and related requirements as specified by the commission.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451315 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 918-7184

Chapter 478. Volunteer Fire Inspector

- 37 TAC §§478.1, 478.3, 478.5, 478.7

The Texas Commission on Fire Protection proposes amendments to §§478.1, 478.3, 478.5, and 478.7, concerning Volunteer Fire Inspector. The change to §478.1 requires a person who holds a certificate that has been

inactive for more than a year to retake the commission examination. The changes to §478.3 deletes language concerning adoption by reference of the inspector curriculum in order to accommodate the proposal of a new curriculum approval process in new chapter 472 concerning Volunteer Certificate Curriculum Manual and removes the requirement for an associate degree for basic certification. The changes to §478.5 and §478.7 allow either old or new National Fire Academy courses to be used toward higher levels of certification.

Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, has determined that for each year of the first five years the sections as amended are in effect, there will be fiscal implications for state and local government as a result of administering the sections as amended. Local governments that pay for training for volunteer fire inspection personnel may experience a savings of \$50 to \$500 as a result of dropping the associate degree requirement for basic certification and from allowing old or new National Fire Academy courses. The agency anticipates a reduction in administrative costs of approximately \$1,000 per year as a result of discontinuing the adoption by reference of the volunteer inspector curriculum.

Mr. Yates also has determined that for each year of the first five years the amended sections are in effect the public benefit anticipated as a result of enforcing or administering the amended sections will be a possible increase in the number of persons seeking fire inspector certification through the college route by making it more accessible (by requiring only fire prevention and fire protection courses and no associate degree) which may indirectly improve fire prevention in communities served by volunteer fire inspection personnel. In addition the annual implementation schedule for curriculum changes will aid local governments in budgeting and planning for training.

There are no additional economic costs of compliance for small or large businesses or for persons required to comply with the sections as amended.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

Texas Government Code, §419.071(e) is affected by the proposed amendments.

§478.1. Minimum Standards For Volunteer Fire Inspection Personnel.

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

(c) Individuals who [currently] hold an active paid Fire Inspector certification [on the effective date of this section], will upon application be issued the equivalent Volunteer Fire Inspector Certification. If the certificate has been inactive for more than one year the person must take the commission examination as provided in Chapter 479 of this title (relating to Examinations).

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

§478.3. Minimum Standards for Basic Volunteer Fire Inspector Certification.

(a) (No change.)

(b) In order to be certified by the commission as a Basic Volunteer Fire Inspector, an individual must complete a commission approved volunteer fire inspection program and successfully pass the commission examination as specified in Chapter 479, of this title. An approved basic volunteer fire inspection program shall consist of one of the following:

(1) Completion of the commission approved Basic Volunteer Fire Inspector Curriculum of at least 226 total hours as specified in Chapter 4, of the commission's document titled "Commission Volunteer Certification Curriculum Manual", as approved in accordance with Chapter 472 of this title (relating to Certification Curriculum Manual [adopted by reference in §478.11 of this title, (relating to Basic Volunteer Fire Inspector Curriculum)]); or

(2) Successful completion of an out of state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the Basic Volunteer Fire Inspector Curriculum as specified in Chapter 4, of the commission's document titled "Commission Volunteer Certification Curriculum Manual" as approved in accordance with Chapter 472 of this title (relating to Certification Curriculum Manual [adopted by reference in §478.11 of this title, (relating to Basic Volunteer Fire Inspector Curriculum)]); or

(3) Successful [Possession, as a minimum, of an Associate Degree from an accredited college or university and successful] completion of the following college courses: Fundamentals of Fire Protection-3 semester hours; Fire Protection Systems-3 semester hours; Fire Prevention-3 semester hours; Building Code-3 semester hours; Building Construction-3 semester hours; Hazardous Materials I-3 semester hours; Fundamentals of Speech-3 semester hours; TOTAL SEMESTER HOURS-21*. Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18; or

(4) (No change.)

§478.5. Minimum Standards For Intermediate Volunteer Fire Inspector Certification.

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

(d) If a National Fire Academy off campus course is discontinued or replaced by a new course, the old or [National Fire Academy off campus courses that are discontinued by the National Fire Academy and are replaced by new course, of equal or greater class hours, the] new course may be used toward requirements for certification.

(e) (No change.)

§478.7. Minimum Standards For Advanced Volunteer Fire Inspector Certification.

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

(c) If a National Fire Academy off campus course is discontinued or replaced by a new course, the old or [National Fire Academy off campus courses that are discontinued by the National Fire Academy and are replaced by new course, of equal or greater class hours, the] new course may be used toward requirements for certification.

(d) (No change.)

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451316

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 918-7184

◆ ◆ ◆
**Chapter 479. Examinations for
Volunteer Fire Fighter
Certification**

- 37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11

(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 Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Fire Protection proposes the repeal of §§479.1, 479.3, 479.5, 479.7, 479.9, and 479.11, concerning examinations for volunteer certification. The repealed sections are replaced by new sections dealing with the same subject matter which

conform the volunteer examinations to changes in procedures for examinations for paid fire protection personnel.

Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implication for a state government as a result of enforcing or administering the repeals. Local governments that pay for testing of volunteer personnel will experience a reduction in cost of approximately \$950 in examination fees as a result of eliminating "module" testing, while maintaining one comprehensive written and performance skills examination.

Mr. Yates, also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing or administering the repeals will be a clearer understanding of certification testing for volunteer fire protection personnel in a manner consistent with testing of paid personnel.

There are no additional economic costs of compliance for small or large businesses or for persons required to comply with the repeals.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeals are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

Texas Government Code, §419.071(e) is affected by the proposal.

§479.1. Requirements-General.

§479.3. Definitions.

§479.5. Procedures.

§479.7. Eligibility.

§479.9. Grading.

§479.11. Performance Skills.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451318

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 918-7184

Chapter 479. Examinations for Volunteer Fire Fighter Certification

• 37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11, 479.13

The Texas Commission on Fire Protection proposes new §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11, and 479.13, concerning examinations for volunteer certification. The new sections replace repealed sections dealing with the same subject matter and conform the volunteer examinations to changes in procedures for examinations for paid fire protection personnel.

Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implication for a state government as a result of enforcing or administering the new sections. Local governments that pay for testing of volunteer personnel will experience a reduction in cost of approximately \$950 in examination fees as a result of eliminating "module" testing, while maintaining one comprehensive written and performance skills examination.

Mr. Yates, also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing or administering the new sections will be a clearer understanding of certification testing for volunteer fire protection personnel in a manner consistent with testing of paid personnel.

There are no additional economic costs of compliance for small or large businesses or for persons required to comply with the new sections.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

Texas Government Code, §419.071(e) is affected by the proposal.

§479.1. Requirements-General.

(a) In order to be certified by the commission an individual must complete the standards set forth for an approved basic

volunteer curriculum, and must pass the commission approved examinations pertaining to the volunteer discipline for which certification is sought.

(b) The Commission approved examination(s) shall consist of at least a written test.

(c) The commission approved examinations may also include a skills or proficiency test where proficiency is deemed important and/or necessary by either NFPA standard, OSHA mandates for life safety, or the Texas Commission on Fire Protection. If a performance test is included in the examination, then the written test and performance test together constitute a complete examination.

(d) The commission shall make reasonable accommodations required by federal law in reference to testing procedures for individuals with disabilities as required by the Americans with Disabilities Act.

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

Certificate of Successful Completion—A document supplied by the commission which identifies and shall be used as proof that an individual has completed the required training hours and has successfully passed the commission approved examination(s) for a specific discipline of the Basic Volunteer Curriculum.

Commission—The Texas Commission on Fire Protection

Curriculum—The competencies established by the commission as a minimum requirement for certification by the commission in a volunteer discipline.

Curriculum Phase—Those completed training hours from specific curriculum subject areas of the Basic Volunteer Fire Fighter Curriculum, that are required to complete a specific level of the Basic Volunteer Fire Fighter Certification Program.

Eligibility—A determination of whether or not an individual has met the requirements set by the commission and would therefore be allowed to take a commission examination.

Endorsement of eligibility—A signed statement testifying to the fact that an individual has met the training hour requirements of a commission approved curriculum and is qualified to take the commission approved examination(s) for volunteer certification. An endorsement of eligibility will usually be provided by the training coordinator of an approved basic volunteer fire fighter training facility, approved certification school, approved course; or approved training program; however, it may be provided by a member of the commission staff in certain circumstances.

Examination—A state test consisting of written and/or performance skills, administered by the commission or under its supervision, which an examinee must pass as one of the requirements for certification.

Examinee—An individual who has met the commission requirements and therefore qualifies to take a commission approved examination.

Field Proctor—An individual that has successfully completed the commission administered Field Proctor Orientation and has received a certificate of completion from the commission. The Field Proctor must as a minimum, possess an instructor certification issued pursuant to Chapter 425 of this title (relating to Fire Protection Personnel Instructor Certification) or Chapter 475 of this title (relating to Volunteer Fire Fighter Instructor Certification). The Field Proctor must be approved by the commission to instruct all subject areas identified in the curriculum that they will be proctoring. The Field Proctor shall work under the supervision of a Staff Proctor to administer commission examinations.

§479.5. Procedures.

(a) Procedures for conducting written and/or performance examinations are determined by the commission.

(b) The commission shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.

(c) An individual who fails to pass a commission examination will be given one additional opportunity to pass the examination. After two failures, the examinee must re-qualify by repeating the curriculum applicable to that examination.

(d) To apply for a commission approved examination, the designated chief training officer/coordinator of the entity providing the training or an individual requesting an examination must submit an examination application form and provide all documentation that the examinee has completed the training requirements of the discipline to be tested. The Chief Training Officer/Coordinator or the individual applicant shall complete the Application for Testing and return to the commission office within 14 calendar days of receipt of the application. The commission, upon receipt of the application for Testing, will schedule a time and place for the examination. A reasonable attempt shall be made to schedule the examination as soon as possible after the completion of the applicable curriculum and at a place agreeable to the Chief Training Officer/Coordinator or applicant.

(1) Commission examinations, or retakes, for less than eight examines shall

be conducted in Austin, Texas, or another place designated by the commission. The commission shall coordinate with the provider of training, the chief training officer/coordinator, or the applicant(s) as to the time of the examination.

(2) Commission examinations, or retakes, for less than eight examines shall be conducted in accordance with this section, provided that the entity providing the training/testing agrees to pay an examination fee equal to the amount that would be charged for eight examines.

(3) If a performance test is part of the commission examination, examines that are required to take the commission examination in Austin, Texas, or another place designated by the commission, shall be required to furnish a complete set of protective clothing that complies with §435.3(d), but not required, to provide a self-contained breathing apparatus that complies with §435.3(2) of this title (relating to Self-Contained Breathing Apparatus) that the examinee is familiar with an extra cylinder.

(e) If the designated chief training officer/coordinator or the applicant(s) requesting a commission examination determines that the time and/or place of the examination as set by the commission is not acceptable for good cause, he may request the commission to reschedule or relocate the examination providing the request is received at least 20 days prior to the original scheduled time of the examination or the new proposed time, whichever would result in the earliest notification. The commission shall give all such requests due consideration and may reschedule or relocate the examination as necessary.

(f) Each examination must be administered by a member of the commission staff known as "Staff Proctor" or by a commission approved Field Proctor under the direction of a member of the commission staff.

(g) The commission approved Field Proctor will not be the instructor of the curriculum which is being tested.

(h) The Staff Proctor shall:

(1) ensure that the examination remains secure and is conducted under conditions warranting honest results;

(2) collect all examination materials from any examinee who is dismissed; and

(3) record the fact of examination on the endorsement of eligibility and shall collect any fraudulent or questionable endorsements.

(i) The Staff or Field Proctor shall:

(1) monitor the examination while in progress;

(2) control entrance to and exit from the test site;

(3) permit no one in the room while the written test is in progress except proctors, examinees, and commission staff;

(4) assign or re-assign seating; and

(5) bar admission to or dismiss any examinee who fails to comply with any of the provisions of §479.7(a) and (b) of this title (relating to Eligibility).

(j) Examination booklets, answer sheets, scratch paper, and grade roster(s) will be delivered to the staff proctor by means specified by the commission. The staff proctor shall immediately document any errors detected in the examination materials provided.

(k) The staff proctor shall remit to the commission all examination booklets, answer sheets, and scratch paper in the return container provided by the commission immediately following the completion of the written examination.

(l) All official grading and notification shall come from the commission. The commission staff shall inform the chief training officer or examinee of the preliminary test results within 72 hours after completion of the examination. The commission staff shall notify the chief training officer/coordinator or examinee of the official test results in writing within ten days after completion of the examination.

(m) The commission will provide one individual written grade report to each examinee, within 20 days after completion of the examination. This report may be mailed to an address specified by the examinee. If the written grade report should prove to be undeliverable, it shall be the responsibility of the examinee to contact the commission office to make arrangements for an additional grade report.

(n) An examinee that successfully completes the applicable volunteer curriculum and the required commission basic volunteer certification examination(s) shall be issued a certificate of completion from the commission. The certificate of completion shall, as a minimum, identify the provider of training, the course I.D. number, the course approval number, hours of instruction, date issued (date commission basic certification examination was successfully passed), name of instructor, and the name of the person completing the course/curriculum.

(o) If performance skills are required as part of a certification examination, the entity or chief training officer/coordinator applying for the certification examination shall be responsible for providing the required number of Approved Field Proc-

tors. The number of Field Proctors shall be determined by the commission.

(p) Each written examination has two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly. Active questions do count toward the examination score. Examinees will not be able to distinguish the pilot questions from the active questions. Therefore, examinees should answer all questions to the best of their ability.

(q) The basic volunteer fire fighter certification examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three hours.

§479.7. Eligibility.

(a) Eligibility to sit for a commission approved examination is based, generally, upon the examinee completing the training hours required appropriate to the specific discipline of the commission Basic Volunteer Curriculum or after completion of the minimum standards pertaining to a basic volunteer curriculum.

(b) In order to qualify to take a commission approved examination, the examinee must:

(1) meet or exceed the minimum training requirements set by the commission as a prerequisite for the specified curriculum examination;

(2) possess and display upon request, at the test site, a valid and timely endorsement of eligibility for the specific examination sought;

(3) bring to the test site and display upon request some identification which contains a photograph of the examinee;

(4) report to the proper location on time; and

(5) comply with all the written and verbal instructions of the proctor.

(c) An examinee shall not:

(1) violate any of the fraud provisions of this section;

(2) disrupt the examination;

(3) bring into the examination site any books, notes, or other written materials related to the content of the examination;

(4) refer to, use, or possess any such written material at the examination site;

(5) give or receive answers or communicate in any manner with another examinee during the examination;

(6) communicate any of the contents of any examination to another at any time;

(7) steal, copy, or in any way reproduce any part of the examination;

(8) engage in any deceptive or fraudulent act either during an examination or to gain admission to it; or

(9) solicit, encourage, direct, assist, or aid another person to violate any provision of this section.

(d) An endorsement of eligibility may be issued by:

(1) a member of the commission staff;

(2) a training coordinator of an approved training facility or academy; or

(3) an individual or entity designated by the commission.

(e) An endorsement of eligibility shall:

(1) be on a form provided by the commission; and

(2) be signed and completed by a person eligible under subsection (d) of this section, with a specific notation of the training completed and examination sought;

(3) include a date of issue; and

(4) include a date of expiration which shall be one year from the date of issue.

§479.9. Grading.

(a) For a score to be or remain valid the following conditions must be met.

(1) The examinee must complete the answer sheet or otherwise record the answers, as instructed by the proctor.

(2) If performance skills are required as a part of the examination, then the examinee must demonstrate the performance skills as instructed by the proctor.

(3) The endorsement of eligibility must remain valid.

(b) The minimum passing score of each written examination shall be 70%. This means that 70% of the total possible valid questions must be answered correctly. The commission may, at its discretion, invalidate any question.

(c) If the commission invalidates an examination score for any reason, it may also, at the discretion of the commission and for good cause shown, require a retest to obtain a substitute valid test score.

§479.11. Performance Skills. If performance skills are required as part of a com-

mission examination, the performance skills portion shall be conducted as follows:

(1) The performance skills portion of the examination shall consist of at least four practical skills objectives, which must be physically demonstrated by each examinee before an examination proctor.

(2) The practical skills chosen for the purpose of the examination shall be selected from the practical skills objectives listed in that portion of the Commission Volunteer Certification Curriculum Manual, pertaining to the discipline for which the examination is intended.

(3) The practical skills objectives shall consist of one skill pertaining to self contained breathing apparatus and at least three other skills which are randomly selected by the staff proctor prior to the examination.

(4) An examinee shall not be notified of the specific skills to be tested until the time of the examination.

(5) Performance skills examination check-sheets shall be made available by the commission office, to instructors of approved academies/training facilities to assist them in preparing the examinees for the skills portion of a commission examination.

(6) An examinee who fails a practical skill shall be allowed one retest, at a time and place to be determined by the staff proctor. Generally, a retest should not be conducted until after the conclusion of the performance skill portion of the examination.

(7) An examinee being retested on a practical skill shall be retested on any skill from the same subject area as the practical skill that was failed. The practical skill shall be randomly selected by the staff proctor.

§479.13. Testing For Certification Status.

(a) An individual on inactive status (as defined in §471.3 of this title, relating to Definitions), for one year or longer may not renew the certificate or certificates that were previously held.

(b) The individual may obtain a new certificate or certificates in the discipline or disciplines which was previously held by:

(1) passing the commission examination(s) pertaining to the discipline or disciplines which was previously held; or

(2) completing the current requirements, set by the commission for the disciplines previously held, that would be applied to an individual that had not been certified by the commission.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451317

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 2, 1995

For further information, please call: (512) 918-7184

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §§15.430, 15.432, and 15.475, concerning client participation in transfer of resources, exceptions to transfer of resources, and deeming of income, in its Medicaid Eligibility rule chapter. The purpose for the amendments is to reinstate a rule which was omitted when transfer of resource rules were recodified, ensure that the same exceptions to transfer of resources are consistent throughout the rule chapter, and ensure that income sources that are excluded in determining a client's countable income are also excluded from income deemed from an ineligible parent or spouse.

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

Mr. Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the section will be that DHS will be in compliance with federal policy requirements, and that the application of statewide policy is consistent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long-Term Care Unit. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-058, 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 D. Resources

• 40 TAC §15.430, §15.432

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with

the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.430. Client Participation in Transfer of Resources.

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

(e) If the receiver of a transferred resource returns it to the client, the transfer is nullified effective the date of the return.

§15.432. Exceptions to Transfer of Resources—July 1, 1988, and After.

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

(c) The transfer-of-resource policy does not apply when:

(1) a client's Medicaid eligibility is transferred from SSI to MAO because he enters a long-term care facility, and he applied for SSI before March 1, 1981; [or]

(2) a client's most recent MAO application for assistance was made before March 1, 1981, and the client transferred nonexcludable resources on or after July 1, 1988; or [.]

(3) a client changes a joint bank account to establish separate accounts to reflect correct ownership of and access to funds.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451355

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: February 1, 1995

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

◆ ◆ ◆
Subchapter E. Income

• 40 TAC §15.475

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.475. Deeming of Income.

(a) The following requirements apply:

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

(4) The department exempts certain types of income that may be received by a client's ineligible spouse, ineligible parent, a parent's ineligible spouse, or any ineligible children living in the household. The following types of income are not deemed to the client:

(A)-(CC) (No change.)

(DD) payments to an ICF-MR client by the MR facility, intended to enhance the client's social skills and functional abilities. The use of such payments must be included in the client's active treatment plan.

(EE) hazardous duty pay of a spouse or parent absent from the home because of active military service.

(FF) the first \$2,000 per year of income from leases on individually-owned trust or restricted Indian lands.

(GG) restitution payments made by the U.S. government under Public Law 100-383 to Japanese-Americans (or, if deceased, to their survivors) and Aleuts who were interned or relocated during World War II.

(HH) reparation payments received under Sections 500-506 of the Austrian General Social Insurance Act.

(II) per capita judgment funds (including interest and investment income earned on such funds while the funds are held in trust) distributed to members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the independent Seminole Indians of Florida, and the Miccosukee Tribe of Indians of Florida, under Public Law 101-277.

(JJ) judgment funds, including interest and investment income which accrued on Indian judgment funds while held in trust, distributed under Public Law 97-458.

(KK) per capita distributions of funds held in trust by the Secre-

tary of the Interior to members of an Indian tribe, under Public Law 98-64.

(LL) all money and lands transferred to members of the Puyallup Tribes under the Puyallup Tribe of Indians Settlement Act of 1989 (Public Law 101-141, Sections 10).

(MM) payments under the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (Dutch acronym, WUV).

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

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451356

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: February 1, 1995

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

◆ ◆ ◆
Chapter 48. Community Care
for Aged and Disabled

1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility

• 40 TAC §§48.6003, 48.6005, 48.6030

The Texas Department of Human Services (DHS) proposes amendments to §§48.6003, 48.6005, and 48.6030, concerning client eligibility criteria, level-of-care/medical necessity determinations, and home and community support services general contracting requirements, in its Community Care for Aged and Disabled chapter. The purpose of the amendments is to delete the requirement that a nursing facility waiver provider be under contract with DHS to provide primary home care services; to delete the personal assistance service category of licensure and add a licensed home health category of licensure; to increase the effective time of the preadmission level-of-care to 120 days; to allow applicants to qualify for services while using Medicare and other third party resources; to change the time by which a nursing facility waiver eligible client must receive waiver services; and to delete the limit of four hours protective supervision per week.

Burton F. Raiford, commissioner, has determined that for the first five-year period the

proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that more providers will be able to provide nursing facility waiver services and more applicants will be able to qualify for nursing facility waiver services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Anita Anderson at (512) 450-3195 in DHS's Medicaid Waiver unit. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-107, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§48.6003 Client Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

- (1) (No change.)
- (2) meet the level-of-care criteria for nursing facility care in accordance with §19.1609 and §19.1610 [§§19.1601-19.1612] of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination [Medical Review and Reevaluation]);
- (3)-(4) (No change.)
- (5) have ongoing needs for 24-hour supervision or one or more of the

nursing [following] tasks listed in subparagraphs (A)-(F) of this paragraph that cannot be delivered adequately on an ongoing basis by friends, relatives, volunteers, other Medicaid reimbursed services, or service agencies other than DHS, [or by third party resources,] and which will be met by waiver services. Current nursing facility residents who are Medicaid eligible or who are applying for Medicaid and clients being served by the adult foster care or residential care program funded by DHS meet this eligibility criteria. [:]

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

(E) invasive procedures, which involve inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube, such as intermittent or indwelling catheterization; or

(F) care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatments; [or]

[(G) twenty-four hour supervision.]

(6)-(7) (No change.)

(8) have ongoing needs for waiver services whose projected costs, as indicated on the Individual Plan of Care, do not exceed the maximum service ceilings set for those services as listed below:

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

(C) respite care cannot exceed 30 days per individual per Individual Plan of Care year; and

[(D) the protective supervision component of the Personal Assistance service category cannot exceed four hours per week; and]

(9) receive waiver services within 30 days after waiver eligibility is established [at least monthly].

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

§48.6005. Level-of-Care/Medical Necessity Determinations [Criteria].

(a) (No change.)

(b) A preadmission level of care and medical necessity determination expires 120 [90] days from its issuance.

(c) (No change.)

§48.6030. Home and Community [Personal Assistance and] Support Services General Contracting Requirements. To contract with the Texas Department of Human Services (DHS) to provide home and community [personal assistance and] support services under the Nursing Facility Waiver Program, a legal entity or one of its divisions must:

(1) be licensed by the Texas Department of Health (TDH) as a Home and Community Support Service agency to provide the following categories of service:

(A) licensed and certified home health services; and

(B) licensed home health [personal assistance] services; and

(2) be authorized by the secretary of state to do business in the State of Texas (if an out-of-state corporation).[:]

(3) be certified for reimbursement under the Social Security Act, Titles XVIII and XIX; and

[(4) be under contract with DHS to provide Primary Home Care Services.]

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451338

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: February 1, 1995

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





Name: Daisy Loera
Grade: 6
School: Bovina Middle School, Bovina ISD



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 filing 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 22. EXAMINING BOARDS

Part XVII. Texas State Board of Plumbing Examiners

Chapter 366. Treatment and Disposal of Graywater

Purpose; Definitions; General
Requirements for Graywater
Systems; Design of
Graywater Systems for Wa-
ter Reuse

• 22 TAC §§366.1-366.4

The Texas State Board of Plumbing Examiners has withdrawn from consideration for permanent adoption a proposed new §§366.1-366.4, which appeared in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8344). The effective date of this withdrawal is November 21, 1994.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451194 Gilbert Kisling
Administrator
Texas State Board of
Plumbing Examiners

Effective date: November 21, 1994

For further information, please call: (512)
458-2145



TITLE 30. ENVIRONMEN- TAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 281. Applications Processing

Subchapter C. Air Quality Per-
mits

• 30 TAC §281.43

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed new §281.43, which appeared in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9114). The effective date of this withdrawal is November 23, 1994.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451382 Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Effective date: November 23, 1994

For further information, please call: (512)
239-6087



TITLE 40. SOCIAL SER- VICES AND ASSIS- TANCE

Part I. Texas Department of Human Services

Chapter 98. Adult Day Care Facilities

Subchapter G. Miscellaneous
Provisions

• 40 TAC §98.121

The Texas Department of Human Services has withdrawn from consideration for permanent adoption a proposed new §98.121, which appeared in the September 16, 1994, issue of the *Texas Register* (19 TexReg 7264). The effective date of this withdrawal is November 28, 1994.

Issued in Austin, Texas, on November 28, 1994.

TRD-9451454 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 28, 1994

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





Name: Chris Salazar

Grade: 8

School: Devine Middle School, Devine ISD

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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 15. Consumer Services Division

Texas Weights and Measures

• 4 TAC §15.11

The Texas Department of Agriculture (the department) adopts an amendment to §15.11, concerning the registration of commercial weighing and measuring devices, without changes to the proposed text as published in the September 20, 1994, issue of the *Texas Register* (19 TexReg 7321).

The amendment is adopted in order to update the department's registration procedures for weighing and measuring devices and to standardize the weights and measures program's late fee and registration fee schedules.

The amended section will reduce registration fees for liquefied petroleum gas (LPG) meters from \$80 to \$25 and will delete fees for testing raw milk storage tanks.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §13.1011, which provides the Texas Department of Agriculture with the authority to adopt rules for the registration of commercial weighing and measuring devices; and §13.1151, which provides the department with the authority to collect a fee not to exceed \$80 for annual registration of bulk or LPG meters and assess a late fee against a person who fails to make timely payments of an annual registration fee.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451261

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: December 13, 1994

Proposal publication date: September 20, 1994

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

Chapter 17. Marketing and Development Division

Texas Commodity Referendum Act

• 4 TAC §17.20

The Texas Department of Agriculture (the department) adopts new §17.20, concerning restrictions on the use of producer assessments collected under the Texas Commodity Referendum Act, without changes to the proposed text as published in the September 23, 1994, issue of the *Texas Register* (19 TexReg 7493).

The Texas Commodity Referendum Act, the Texas Agriculture Code, Chapter 41 (the Act) at §41.060, prohibits the use of producer assessments to influence legislation or to promote or oppose the election of candidates to public office. The new section is adopted in order to provide guidance to commodity producer boards established under the Act to follow in their determination of whether an activity proposed for funding is in compliance with §41.060.

The new section provides a general statement of the prohibition against expending funds to influence legislation or promote or oppose the election of candidates to public office; provides a list of actions that constitute influencing legislation and a list of actions that are not considered to be influencing legislation; provides a list of activities considered to be promoting or opposing candidates seeking election to public office; prohibits indirect funding of actions that constitute influencing legislation; and provides a definition of legislation for purposes of the section.

General comments in support of the new section were submitted by the Texas Soybean Producers Board and the Texas Wheat Producers Board. The Texas Peanut Producers Board (TPPB) also submitted comments questioning whether the new section would be in conflict with §41.001 of the Act, which provides that "programs may be devised (by commodity boards) to alleviate any condition that serves to impede the production, marketing, or use of any agricultural commodity". Specifically, the TPPB is concerned that the new section would hinder its ability to educate

lawmakers on the impact their actions would have on the peanut industry, thereby not allowing the TPPB to fulfill its responsibilities to producers as provided in §41.001. The department believes that the section as adopted does specifically allow for providing information to legislative members or their staff for purposes of educating members as long as the information provided is factual, neutral, and does not attempt to influence the outcome of pending legislation.

The new section is adopted under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of the Code, Chapter 41.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451262

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: December 13, 1994

Proposal publication date: September 23, 1994

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

Part II. Texas Animal Health Commission

Chapter 36. Exotic Livestock and Fowl

• 4 TAC §36.1, §36.2

The Texas Animal Health Commission adopts amendments to §36.1, Definitions, and 36.2, General, to define Exotic Bovidae, without changes to the proposed text as published in the October 4, 1994, issue of the *Texas Register* (19 TexReg 7868).

These amendments are necessary to define Exotic Bovidae to include, among others, water buffalo, gnu (wildebeest), addax, antelope, and nilgai. The adopted language requires a negative brucellosis and tuberculosis test prior to entry. This provision is necessary to assure that exotic bovidae entering the state

are free from brucellosis and tuberculosis in order to protect Texas' domestic and exotic livestock population from the diseases.

Three comments were received "Against" the adoption of the amendments. The groups and Associations "against" the adoption of the amendments are: Kelly Sutton, General Manager, Showplace Hill, Inc., Dr. Eric Miller of the American Zoo and Aquarium Association, and Dr. Don Farst of the Gladys Porter Zoo. Their comments are summarized as follows:

One commenter expressed opposition to the proposed testing requirement because the cost of testing has adverse economic impact, and because of the risk of injury to animals during testing. In addition, it is implied that the proposal is being fostered by the Texas cattle industry and unfairly targets exotics. These factors were not judged to outweigh the disease concerns and thus, the adoption of the regulation proceeded.

Two commenters expressed concerns on behalf of the Zoo community. Specifically, those who are members of the American Zoo and Aquarium Association (AZA). Specifically, the concern focused on risk that might involve rare and endangered animal specimens. Both commenters suggested that some carefully considered exemptions to the proposed regulation where rare or endangered animals are involved and extensive health history is available would be considered with disease control principles.

These concerns have been taken under consideration and result in changes to this regulation in the future. Meanwhile, requests for waiver of this new provision will be considered on a case-by-case basis where rare or endangered species are involved and adequate health history is provided.

The Commission adopts the proposal without changes to define Exotic Bovidae, and to require a negative brucellosis and tuberculosis test prior to entry.

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

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451208 Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 12, 1994

Proposal publication date: October 4, 1994



Chapter 59. General Practice and Procedures

Open Records

• 4 TAC §59.5

The Texas Animal Health Commission adopts an amendment to §59.5, concerning the procedure for inspecting public records and establishing charges for reproduction of public records, without changes to the proposed text as published in the October 4, 1994, issue of the *Texas Register* (19 TexReg 7869). Charges for these records will be the charges set by the General Services Commission unless Texas Animal Health Commission determines it the public's best interest to waive those charges. Records may be requested by sending a written request to the Texas Animal Health Commission.

This amendment is necessary to set out a uniform procedure for requesting inspection or copies of agency records that are open to the public. It is also necessary to establish charges for those records.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Texas Civil Statutes, Chapter 552, which provide state agencies the authority to adopt rules regarding inspection and reproduction costs for public records.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451209 Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 12, 1994

Proposal publication date: October 4, 1994



Chapter 59. General Practice and Procedures

Petition for Rules or Changes to Rules

• 4 TAC §59.6

The Texas Animal Health Commission adopts an amendment to §59.6, concerning the procedure for establishing rules of procedure for petitions for rules or changes to rules, without changes to the proposed text as published in the October 4, 1994, issue of the *Texas Register* (19 TexReg 7869). A petition that does not comply with form or content requirements will be returned to the petitioner with an explanation of how the petition fails to meet the specified requirements.

This amendment is necessary to prescribe the form for a petition for rules or rule change

and to set out uniform procedures for the petition's submission, consideration, and disposition.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Texas Civil Statutes, Chapter 2201, which provide the Commission with the authority to adopt rules regarding petitions for rulemaking.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451210 Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Effective date: December 12, 1994

Proposal publication date: October 4, 1994

For further information, please call: (512) 719-0714



TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules Records and Reports

* 16 TAC §23.11

The Public Utility Commission of Texas adopts an amendment to §23.11, with changes to the proposed text as published in the August 26, 1994, issue of the *Texas Register* (19 TexReg 6692).

This amendment adds a new subsection §23.11(j) to the Substantive Rules concerning submission of equal opportunity reports to the commission. Subsection §23.11(d)(8) provides for submission dates for the required reports. This rule is based upon House Floor Amendment 17 to the Committee Substitute of Senate Bill 498. This amendment was adopted by an overwhelming vote in the 1993 legislative session. Floor Amendment 17 would have required the commission to adopt rules to require utilities to make a good faith effort to issue not less than 15% of the total value of all contracts awarded to historically-underutilized-businesses. This amendment to §23.11 requires reporting of information, but does not establish specific goals of any kind.

Comments to the proposed amendment were filed by nine parties. The list of respondents includes: Honorable Royce West, Texas Senate (Senator West); Houston Lighting & Power (HL&P); Texas Utilities Electric Company (TU); Central Power and Light Company, Southwestern Electric Power Company, West Texas Utilities Company (jointly referred to as CSW); Gu# State Utilities (GSU); Lower Colorado River Authority

(LCRA); Southwestern Bell Telephone (SWB); and Texas Telephone Association (TTA). GTE Telephone Operations Central Area (GTE) concurred with comments filed by TTA.

The following summarizes the comments of the parties, the issues, and the commission's response to the comments.

Sen. West states that the language adopted for the rule should be stronger and more explicit than it appears in the proposed rule. But if the commissioners deem it not to be in the public interest to adopt the more directive language, they should, minimally, vote for the amendment as published. Senator West states that minorities constitute approximately 40% of the population of the state of Texas who are captive consumers of the utilities. In view of expected competition in the utility business, it is essential that such a large group of the population participate in opportunities to make it a fair competition. The legislature, having considered the subject matter in the last session and having overwhelmingly voted for it, intended that the matter be addressed by the commission.

The commission agrees that the subject matter should be addressed. The commission is unable to make the requirements any stronger than provided in the proposed rule without additional legislative authority. Therefore, the commission accepts Senator West's alternative suggestion to substantially adopt the rule as published so that the legislature may have adequate information to assist it in further deliberations on the subject matter.

CSW states that the preamble of the published rule indicated an inappropriate assumption that utilities need to "improve the status in the foregoing areas," and that utilities in general are not providing equal contracting opportunities to historically underutilized business and employment opportunities to minorities. However, CSW agrees that the rule, as currently proposed, does not seem to pose an undue reporting burden to a utility.

GSU states that the commission should not impose regular requirements on utilities in this area. The commission's proposed involvement in this area of minority contracting, through reporting requirements, would inevitably move the commission toward increased micromanagement of a utility's business, particularly in view of numerous safeguards imposed by federal and state reporting requirements already in place. While GSU does not necessarily object to voluntarily providing information on the subject matter, it believes that the Commission should not extend its jurisdiction into the contracting and employment practices of utilities through mandatory reporting.

HL&P states that it has numerous programs to enable HUBs to participate in contracting opportunities and it works with numerous minority business organizations in an effort to support the community and to exercise good business relations. However, in view of reporting requirements established by several federal and state agencies, the commission's

reporting requirements and monitoring would be duplicative of such other reporting efforts.

LCRA states that its' board of directors has established affirmative action goals since 1989. LCRA has made considerable progress by increasing the number of minority and women in professional positions by 50%. The management of LCRA provides reports to its board of directors concerning progress toward affirmative action goals on a semi-annual basis and provides monthly up-dates. Extensive EEO reports are provided to the Governor's EEO office containing detailed information about each employee in each EEO category, including salary and ethnicity information in those categories. Such reports are filed every other year.

TTA states that its membership supports the commission's proposed rule amendment to require reports related to employment opportunities and business activities that are currently being provided to state or federal governmental agencies.

TU states that it supports the reporting requirement of the proposed amendment.

The commission interprets these comments filed by utilities as generally supporting or at least not objecting to the reporting requirements specified in this amendment. The commission clarifies that CSW's interpretation of the phrase concerning efforts made by utilities to improve the status of HUBs and minorities in the preamble of the proposed rule is erroneous. Some utilities in comments to published questions indicated that the reporting requirements contemplated in the questions did not tell the whole story of a utility's efforts on the subject matter because some utilities engage in several unreported activities to increase or promote contracting opportunities for HUBs and employment opportunities for minorities and women. The phrase in question was used to permit utilities to voluntarily describe such efforts so that the legislature and the commission are made aware of those efforts. HL&P's assertion that filing copies of required reports will be duplicative of efforts by other agencies is misplaced. Similarly, GSU's assertion that the commission's involvement in this arena will eventually lead to micromanagement of the utilities is without merit. The purpose of reports required by this amendment is to provide the legislature with information useful in further deliberations on the subject matter in which it has expressed interest in the last legislative session, since the legislature may consider this matter in the coming legislative session. As indicated earlier in this preamble, the commission lacks authority to micromanage activities in this area without a further grant of power by the legislature.

In regard to due dates for filing the reports, HL&P states that, as proposed, the initial filing due by December 31, 1994 would not reflect a full year's information because the relevant information necessary to complete the current filing is not finalized until well after the year-end. SWB and TU raised similar concerns regarding availability of reports for the first filing.

The commission agrees with the concerns expressed by HL&P, SWB, and TU. The com-

mission adopts TU's suggestion to change §23.11(d)(8). TU's suggested language provides that copies of reports filed during calendar year 1994 shall be due by December 31, 1994. All subsequent reports shall be filed with the commission concurrently with the respective agency filings.

All comments, including those not specifically addressed herein, were fully considered by the commission.

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

Cross Index to Statute, Article or Code: Texas Civil Statute Article 1446c.

§23.11. General Reports.

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

(d) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this section.

(1) Monthly reports: 45 days after the end of the reported period.

(2) Quarterly reports other than shareholder reports: 45 days after the end of the reported period.

(3) Semi-annual and annual earnings reports: 100 days after the end of the reported period.

(4) Shareholder annual reports: seven days from the date of mailing the same to shareholders.

(5) Securities and Exchange Commission Filings: 15 days from the initial filing date with the Securities and Exchange Commission.

(6) Special or additional reports: as may be prescribed by the commission.

(7) Annual reports required by subsections (f)-(h) of this section shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.

(8) Reports required by subsection (j) of this section: for filings made during calendar year 1994 the reports shall be due on December 31, 1994, and for subsequent years the reports shall be due at the same time that filings are made with the respective governmental agency.

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

(j) Equal opportunity reports.

(1) Definitions. The following words and terms, when used within this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) "Minority group members"-include:

- (i) African-Americans;
- (ii) American-Indians;
- (iii) Asian-Americans;
- (iv) Hispanic-Americans and other Americans of Hispanic origin; and
- (v) women.

(B) "Historically-underutilized-business"-a business entity at least 51% of which is owned by minority group members, or in the case of a corporation, at least 51% of the shares of which are owned, managed, and controlled by minority group members.

(2) Each utility that files any forms with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, and/or relating to contracting opportunities for historically-underutilized businesses (e.g., EEOC Form EEO-1, FCC Form 395, GSA Form SF-295, REA Form 268, etc.) shall file copies of those same completed forms with the commission, and submit copies of any other forms required to be filed which contain the same or similar information such as that addressing:

(A) the number and value of contracts awarded to historically-underutilized-businesses and goals relating thereto, if any; and

(B) personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating thereto, if any.

(3) Any additional information relating to the matters described in this subsection may be submitted at the utility's option.

(4) On February 1 of each year, the commission shall submit a report summarizing the filed reports to the Texas legislature.

(k) Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(l) Service quality reports. Service quality reports shall be submitted quarterly on a form prescribed by the commission.

(m) Research and development reports. Research and development reports shall be submitted annually on a form prescribed by the commission.

(n) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(o) Semi-annual and annual earnings report. Each utility shall report its semi-annual and annual earnings on forms prescribed by the commission as set out in §23.12 of this title, (relating to Financial Records and Reports).

(p) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451404

John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: December 13, 1994

Proposal publication date: August 26, 1994

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

Part IV. Texas Department of Licensing and Regulation

Chapter 78. Talent Agencies

• 16 TAC §§78.10, 78.20, 78.30

The Texas Department of Licensing and Regulation adopts amendments to §§78.10, 78.20, and 78.30, concerning talent agencies, without changes to the proposed text as published in the September 27, 1994, issue of the *Texas Register* (19 TexReg 7577). The new definition describes temporary locations not required to be separately registered. The amendment to §78.20 specifies that anyone that advertises as a talent agent or whose advertising implies he is a talent agency must be registered under the Act. The amendment to §78.30 changes the definitions within that section to agree with the definitions in Texas Civil Statutes, Article 5221a-9.

The justification for the amendments is that the profession and the public need clarification of requirements.

The amendments will function by increasing program integrity and consumer protection.

Two comments opposing the amendment to §78.20 were received. Both comments stated that advertising a modeling or casting call should not be construed as implying that employment might be obtained by answering the advertisement. The department disagrees

with the comments because consumers do not generally have enough knowledge to distinguish between advertisements for obtaining representation and advertisements for other services when this particular wording is used.

The amendments are adopted under Texas Civil Statutes, Article 5221a-9, which authorizes the department to register and regulate talent agencies.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451195

Jack W. Garleon
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: December 12, 1994

Proposal publication date: September 27, 1994

For further information, please call: (512) 463-7357

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 223. Fees

• 22 TAC §223.2

The Board of Nurse Examiners adopts new §223.2, concerning Charges for Public Records, without changes to the proposed text as published in the October 14, 1994, issue of the *Texas Register* (19 TexReg 8093).

This new rule is being adopted to outline the charges that will be made for public records. House Bill 1009, 73rd Legislative Session, amended the Texas Open Records Act to require each state agency to specify, by rule, the charges the agency will make for copies of public records.

This rule defines the charges that will be made for public records.

No comments were received regarding adoption of the rule.

The new section is proposed under the Nursing Practice Act (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it and House Bill 1009—Chapter 428, Acts, 73rd Legislature, Regular Session (1993). Article 4527 of the Nursing Practice Act is affected by this proposed new section.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451177 Loulee Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: December 12, 1994

Proposal publication date: October 14, 1994

For further information, please call: (512) 835-8675

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

**Chapter 519. Practice and
Procedure**

**Failure to Attend; Default
Judgment**

• 22 TAC §519.47

The Texas State Board of Public Accountancy adopts new §519.47, with changes to the proposed text as published in the October 4, 1994, issue of the *Texas Register* (19 TexReg 7872).

The new rule will remove a comma after the word "true" and before the word "without" in subsection (a), will remove a comma after the word "hearing" and before the words "and upon" in subsection (b), the addition of the word "notice" after the word "means" and before the word "sufficient" in subsection (b), the addition of a comma after the word "Code" and before the word "Sections" in subsection (b). In addition, the words "as contained" replace the word "set" in the boldface typed portion (the last sentence) in subsection (b). Lastly, the preamble printed in the Register had the correct section number (§519.47) but in the printing of the section language the section was incorrectly printed as §510.47, and this is now being corrected.

This new rule shortens disciplinary hearings when a party fails to appear.

This new rule will function by allowing the taking of a default judgment without having to present additional evidence and testimony.

No comments were received concerning adoption of the new 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.

§519.47. Failure to Attend; Default Judgment.

(a) If a respondent fails to appear in person or by legal representative on the day and at the time set for public hearing, the administrative law judge, upon motion by the petitioner, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the public hearing. For

purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the allegations against the respondent in the notice of public hearing are deemed admitted as true without any requirement for additional proof to be submitted by the petitioner.

(b) Any default judgment granted under this section will be entered on the basis of the allegations contained in the notice of public hearing and upon the proof of proper notice to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code, §§2001.051, 2001.052 and 2001.054, and §519.6 of this title (relating to Service in Nonrulemaking Proceedings); such notice also shall include the following language in capital letters in 12-point boldface type: **FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU AS CONTAINED IN THIS NOTICE BEING ADMITTED AS TRUE, REGARDLESS OF WHETHER ADDITIONAL PROOF IS SUBMITTED.**

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

Issued in Austin, Texas, on November 11, 1994.

TRD-9451234 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 13, 1994

Proposal publication date: October 4, 1994

For further information, please call: (512) 505-5566

◆ ◆ ◆
**Part XXXIV. Texas State
Board of Social Worker
Examiners**

**Chapter 781. Social Worker
Licensure**

The Texas State Board of Social Worker Examiners (board) adopts the repeal of existing §§781.101-781.106, 781.201-781.208, 781.301-781.305, and 781.401-781.410; and new §§781.101, 781.102, 781.201-781.217, 781.301-781.315, 781.401, 781.402, 781.501-781.514, 781.601-781.608, and 781.701-781.707, concerning the licensing and regulation of social workers. Sections 781.102, 781.201, 781.205, 781.213, 781.216, 781.217, 781.301-781.303, 781.309, 781.310, 781.315, 781.401, 781.402, 781.503, 781.505, 781.506, 781.509, 781.512-781.514, 781.602-781.604, 781.703-781.707 are adopted with changes to the proposed text as published in the July 19, 1994, issue of the *Texas Register* (19 TexReg 5575). The re-

maining sections are adopted without changes to the proposed text and will not be republished.

The existing sections are repealed to allow for the adoption of new sections concerning the regulation and licensing of professional social workers in the State of Texas. The new sections will implement the provisions of the Texas Professional Social Work Act, Human Resource Code, Chapter 50 as amended by Senate Bill 1426, 73rd Legislative Session, 1993; update and clarify existing rules; and better assist licensees in understanding and compliance with the rules.

Specifically, the new sections cover the purpose and scope; definitions; responsibilities; meetings; board training; transaction of official business; agendas; minutes; elections; officers; committees; executive director; reimbursement for expenses; official records of the board; impartiality and non-discrimination; applicants with disabilities; license; roster; fees; qualifications; supervision for specialty recognition; application; required documentation of qualifications for licensure; fitness of applicants for licensure; materials considered in determination of fitness of applicants; finding of non-fitness for licensure; provisional licenses; temporary license; examination requirements; application denial; required reports to the board; code of ethics; standards of practice; general; staggered renewals; license renewal; late renewal; inactive status; emeritus status; active military duty; purpose; hour requirements for continuing education; types of acceptable continuing education; activities unacceptable as continuing education; approval of continuing education providers; acceptance of continuing education approved by another licensing board; credit hours granted; continuing education documentation; purpose; disciplinary action; notices; complaint procedures; licensing of persons with criminal backgrounds; suspensions, revocation, or nonrenewal; informal disposition; default orders; monitoring of licensees; purpose; general; notice; subpoenas; pre-hearing conferences; hearing procedures; and action after the hearing.

The board made the following changes to the proposed sections as a result of the following comments.

The terms "private independent practice", "sexual exploitive behavior" and "sexual contact" have been added to the definitions in §781.102 for further clarification.

One commenter suggested that the board should add the term "case management" into the definition of "professional social work practice" in §781.102. The board disagreed due to the term "case management" being so broad. The term would be very difficult to define.

One commenter wanted to know how to get an item on the board agenda. The board added a subsection at §781.205(b) to state "Requests for items to be placed on the agenda must be submitted to the executive director at least 30 days in advance of the scheduled meeting".

One commenter requested that in §781.209(g) the complaints committee mem-

bers should be limited to social workers licensed at the same level as the social worker against whom a complaint has been filed. The board disagreed because the complaints committee is a standing committee and it would be impractical to change its composition based on the license category of the social worker under investigation.

One commenter suggested that "gender, age, and political affiliation" be added in §781.213(a) to be consistent throughout the rules. The board added these terms into this section.

A staff person stated that in previous meetings on writing the rules it was discussed not to have phone numbers printed in the directory as required by §781.216(b). The board discussed this issue and agreed that there may be some safety and privacy issues with printing telephone numbers of licensees so the reference to telephone numbers has been deleted. However, if a person in private practice wants to have his or her phone number printed in the directory he or she can do this through the board office.

A staff person stated that there was a discrepancy between §781.217 on "inactive status fee" to go back to active status and §781.505 which says the fee will be prorated. The fee list in §781.217 says \$15.00 plus renewal fee for specialty recognition if applicable. The board reviewed this problem agreed; so paragraph (9) in §781.217 has been deleted and §781.505(d) was changed to read "A person must notify the board in writing to reactivate the person's status. Reactivation status shall begin on the first day of the month following payment of the license fee. The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals)."

Two commenters on §781.301(a)(3)(B) wanted to know if three years of experience is enough with an associate's degree. The board feels that three years of experience is enough. In addition, the board clarified that a SWA's out-of-state supervisor may have an equivalent license, instead of a Texas license.

Further clarification has been added to §781.301(a)(3)(A) regarding an out-of-state supervisor having an equivalent license.

Section 781.301(a)(4)(B) and (a)(5)(B) have been clarified to include people who are applying for LMSW-ACP or LMSW-AP who have received their experience in another state.

Two commenters on §781.301(a)(4)(B) felt that five years of experience should be required. The board feels as though three years of is enough experience.

Section 781.301(a)(4)(A),(B) and (C) have been clarified to include individuals who received their experience and supervision from out of state.

In §781.301(a)(5)(A),(B) and (C) were clarified to include individuals who received their experience and supervision from out of state.

Concerning §781.301(a), one commenter stated that individuals with doctoral degrees in social work should not be in the LMSW

category. The board responded that this degree is in the LMSW category under the Human Resource Code, Chapter 50 so no change was made.

One commenter disagreed with §781.301(b)(1) which allows an Advance Clinical Practitioner to provide clinical and nonclinical social work. The commenter felt that ACP's may be very competent clinicians with all the necessary skills, but an ACP may not have the necessary and specialized skills to engage in such areas as community organization, planning, administration, teaching, research, administrative supervision and non-clinical consultation. The board disagreed because other sections of the rules make it clear that an ACP must only offer services for which he or she is competent.

Concerning §781.301(b)(3), one commenter stated that she did not support this subsection because a person who holds a SWA and a LPC license should be able to be in private practice as an LPC. The board agreed and has clarified this section.

Concerning §781.301, one commenter suggested adding in a specialty recognition for case management. The board did not find sufficient evidence to develop a new specialty.

Concerning §781.301, one commenter wanted supervision to be open to other disciplines. The board feels supervision by a social worker is necessary to assure an appropriate level of identification with the social work profession.

Four commenters stated that they liked §781.302 (Supervision for Specialty Recognition).

One commenter stated that §781.302(a)(2) and (3) needed clarification in regards to the 30 and 90 days being a guideline and that there may be circumstances where this can not be done due to turnover in staff. The board believes that the times in the rule are mandatory and offer sufficient time for an individual to comply.

One commenter wanted to know how one can take professional responsibility under §781.301(b)(2), if supervision is occurring outside the agency. The board stated that an individual takes on a level of responsibility when he or she provides supervision no matter whether the supervision is in or outside of an agency setting.

Section 781.302(b)(3) has been reformatted to make it more readable.

Concerning section 781.302(b)(3)(B) the words "social worker" have been added to clarify the type of graduate course needed.

Concerning section 781.302(b)(3)(D) the word "course" has been replaced with "program" for further clarification.

Concerning §781.302, one commenter stated that current ACP supervisors should be grandparented under the new section. The board stated that the rules were written to assure competency and were sufficiently broad to cover most current ACP supervisors and, therefore, a grandparenting clause was unnecessary.

Section 781.303(e) has been clarified concerning the 12 month periods.

The last sentence in §781.303(g) has been taken out because there are no additional fees for the approval of the upgrade. The subsection now reads, "No additional fee is required before recognition as an ACP or AP is granted." Also the word "license" has been changed to "licensee", to correct a typing error.

One commenter opposed letting degrees from schools in candidacy status count toward an LSW or LMSW under §781.304(b)(2). The board believes that the proposed rule meets the intent of the law without penalizing social work programs in candidacy status or the students who participate in these programs. No change was made.

Concerning §781.304, one commenter wanted to know about people who graduate prior to the program's accreditation or candidacy status. She wanted to know if they are eligible for the LSW or LMSW. The board stated that since the program was not accredited or in candidacy, its graduates are not eligible for the LSW or LMSW.

One commenter stated in general that she would like to see case management experience specified and identification of social work with case management in the proposed rules. This person was concerned with the case management movement, especially in health care and hospitals, etc. The board agrees that some social workers do engage in case management but did not accept this recommendation because the field of case management is too broad to attempt to define.

One commenter wanted to know what constitutes a supervisor under §§781.301 or 781.302. Is a supervisor the person who does their evaluations? The board stated that a work supervisor and a supervisor under this chapter may be different persons. The definition of "supervision" in §781.102 addresses the responsibilities of a supervisor under this chapter.

One commenter disagreed with section 781.305(3). The board believes that the language as written is one way to define public trust.

Section 781.309(a)(1) has been clarified to read "A person holding a temporary license must take the designated examination within six months of issuance of the temporary license."

Section 781.310(b) has been clarified concerning reexaminations.

Concerning §781.311 one commenter stated that people who applied prior to the rule changes should be able to take the examination again without petitioning the board. The board took the position that all applicants must comply with the rules unless specifically exempted from a rule. No change was made.

One commenter stated that he liked §781.311 (Alternate Method of Examining Competency)

Concerning §781.311(a)(3) one commenter requested that two social workers should have to submit documentation. The board referred this comment to the supervision committee for further review.

One person commented that in §781.311(b) and (d) the board should vote with a 2/3 majority. The board disagreed and stated that the majority vote requirement is used by the board for all votes.

Concerning §781.315(a)(2) the word "licensee" was changed to "license" for further clarification.

Section 781.402(f) was revised to prohibit a licensee's promotion of personal or business activities to a client.

Concerning §781.402 one commenter stated that when laws are referenced in the rules, social workers should get copies of these laws. The board stated that laws that are referenced will be published in the social worker directory.

One commenter stated that she supports §781.401 and §781.402.

One commenter stated that in §781.402(j) the social worker should be able to bill the client if the client does not show for the appointment. The board stated that the social worker can bill for a missed appointment if agreed to by the client but cannot bill third parties for sessions that did not take place.

Section 781.402(j)(1) was clarified.

Section 781.402(o) was revised to delete the Texas Penal Code, 21.14 which was repealed.

One comment was made that the board is setting itself up as an authority on criminal justice in §781.402(p). The board responded that this subsection has nothing to do with criminal justice. Such reporting is required by the Texas Civil Practice and Remedies Code, Chapter 81. No change was made.

Concerning §781.402(t) one commenter suggested adding the language "after first confronting the offending licensee to try to resolve the problem". He suggested the board add similar language into the rules for licensed psychologists and that by doing so this could save the board a great deal of time, effort and money if implemented. The board did not agree that a complainant should be required to confront the social worker prior to filing a complaint.

Concerning §781.402(cc), one commenter suggested that the board add in the word "academic" before the word "credentials" to distinguish from legal credentials. The board does not feel as though this was necessary; and that the language as proposed is clear.

A person pointed out that the board is issuing a dated seal instead of a new license each year at renewal in contradiction to §781.503(e). The board agrees and has changed the language accordingly.

Concerning §781.505(d) the words "reactivation status fee" have been replaced with "license fee" to be consistent with the fees section.

Concerning §781.506(c), one commenter stated that emeritus status social workers should be allowed to earn some money for occasional work such as consultation and speaking engagements. The board disagrees and maintains its position that if a person was working as a social worker the person could not be on emeritus status.

One commenter disagreed with §781.506(d). He did not feel as though it is fair to penalize someone for coming back into the field by requiring the late fee and having to reapply. This section was revised to delete the additional penalty fee for late renewal.

Concerning §781.508, three commenters wanted to keep the same continuing education requirements. The board believes that requiring CEU's helps assure quality continuing education.

Concerning §781.503, one commenter stated that renewal should be over a two year period instead of every year. The board response is that in the Human Resource Code, §50.023(a) it states "The board by rule shall adopt a system under which licenses or, orders of recognition issued under this chapter expire on various dates during the year, and the dates for renewal shall be adjusted accordingly."

Concerning §781.508, two commenters felt that 1.5 CEU's were too many and too expensive. The board believes that requiring 1.5 CEU's is adequate and is not any more expensive than previous requirements.

Concerning §781.508, six commenters stated that the board should keep the ethics training in for renewal. The board does not feel as though it had enough information to require specialized training.

Concerning §781.509, two commenters stated that the continuing education should be related to the licensee's practice area. The board believes that the licensee is capable of determining what type of continuing education should be taken.

Concerning §781.509, one commenter stated that continuing education should not be limited to those programs only approved by the board. The board stated that the rule do not limit continuing education only to approved programs of the board. Licensees should refer to §781.509 (Types of Acceptable Continuing Education).

Concerning §781.508, one commenter stated that it is difficult to get continuing education due to work not allowing her off and not paying for any of the continuing education costs. The board believes that it is the responsibility of each licensee to obtain continuing education.

One commenter stated that a licensee should be able to get continuing education credit in §781.510(2) for serving on committees. The board does not believe that serving on a committee is considered continuing education.

Concerning §781.505, one commenter stated that "the demand for a certain number of hours for training apparently was written into the rules by the providers or their agents." The board feels as though continuing educa-

tion does help ensure continued competency. Concerning §781.511(g), one commenter stated that providers should be able to keep a summary of the evaluations instead of keeping all the evaluations due to space problems. The board does not consider that maintaining these evaluations for a two year period was a significant problem. No change was made.

In reference to §781.511, one commenter felt that training should be conducted by a responsible agency by a responsible person and the lesson plan should be carefully reviewed. The board feels the rules are sufficient to assure the general quality of the continuing education programs.

Concerning §781.509 one commenter questioned the continuing education requirements for people in administration and planning. The board responded that social workers could obtain any training they believed would assist them, but they would still have to complete the required number of approved hours.

Concerning §781.512(a) one commenter stated that if the program is approved by another licensing board, it should be automatically approved for social workers. The board disagrees with this position. The rules require individual programs to be approved if they relate to the field of social work. Subsection (a) was revised to clarify this position.

The first sentence of §781.513(3) was taken out for better clarity and was added to §781.513(5).

Section 781.513(5) was clarified.

One commenter disagreed with §781.513(6) because she works overseas and gets her continuing education thru correspondence but the rules only allow 1.0 CE for renewal. The board has revised this section to allow persons outside the United States to get all their hours by correspondence.

One commenter wanted to know how long social workers need to keep their CE documentation under §781.514. The board added language to clarify that documentation of continuing education listed on the renewal form must be retained for two years.

Two commenters supported the Complaints and Violations Subchapter.

A grammatical correction was made to §781.602(a)(4).

One commenter stated that §781.602(e) violated due process. The board stated that the language did not violate due process but added a sentence to make it clear that the licensee could present information to the board related to reprimand.

Concerning §781.603(a), one commenter recommended that a complaint should only be filed after first attempting to resolve the issue directly with the social worker. The board does not agree with this position because it is not appropriate to require the complainant to confront the social worker prior to filing a complaint.

Concerning §781.603(f) and 781.702(e), one commenter mentioned that all mailings related to complaints should be sent certified mail, return receipt to assure proper notice. The board disagrees because people do not always pick up their mail.

Section 781.604(b)(6) was changed to refer to "the felony offense of theft", since the law on insurance claim fraud was repealed.

One commenter stated that in §§781.606(b) and (d)(1)(D), (k), (m), (n)(5), and (q), and 781.707(e), references to "complaints committee or executive director" be changed to allow only the complaints committee to make decisions and take action. The board disagrees, stating the executive director was allowed to take certain actions to expedite the process.

One commenter stated that §781.606(d)(1)(D) should require complaint committee members to be present. The board disagreed with this comment because requiring the complaints committee to attend the hearings may not always be possible.

Concerning §781.606(l) one commenter requested that the word "sworn" be added before "statement" in the second sentence. The board did not feel it was necessary to have additional statements notarized when submitted.

One commenter wanted to know who pays for subpoena costs under §781.704(c). The board stated that the person who wants the subpoena pays according to the Administrative Procedure Act. No changes were made.

Section 781.707(c)(3) has been added to address revisions by the board of a proposed order from an Administrative Law Judge.

Minor typographical and grammar changes were made throughout the text.

The following organizations commented on the rules: National Association of Social Workers, Texas Society of Clinical Social Workers, Child & Family Services, Inc., Houston Study Group, Fort Worth Independent School District, and Communities in Schools.

All commenters were generally in favor of the rules but expressed concern, offered suggestions, and requested clarification indicated in the summary of comments.

Certification Requirements

• 22 TAC §§781.101-781.106

The repeals are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

The repeals implement the Texas Professional Social Work Act.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451272

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Subchapter A. General Provisions

• 22 TAC §781.101, §781.102

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

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

Act—The Texas Professional Social Work Act, Human Resources Code, Chapter 50.

Accredited colleges or universities—Colleges or universities as reported by the American Association of Collegiate Registrars and Admission Officers.

Administrative Law Judge (ALJ)—A person within the State Office of Administrative Hearings who conducts hearings under this chapter on behalf of the board.

Agency—A public or private employer or business entity providing social work services.

APA—The Administrative Procedure Act, Government Code, Chapter 2001.

Board—Texas State Board of Social Worker Examiners.

Client—A person who seeks or receives social work services. A person remains a client until the termination of services.

Clinical social work—The practice of providing evaluation, diagnosis, and treatment to individuals, families, or groups with mental or emotional conditions or disorders or who are adversely affected by social or psychosocial stress or health impairment.

Confidential information—Information obtained from a client or records relating to a client, including the client's identity, that are not discloseable under applicable law.

Council on Social Work Education (CSWE)—The national organization which accredits social work education schools and programs.

Department—Texas Department of Health.

Detrimental to the client—An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

Full-time experience—Social work services totalling 30 or more hours per week.

Health care professional—A licensee or any other person licensed, certified, or

registered by the State of Texas in a health-related profession.

License-A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

LMSW-Licensed master social worker.

LMSW-ACP-Licensed master social worker-advanced clinical practitioner.

LMSW-AP-Licensed master social worker-advanced practitioner.

LSW-Licensed social worker.

Licensee-A person licensed or recognized by the board to perform professional social work practice.

Nonclinical social work—The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, nonclinical consultation and other related social work activities.

Part-time-Social work services totalling less than 30 hours per week.

Private independent practice—The practice of a social worker who is solely responsible for the services provided and for establishing the conditions of exchange with clients.

Professional social work practice—Services and actions performed for compensation to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of professional social work is guided by special knowledge, acquired through formal professional social work education, of social welfare policies and services, social welfare systems and resources, human development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Professional social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, counseling, assessment, and evaluation. Professional social work practice may also be referred to as social work services.

Recognition-Authorization from the board to engage in the private, independent or specialty practice of social work services.

Sexual exploitive behavior—A pattern, practice or scheme of conduct which may include sexual contact, that can reasonably be construed as being for the purposes of arousal or gratification or sexual abuse of any person.

Sexual contact—Any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person (Texas Penal Code, §21.01).

Social worker—A person licensed under the Act as a SWA, LSW, LMSW, LMSW-AP or LMSW-ACP.

SWA—A person licensed as a social worker associate.

Supervision—The professional relationship between a supervisor and a social worker which provides evaluation and direction over the services provided by the social worker and promotes professional development of knowledge, skills, and abilities to provide social work services. It may include, without being limited to, direct observation or the review of case presentations, audiotapes, or videotapes.

Termination—The end of professional services, meetings, and billing for services.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451273 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Application Process

• 22 TAC §§781.201-781.208

The repeals are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451274 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Subchapter B. The Board

• 22 TAC §§781.201-781.217

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social

Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.201. Board Rules.

(a) The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(A) a brief explanation of a justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be filed with the board office.

(4) The board office may determine the petition does not contain the information described in paragraph (2) of this subsection and shall return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rulemaking procedures in accordance with the Administrative Procedure Act, the Government Code, Chapter 2001. The board may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rulemaking procedures, the version of the rule

which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rules submitted within six months after the date of an initial position.

§781.205. Board Agendas.

(a) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chairperson.

(b) Requests for items to be placed on the agenda must be submitted to the executive director at least 30 days in advance of the scheduled meeting.

(c) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

§781.213. Impartiality and Non-discrimination.

(a) The board shall make all decision in the discharge of its statutory authority without regard to any person's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§781.216. Roster of Licensees.

(a) Each year the board shall publish a roster of licensees.

(b) The roster of licensees shall include, but not be limited to, the name and address of current licensees.

(c) The board shall make a copy of the roster available to each licensee, and upon request, copies to other state agencies and the general public.

§781.217. Fees.

(a) The following are the board's fees:

(1) application fee for all licenses or specialty recognition—\$20;

(2) license fee for SWA, LSW, or LMSW-\$30;

(3) renewal fee for SWA, LSW or LMSW-\$30;

(4) license specialty recognition (AP or ACP)-\$10;

(5) renewal fee for specialty recognition-\$10;

(6) additional or replacement license fee-\$10;

(7) additional penalty fee for late renewal:

(A) 1-90 days-\$45; and

(B) 91 days but less than one year-\$90;

(8) inactive status fee-\$15;

(9) returned check fee-\$25; and

(10) continuing education sponsor application fee-\$50.

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.303 of this title (relating to Application).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, a returned check fee must be in the form of a cashier's check or money order.

(d) A license which is issued by the board, but for which a check is returned (e.g. insufficient funds, account closed, or payment stopped) is invalid.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451275

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Certificate Expiration and Renewal

• 22 TAC §§781.301-781.305

The repeals are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that

are necessary to administer the Texas Professional Social Work Act.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451276

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Subchapter C. Licenses and Licensing Process

• 22 TAC §§781.301-781.315

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.301. Qualifications for Licensure.

(a) The following education and experience is required for the specified licenses and specialty recognitions:

(1) LMSW—a doctoral or master's degree in social work from a CSWE accredited college or university;

(2) LSW—a baccalaureate degree in social work from a CSWE accredited college or university;

(3) SWA—

(A) a baccalaureate degree from an accredited college or university and one year of full-time social work experience as defined in §781.304(c) of this title (relating to Required Documentation of Qualifications for Licensure) under the supervision of a SWA, LSW or LMSW or a person with an equivalent social work license if the experience was completed in another state; or

(B) an associate of arts degree in a behavioral science from an accredited college or university and three years of full-time social work experience as defined in §781.304(c) of this title under the supervision of a SWA, LSW or LMSW or a person with an equivalent social work license if the experience was completed in another state;

(4) LMSW-ACP—

(A) qualified to be licensed as a LMSW;

(B) three years of full-time experience in a clinical social work position after completion of the qualifications for licensure as a LMSW or its equivalent if the experience was completed in another state;

(C) two years of supervision (as part of the three years of experience) under a LMSW-ACP supervisor or its equivalent if the experience is completed in another state;

(D) identification with and continued participation in the social work profession as evidenced by licensure as an LMSW, active membership and participation in social work organizations and experience in social work positions; and

(5) LMSW-AP—

(A) qualified to be licensed as a LMSW;

(B) three years of full-time experience in a non-clinical social work position after completion of the qualifications for licensure as a LMSW or its equivalent if the experience was completed in another state;

(C) two years of supervision (as part of the three years of experience) under a LMSW-ACP, LMSW-AP supervisor or its equivalent if the experience is completed in another state;

(D) identification with and continued participation in the social work profession as evidenced by licensure as a LMSW, active membership and participation in social work organizations and experience in social work positions.

(b) Only a person who is licensed and recognized by the board as a LMSW-ACP or LMSW-AP is qualified for the private, independent practice of social work. No further recognition is necessary.

(1) As a private practitioner, a LMSW-ACP may provide any clinical or nonclinical social work services.

(2) A LMSW-AP must restrict his or her private, independent practice to the provision of nonclinical social work services.

(3) A licensee must not engage in any private, independent practice without being licensed and recognized by the board as a LMSW-ACP or LMSW-AP, unless the person is licensed in another profession and acting solely within the scope of that other license. The person may not use the titles "licensed master social worker", "licensed

social worker", or "social work associate" or any other title or initials that implies licensure or certification in professional social work services.

(c) An applicant for AP and ACP recognition is not eligible for a temporary or provisional license.

§781.302. Supervision for Specialty Recognition.

(a) A LMSW who plans to apply for specialty practice recognition must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director at the beginning of supervision or within six months of the effective date of these rules;

(2) submit a notice to the board within 30 days of the end of each supervisory plan with each supervisor and a termination evaluation completed by the supervisor; and

(3) submit a new supervisory plan within 90 days of changing supervisors.

(b) A person who wishes to be an approved supervisor must file a request with the board. A supervisor must:

(1) be a LMSW-ACP or LMSW-AP or hold the equivalent social work license or certification in another state;

(2) take professional responsibility for the social work services provided within the supervisory plan;

(3) A supervisor must meet one of the following:

(A) be the agency designated supervisor; or

(B) have completed one social work graduate course in supervision from an accredited college or university; or

(C) have completed two years of experience as a clinical social work supervisor; or

(D) have completed a supervisor's training program acceptable to the board; and

(4) currently be engaged in the practice of social work and self-identified as a social worker.

(c) On receipt of the request and verification of qualifications, the board will issue a letter of approval to a qualified supervisor.

(d) A supervisor must maintain the qualifications described in subsection (b) of this section while he or she is providing supervision.

(e) Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(1) There can be no more than six individuals in a supervision group.

(2) Supervision shall consist of no less than 100 hours.

(3) Supervision shall be spread out over the experience of the supervisee.

(4) Supervision shall be accomplished in one or two hour blocks not exceeding 10 hours per month.

(f) Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director or a committee of the board has granted an exception allowing an alternate form of supervision due to geographical difficulties or physical disabilities. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee.

(g) Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time of the supervision.

§781.303. Application.

(a) An application for licensure must be on the official form designated by the board. Application packets which include the application form are available on request.

(b) The application process begins when the completed application form and fee are received in the board office.

(c) Receipt of an application form will be acknowledged by a letter from the executive director within 15 working days of receipt. The letter will include:

(1) the licensing or recognition category requested;

(2) deficiencies in documented qualifications, if any; and

(3) additional documentation necessary for examination approval. This could include transcripts, supervisory references and other documents which verify qualifications.

(d) A letter approving the applicant to sit for the examination will be mailed within 15 working days of the receipt of all required documentation.

(e) If an applicant fails to fully document his or her qualifications within 12 months of filing the application or fails to

take the examination within 12 months of approval to sit for the examination, the application will be voided and reapplication may be required.

(f) If the applicant passes the examination, the executive director shall mail a notice of approval stating the fee for initial licensure.

(g) On receipt of the license fee in the board office, licensure for LMSW, LSW, or SWA will be immediately granted and the license will be mailed to the licensee within 10 working days.

(h) In the event an application is not processed in the time periods stated in this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied. The executive director will respond to the request for refund within 30 days from the date it is received. Good cause for exceeding the time period is considered to exist if the number of applications for license or license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(i) If a request for reimbursement under this section is denied by the executive director, the applicant may appeal to the chairperson of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairperson at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chairperson shall provide written notice of the chairperson's decision to the applicant and the executive director. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(j) The time periods for contested cases related to the denial of a license or a license renewal are not included within the time periods in this section. The time period for conducting a contested case hearing runs from the date the board office mails notice

of the proposed denial and ends when the decision of the board is final and appealable. A hearing may be completed within six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§781.309. Temporary License.

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a LMSW, LSW, or SWA as long as the applicant meets all the requirements, with the exception of the examination, for the level of license sought.

(1) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(2) The temporary license is valid until the results of the first qualifying examination are made available (i.e. the first examination taken by the temporary licensee or the end of the six months from issuance of the license if the examination is not taken, whichever is earlier).

(b) A person may receive a maximum of two temporary licenses at a certain level of license.

(c) A person who failed the examination and is without a valid temporary license may retake the examination under §781.310(b) of this title (relating to Examination Requirement).

§781.310. Examination Requirement.

(a) An applicant for licensure or recognition must pass an examination designated by the board.

(b) If an applicant fails the examination, he or she may retake the examination no more than twice. An applicant who has failed the examination three times must petition the board to retake the examination. The board may order the applicant to complete one or more social work educational courses as a prerequisite to retaking the examination.

§781.315. Surrender of License.

(a) Surrender by licensee.

(1) A licensee may at anytime voluntarily offer to surrender his or her license for any reason, without compulsion.

(2) The license may be delivered to the board office by hand or certified mail.

(3) If there is no complaint pending, the board office may accept the surrender and void the license.

(b) Formal disciplinary action.

(1) When a licensee has offered the surrender of his or her license after a complaint has been filed, the board shall

consider whether to accept the surrender of the license.

(2) When the board has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a board order shall be prepared accepting the surrender.

(3) In order to accept a surrender, the board may require the licensee to agree to certain findings of fact and conclusions of law, including the making of an admission of a violation of the Act or this chapter.

(4) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

(c) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451277

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Administrative Actions

• 22 TAC §§781.401-781.410

The repeals are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451278

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Subchapter D. Code of Ethics and Professional Standards of Practice

• 22 TAC §781.401, §781.402

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.401. Code of Ethics.

(a) A social worker must observe and comply with the code of ethics and standards of practice set forth in this subchapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to do or refuse to perform any act or service for which the person is licensed solely on the basis of a client's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(2) A social worker shall truthfully report or present her or his services, professional credentials and qualifications to clients or potential clients.

(3) A social worker shall only offer those services that are within his or her professional competency.

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall avoid a relationship with other persons that are detrimental to a client or former client.

(9) A social worker shall not engage in any exploitive or sexual act with a client or former client.

(10) A social worker shall refrain from providing service while impaired due to the social worker's physical or men-

tal health or the use of medication, drugs or alcohol.

(11) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(12) A social worker shall refer a client for those services that the social worker is unable to meet and terminate service to a client when continued service is no longer in the client's best interest.

(b) The grounds for disciplinary action of a social worker shall be based on the code of ethics or standards of practice in effect at the time of the violation.

§781.402. Standards of Practice.

(a) A licensee shall not knowingly make any misleading, deceptive, fraudulent or exaggerated claim or statement about any aspect of the licensee's services or qualifications or continue to permit such claims on the licensee's behalf.

(b) If the licensee learns that inappropriate claims regarding the licensee's services have been made, the licensee will immediately notify the board and take all available steps to correct the inappropriate claims and to prevent their reoccurrence.

(c) A licensee shall inform an individual before or at the time of the individual's initial session with the licensee of the following:

- (1) fees and arrangements for payment;
- (2) purposes, goals, and techniques;
- (3) any restrictions placed on the licensee by the board;
- (4) the limits on confidentiality; and
- (5) any intent of the licensee to use another individual to provide social work services to the client.

(d) A licensee shall inform the client of any changes to the items in subsection (c) of this section prior to or promptly after initiating the change.

(e) The provisions of the Health and Safety Code, §161.091, et seq. relating to the prohibition of illegal remuneration for the securing or soliciting of clients apply to licensees.

(f) A licensee shall not promote the licensee's personal or business activities to a client.

(g) A licensee shall make every effort to avoid client relationships which could impair the licensee's professional judgement or otherwise increase the risk of

client exploitation. A licensee shall not provide professional services to a member of the licensee's own family, an intimate friend, a close associate, or others whose welfare might be jeopardized by such a dual relationship.

(h) In individual and group therapy settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within a group or from individual therapy.

(i) For each client, a licensee shall keep records of the dates of social work services, types of social work services, and billing information. Records held by a licensee shall be kept for five years for adult clients and two years beyond the age of 18 for minor clients. Records held or owned by governmental agencies or educational institutions are not subject to this requirement.

(j) A licensee shall bill or permit clients or third parties to be billed on his or her behalf only for those services actually rendered or as legally agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(1) Billing should accurately reflect the name(s) of the person(s) providing services.

(2) On the written request of a client, a client's guardian, or a client's parent or managing or possessory conservator if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for social work services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) A licensee may not persistently or flagrantly overcharge a client.

(4) A licensee may not submit to a client or a third party a bill for social work services when the licensee knows that the services were not provided or were improper, unreasonable, or medically or clinically unnecessary.

(k) A licensee shall terminate social work services when in the licensee's professional opinion the client is not benefiting from those services. When services to the client are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(l) A licensee shall not state a professional judgment of any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the statement that the licensee has not personally interviewed the individual.

(m) A licensee may not persistently or flagrantly overtreat a client.

(n) A licensee shall not aid and abet a person's violation of the Act, §50.010.

(o) A licensee shall not engage in sexual contact or sexually exploitive behavior with a client or former client.

(1) A licensee shall not commit an act for which liability exists under the Texas Civil Practice and Remedies Code, Chapter 81, relating to sexual exploitation by a mental health services provider. The licensee need not actually have had a judgment rendered against the licensee under Chapter 81.

(2) It is not a defense that the sexual contact or exploitive behavior took place with the client's consent, outside the treatment sessions or off the premises where social work services took place.

(p) If a licensee has reasonable cause to suspect that a client has been sexually exploited by a mental health services provider during the course of treatment, or if a client alleges sexual exploitation by a mental health services provider during a course of treatment, the licensee must make a report as provided in the Texas Civil Practice and Remedies Code, §81.006. A report under this subsection need contain only the information needed to:

- (1) identify the reporter;
- (2) identify the alleged victim, unless the alleged victim has requested anonymity;
- (3) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and
- (4) provide the name of the alleged perpetrator.

(q) A licensee shall not:

- (1) use alcohol or drugs in a manner which impairs the licensee's ability to provide social work services;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

(r) A licensee shall not disclose any confidential information except as provided in the Health and Safety Code, Chapter 611 or other applicable state or federal statutes or rules. A licensee may take reasonable action to inform medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(s) A licensee shall comply with the Texas Health and Safety Code, Chapter 611, concerning access to records.

(t) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the board.

(u) A licensee shall keep his or her board file updated by notifying the board in writing of changes of name, home and business address, home and business telephone number, and employment.

(v) A licensee shall cooperate with the board by furnishing required documents or information and by responding to a request for information from or a subpoena issued by the board or its authorized representative.

(w) A licensee shall comply with any order issued by the board relating to the licensee.

(x) A licensee shall not interfere with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(y) A licensee shall not file a complaint with the board in bad faith.

(z) A licensee shall not display a license issued by the board which has been reproduced or is expired, suspended, or revoked.

(aa) A licensee shall not make any alteration on a license issued by the board.

(bb) A licensee shall include in any advertisement only information which is true, accurate, illuminating, complete, in context, straight forward and readily verifiable. Advertisement includes, but is not limited to, any announcement of social work services, letterhead, business cards, commercial products, and billing statements.

(cc) In any public representation or advertising of a licensee's professional social work credentials, a licensee shall use only those degrees which were received from an accredited college or university. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(dd) In research with a human subject, a licensee shall take reasonable precautions to ensure that the subject does not suffer emotional or physical harm.

(ee) A licensee shall confine the use of data obtained from social work services for the purposes of education or research to content that can be disguised to ensure full protection of the identity of the subject client.

(ff) A licensee shall report if required by any of the following laws:

(1) Family Code, Chapter 34, concerning abuse or neglect of children;

(2) Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-8451279

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Subchapter E. License Renewal and Continuing Education

• 22 TAC §§781.501-781.514

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.503. License Renewal.

(a) At least 30 days prior to the expiration of a regular license, the board will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and penalty fees, and the number of credit hours of continuing education needed to complete the renewal requirements.

(b) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide current addresses; telephone numbers; a listing of the continuing education completed; a signed statement regarding any civil lawsuits, criminal cases and convictions or any complaints against, investigations involving, or actions against the licensee by any licensing or certification body related to health or mental health care

services; and a statement of continuing compliance with the Act and this chapter.

(c) The executive director will respond in writing to the application for renewal within 15 working days of initial receipt and of receipt of a completed application (if the initial application is deficient) notifying the applicant that his or her license is renewed, that the application is deficient, or that renewal is proposed for denial. Failure to process a renewal application in the time periods stated shall be governed by §781.303(h)-(j) of this title (relating to Application).

(d) The board shall not renew a license until it receives the completed license renewal form and the renewal fee and the licensee has complied with applicable continuing education requirements.

(e) The board shall renew the license of a social worker who has met all requirements for renewal.

(f) If a licensee has made timely and sufficient application for renewal, the license does not expire until the board has acted on the renewal.

(g) The board shall deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §781.602(c) of this title (relating to Disciplinary Action; Notices) is mailed by the board.

(1) A license that is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(2) In the case of delay in the license renewal process because of formal disciplinary action, penalty fees shall not apply.

§781.505. Inactive Status.

(a) A licensee with a current license and who is in good standing, but who is not employed to provide social work services in Texas, is eligible for inactive status. The request for inactive status must be submitted in writing to the board prior to the expiration of the license.

(b) No continuing education is required of a licensee while on inactive status.

(c) The inactive status fee must be paid on or before the expiration date of the license, instead of the renewal fee.

(d) A person must notify the board in writing to reactivate the person's status. Reactivation status shall begin on the first day of the month following payment of the license fee. The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals).

§781.506. Emeritus Status.

(a) A licensee who is at least 55 years of age or disabled and who is not engaged in professional social work practice is eligible for an emeritus license. The request for emeritus status must be submitted in writing to the board.

(b) On receipt of the request the board will issue an emeritus license that will remain valid for the lifetime of the licensee. No renewal fee or continuing education will be required.

(c) The emeritus licensee may only use his or her emeritus title in the provision of social work services as a volunteer. The emeritus social worker may not receive any compensation for social work services.

(d) An emeritus license can be reinstated as a regular license within one year of the date the emeritus license was issued without being subject to the additional penalty for late renewal of a license. To be eligible for a new license after one year, the person would be required to apply for another license by meeting requirements in effect at the time of the application, including passing the examination.

§781.509. Types of Acceptable Continuing Education. Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories:

(1) participating in institutes, seminars, workshops, conferences, independent study programs, post graduate training programs, college academic or continuing education courses which are related to or enhance the practice of social work and are offered, sponsored or approved by an approved provider. Approved providers are:

(A) accredited colleges and universities;

(B) a national or statewide association, board or organization representing members of the social work profession;

(C) a person, agency or entity who is approved as a provider in accordance with §781.511 of this title (relating to Approval of Continuing Education Sponsor);

(D) a person, agency or entity who is approved by a state professional licensing or certification board as a continuing education sponsor or provider as stated in §781.512 of this title (relating to Acceptance of Continuing Education Approved by Another Licensing Board).

(E) nationally accredited health or mental health facilities;

(2) teaching or presenting the activities described in paragraph (1) of this section;

(3) writing a published work or making a presentation directed toward or applicable to the profession of social work; or

(4) providing professional guidance as a field instructor for social work interns in connection with a college or university accredited by or in candidacy status with CSWE.

§781.512. Acceptance of Continuing Education Approved by Another Licensing Board.

(a) A person, agency or entity approved by another state professional licensing or certification board may request its program(s) be accepted for credit hours by the Texas State Board of Social Worker Examiners. The person, agency or entity shall submit documentation of that board's approval, a statement of the relevance of the program(s) to social work practice and the continuing education sponsor application fee.

(b) The executive director will review the documentation and notify the approved provider in writing whether the program(s) are acceptable as credit hours and of the approved provider number, if acceptable.

§781.513. Credit Hours Granted. The board will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour (0.1 CEU) will be given for each hour of participation in a continuing education program by an approved provider.

(2) Credit may be earned through successful completion of postgraduate training programs (e.g., intern, residency, or fellowship programs) or successful completion of social work related courses which are part of the curriculum of a college, university or graduate school of social work at a rate of 5 credit hours (0.5 CEU) per each semester hour or its equivalent.

(3) Credit may be earned for verified teaching in a college, university or graduate school of social work. Credit will be applied at the rate of 5 credit hours (0.5 CEU) for every course taught, not to exceed 10 hours (1.0 CEU) per renewal period.

(4) A field instructor for a social work intern will be granted 5 credit hours (0.5 CEU) for each college semester com-

pleted, not to exceed 10 credit hours (1.0 CEU) per renewal period.

(5) A presenter of a continuing education program or an author of a published work which imparts social work knowledge and skills may be granted 5 credit hours (0.5 CEU) for each original or substantially revised presentation or publication, not to exceed 10 credit hours (1.0 CEU) per renewal period.

(6) Credit hours may be earned by successful completion of an independent study program directly related to social work offered or approved by an approved provider. With the exception of persons residing outside the United States, a maximum of 10 credit hours (1.0 CEU) for independent study programs will be accepted per renewal period.

(7) A licensee may carry over to the next renewal period up to 5 credit hours (0.5 CEU) earned in excess of the continuing education renewal requirements.

§781.514. Continuing Education Documentation.

(a) Credit hours must be listed on the license renewal form supplied by the board. Failure to submit the form or failure to complete the required continuing education is grounds for denial of the application for license renewal.

(b) A random sample of renewal applications will be selected for review.

(1) Documentation of continuing education listed on the renewal form must be retained for 2 years.

(2) A licensee who is selected for review will be notified by mail and required to submit acceptable documentation of the continuing education listed on the continuing education report form. Acceptable documentation includes the following:

(A) copies of continuing education certificates of attendance or other form of verification from the provider of the continuing education program;

(B) grade reports or transcripts verifying the completion of a college course;

(C) letters from the dean or department head or his or her authorized representative verifying the teaching or field instructor assignment;

(D) letters from the program sponsor verifying participation as a presenter in a continuing education program or a copy of the program; or

(E) copies of continuing education programs and other documentation as necessary to establish the relevance of its content to social work practice for any continuing education program which does not have an approved provider number.

(3) All forms of verification must include the subject, date(s), credit hours given and if applicable, name of the sponsor and sponsor approval number.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451280 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

Subchapter F. Complaints and Violations

• 22 TAC §§731.601-781.608

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.602. *Disciplinary Action; Notices.*

(a) The board shall revoke, suspend, or deny a license or order of recognition, place on probation a person whose license or order of recognition has been suspended, or reprimand a person with a license or order of recognition for any of the following reasons:

- (1) violation of any provision of the Act;
- (2) violation of any rule adopted by the board;
- (3) failure to cooperate in the investigation of a complaint filed under the provisions of this chapter;
- (4) physical or mental incompetence to perform social work services as determined by the board;
- (5) provision of false or misleading information to the board regarding his or her qualifications for licensure or renewal or to an inquiry by the board; or
- (6) any of the grounds described in the Act, §50.021(a).

(b) Prior to institution of formal proceedings to revoke or suspend a license or recognition, the board shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension; and the licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, probation or suspension of a license or recognition is proposed, the board shall give written notice by certified mail, return receipt requested; regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the license or recognition shall be denied, revoked, suspended, or probated.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt.

(e) No notice or hearing is required for the board to issue a reprimand other than notice to the licensee of the board meeting where the reprimand will be considered. The licensee shall be given an opportunity to present information at the board meeting.

§781.603. *Complaint Procedures.*

(a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) The executive director will be responsible for the receipt and processing of complaints. The executive director will maintain a log of the receipt, investigation and disposition of all complaints. The board chairperson will appoint a complaints committee to work with the executive director.

(c) On receipt of a complaint, the executive director shall send an acknowledgement letter to the complainant, a copy of applicable rules, and an official form which the complainant must complete and return to the board before further action can be taken. The form must be signed under oath. The executive director may accept an anonymous complaint if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath.

(d) Within 15 days of the receipt of the official forms, the executive director shall review the complaint to assure that there is sufficient information to initiate an

investigation and that the allegations contained in the complaint fall within the board's jurisdiction.

(1) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the complaints committee. Based on its review of the complaint, the complaint committee may instruct the executive director to:

(A) close the complaint with a letter to the complainant explaining why the complaint is not within the board's jurisdiction; or

(B) advise the complainant of the additional information necessary to initiate an investigation.

(2) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

(A) evaluate the threat to public health and safety documented by the complaint;

(B) establish an appropriate plan and schedule for its investigation to be noted in the complaint log;

(C) apprise all parties to the complaint of the schedule for the investigation and notify parties within seven days of changes in the schedule; and

(D) report the status of all continuing investigations to the complainant and the licensee or applicant every 90 days.

(e) The executive director will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.

(f) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the investigator assigned to the case and will be required to provide a sworn response to the allegations within two weeks of that notice. Failure to respond to the allegations within the two week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(g) The complaints committee will review the complaint log to ensure that:

(1) complaint investigations are being handled in a timely manner;

(2) complaints are not dismissed without appropriate consideration;

(3) a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) any issues related to complaints which arise under the Act or this chapter are resolved.

(h) The complaints committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action.

(i) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

(j) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

§781.604. Licensing of Persons With Criminal Backgrounds.

(a) The board may take action against a licensee or deny a license pursuant to Texas Civil Statutes, Articles 6252-13c and 6252-13d relating to felony or misdemeanor convictions or the Act, §50.021(a)(11) relating to felony convictions.

(b) The following felonies and misdemeanors relate to licensure as a social worker because these criminal offenses indicate an inability or a tendency to be unable to perform as a social worker:

- (1) a violation of the Act;
- (2) an offense involving moral turpitude;
- (3) failure to report child abuse or neglect;
- (4) a misdemeanor involving deceptive business practices;
- (5) the offense of assault or sexual assault;
- (6) the felony offense of theft; or
- (7) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a social worker.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451281

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

◆ ◆ ◆ Subchapter G. Formal Hearings • 22 TAC §§781.701-781.707

The new sections are adopted under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.703. Notice.

(a) The administrative law judge (ALJ) shall ensure that notice of the formal hearing is given in accordance with the notice requirements of the Administrative Procedure Act (APA).

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice:

(1) the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances; and

(2) the applicant or licensee is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate disciplinary action may be taken by the board.

§781.704. Subpoenas.

(a) On the written request of any party to the hearing, the executive director shall issue a subpoena to require the attendance of witnesses or the production of documents. The administrative law judge (ALJ) may also issue any necessary subpoenas. A subpoena may be served by any person authorized to serve subpoenas under the Texas Civil Practice and Remedies Code.

(b) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(c) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage at 28 cents a mile, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the administrative Procedure Act.

§781.705. Prehearing Conferences.

(a) The administrative law judge (ALJ), on his or her own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleadings;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties; and
- (8) other matters which may expedite the hearing.

(b) The ALJ shall issue whatever orders are necessary to cover the matters or issues.

(c) Any action taken at the prehearing conference shall be reduced to writing, signed by the ALJ and the parties, and made a part of the record.

§781.706. Hearing Procedure.

(a) The administrative law judge's (ALJ) duties. The ALJ shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall:

- (1) convene and call the hearing to order;
 - (2) state the purpose of and the legal authority for the hearing;
 - (3) announce that a record of the hearing will be made;
 - (4) outline the procedure and order of presentation that will be followed;
 - (5) administer oaths to those who intend to testify; and
 - (6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.
- (b) Presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) The order of proceeding may be altered or modified by the ALJ either

upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(3) The administrative law judge (ALJ) may limit the number of witnesses whose testimony will be repetitious. The ALJ may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(4) The ALJ, at his or her discretion, may allow final arguments and shall note the time and close the hearing. The ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings shall not be consolidated unless the ALJ finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(d) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the ALJ and all other persons participating in or observing the hearing. The ALJ is authorized to take whatever action he or she deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the ALJ deems fair and just.

(e) Recording the hearing. The ALJ will keep either a stenographic or other taped record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APA. In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The ALJ will apply the Texas Rules of Civil Evidence and also the following rules.

(1) Consolidation. The ALJ may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Exhibits.

(A) Form. The parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) After the hearing. Unless specifically directed by the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(3) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(4) Offer of proof. When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the

record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

§781.707. Action After the Hearing.

(a) Proposal for decision.

(1) The ALJ shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(b) Pleading after close. At any time after the record has been closed in a contested case, and prior to the board's decision becoming final in such case, all briefs, exceptions, written objections, motions, replies to the foregoing, and all other written documents shall be filed with the ALJ.

(c) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board may deny, suspend, probate, or revoke a license as it deems appropriate and lawful. A decision of the board may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a licensee and is deemed by the board to be appropriate and lawful.

(2) All final orders shall be signed by the chairperson of the board; however, interim orders may be issued by the ALJ.

(3) To protect the public interest and to ensure that appropriate principles govern the decisions of the board, it is the policy of the board to change a finding of fact of conclusion of law or to modify a proposed order of an ALJ when the proposed order is:

(A) erroneous;

(B) against the weight of the evidence;

(C) based on a misapplication or misinterpretation of laws, rules, or standards;

(D) based on an insufficient review of the evidence;

(E) not sufficient to protect the public interest; or

(F) no appropriate recognition of whether or not rehabilitation of the licensee or application has occurred.

(d) Motion for rehearing. A motion for rehearing shall be addressed to the board and filed with the executive director.

(e) Appeals. All communications regarding any appeal shall be to the executive director.

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451282

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Effective date: December 13, 1994

Proposal publication date: July 19, 1994

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

The following adopted repeals, amendments and new sections submitted by the Texas Department of Health will be serialized beginning in the December 6, 1994 issue of the *Texas Register*. The effective dates for these adoptions will be December 12, 1994, and December 19, 1994.

Chapter 37. Maternal and Child Health Services

Midwives

§37.175 (amendment)

§37.178 (repeal)

§37.178 (new)

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

§§98.104, 98.105 (amendments)

Advisory Committee

§98.121 (repeal)

§98.121 (new)

Chapter 61. Chronic Diseases

Kidney Health Care Program

• 25 TAC §61.15

The Texas Department of Health (department) adopts new §61.15, concerning the Kidney Health Care Advisory Committee, with changes to the proposed text as published in the September 6, 1994, issue of the *Texas Register* (19 TexReg 6981).

In accordance with Texas Civil Statutes (TCS), Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The present advisory committee, the Kidney Health Care Advisory Committee, was established in 1973. Upon review by the department, rules and by-laws have been prepared for adoption by the board.

No comments were received regarding adoption of the new rule. However, the department made a change in the committee's termination process in subsection (e) from automatic termination in 1999 to board review at that time to determine continuation, consolidation or abolishment.

The new section is adopted under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the 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. The new section will affect Health and Safety Code, Chapter 42.

§61.15. Kidney Health Care Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Kidney Health Care Advisory Committee.

(2) The Texas Health and Safety Code, §11. 016, allows the Texas Board of Health to establish the committee.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of end-stage renal disease and to provide advice on current state-of-the-art treatment modalities, medication therapies, and prioritization of the needs of end-stage renal disease patients in Texas.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the Kidney Health Care Division.

(2) The committee shall:

(A) make recommendations regarding benefits to be provided by the Kidney Health Care Division;

(B) provide advice on the coordination of departmental and kidney health care activities with activities of other agencies and organizations involved in end-stage renal disease; and

(C) secure the cooperation and active participation of agencies and organizations that may contribute to the effectiveness of the Kidney Health Care Division.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By March 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include two consumer representatives and seven nonconsumer representatives.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of three members will expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may refer its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451203

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: December 12, 1994

Proposal publication date: September 6, 1994

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

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter L. Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment

• 25 TAC §§405.281-405.297

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§405.281-405.297, concerning human immunodeficiency virus (HIV) prevention, testing, and treatment. Sections 405.283-405.285 and 405.290-405.296 are adopted with changes to the proposed text as published in the August 30, 1994, issue of the *Texas Register* (19 TexReg 6822). Sections 405.281, 405.282, 405.289, and 405.297 are adopted without changes.

The new subchapter describes the longstanding policies of the department governing testing and treatment for HIV, including confidentiality, prevention, and education policies.

A number of clarifications have been made in response to staff and public comment. In

§405.283, definitions c. "high risk behaviors," "sexual contact," and "universal precautions" have been added.

Section 405.284(a) has been revised to clarify that the transmission of HIV may occur during injected drug use and/or from transfusion or infusion of infected blood or blood products, during birth (delivery), and through both the ingestion of breast milk and the process of breastfeeding. Language concerning the transmission of HIV in blood products in the United States and in other countries has been deleted. In the same subsection, language concerning Occupational Safety and Health Administration (OSHA) standards has been deleted as an inaccurate reference. Subsection (d)(1) of the same section, which mandated that education be provided to all clients, has been revised on adoption to state that education must be routinely offered to clients, a revision consistent with the Texas Health and Safety Code. The section is also revised to provide that if education is not deemed appropriate or necessary for a client, that the reasons be documented in the social assessment portion of the client's medical record. Subsection (d)(2) of the section has been revised on adoption to delete the term "act responsibly" and substitute language that more fully describes what constitutes irresponsible behavior for purposes of this subchapter.

Section 405.285(a) is revised on adoption to clarify the entities under the Texas Health and Safety Code who must provide education to clients under the provisions of this subchapter. Subsection (b) of the same section is revised to modify the requirement that all employees receive four hours of training; instead, employees must be trained using a curriculum approved by the director of the HIV Prevention Program and presented by instructors trained and certified by HIV Prevention Program staff. The curriculum is not required to conform to minimum time requirements.

A minor grammatical change is made to §405.286(d), and references to the Health and Safety Code in subsection (f) and (3) are corrected. Subsection (e) (1) and (2) of the same section is revised to emphasize that voluntary testing is to be made available to all clients at state facilities upon request. Section 405.286(f) has been revised for clarity and to emphasize the importance of seeking informed consent. The language in subsection (g) concerning risk of seroconversion to healthcare workers has been modified to more accurately reflect current medical opinion.

Section 405.287(b) has been revised to clarify that "antibody testing" is "HIV antibody testing."

The Texas Health and Safety Code citation in §405.288(a) has been corrected.

In §405.290, reporting requirements have been revised to more closely reflect the requirements set forth in the Texas Health and Safety Code.

Section 405.291(b) has been revised to include the requirement that the exposure of a client to blood and body substances must be

reported to the client's attending physician. Subsection (d) of the same section is revised to indicate that Zidovudine may be initiated for up to three hours following accidental exposure to HIV.

Section 405.292(1) has been fully revised to indicate that all limitations on the activity of HIV-infected patients should follow the same requirements for limitations on activities for other clients, as reflected in a number of existing department rules, which are cited. It is clarified that the justification for limitation is danger to self or others, not risk potential. For this purpose, three rules not previously cited are added: Chapter 402, Subchapter C of this title, relating to Transfer to Vernon Maximum Security Unit; Chapter 404, Subchapter E of this title, relating to Rights of Clients Receiving Mental Health Services; and Chapter 405, Subchapter Y of this title, relating to Client Rights-Mental Retardation Facilities.

A correction to a Texas Health and Safety Code citation is made in §405.293(c) and reference to the Americans with Disabilities Act is added. Subsection (d) has been revised to clarify that under law an employee who is an exposure source will be required to take an HIV test.

Section 405.294(d) is created by moving the last sentence of subsection (c) to create the new subsection. Paragraph numeral is corrected in §405.295.

Section 405.296 has been revised to add references.

Exhibit B has been revised to more accurately reflect the educational and experiential qualifications of HIV Prevention Program faculty. Exhibit C has been extensively revised to more fully address issues of consent. The algorithm describing actions to be taken following significant exposure of an employee or client has been revised.

A public hearing was held on September 7, 1994, at the Central Office of the Texas Department of Mental Health and Mental Retardation. Public testimony was given by four individuals: Melanie Green, Susan Medlin, and Cynthia Hopkins, for Texas Mental Health Consumers, Austin; and Mary Dees, Austin. Written comment concerning the subchapter was received from The Pavilion, Amarillo; Karen King, Austin; Permian Basin Community Centers, Midland, and MHMR Services for the Concho Valley, San Angelo.

One commenter called the new subchapter a "hasty reaction" and asked the department to establish a broad-based group of community AIDS experts to assist in the formulation of policies that will anticipate an AIDS crisis in state hospitals and provide long-term solutions. The department responds that the proposed rule has been department policy since prior to April 1991, when it was developed after careful study by an interdisciplinary committee that included HIV experts. The policy was approved as competent and comprehensive by the Texas Department of Health (TDH) in 1989 and was reviewed and found acceptable by TDH this year.

Three commenters called for closer coordination of the rule with existing rules governing related subjects, e.g., rules governing re-

straint and seclusion in mental health facilities. One commenter noted that the special limitations on client activities set out in the rule are sufficiently at variance from other rules to be a clear indication that an individual is on HIV-related precautions. The department responds that §405.292 of the subchapter, concerning patient limitations, has been revised to emphasize that existing rules govern decisionmaking about interventions and limitations on activities for patients with HIV/AIDS.

One commenter noted that without additional security measures, a policy that prohibits sexual activity between patients or between patients and the public is impossible to enforce. The department acknowledges that enforcement will be difficult.

One commenter observed the special difficulty in enforcing a policy that does not provide for the human sexuality of patients who may spend years in state facilities. The department acknowledges the difficulty.

The commenter noted the apparent incongruity of prohibiting sexual behavior and making condoms available to patients. Another commenter noted that even if condoms are available, the policy set forth in the rule suggests that anyone requesting condoms will be deemed to be engaging in a risk behavior and therefore subject to special limitations on activities. The department responds that condoms are not provided for use on campus but for educational purposes and for use when the patient is on furlough. Language in §405.292 has been revised to clarify that limitations on activities are not imposed for risk potential but for demonstrated danger to self or others.

One commenter noted that for mentally ill patients, often the issue is not one of competency, i.e., that patients who choose to have sexual relations do not necessarily lack capacity to make that decision. The department concurs.

Another commenter urged the department to look at the situation realistically, set guidelines and obtainable procedures that will protect both the safety of patients as well as their dignity and civil rights. The department concurs with the commenter. The rules it is adopting are consistent with the guidelines of the Texas Department Health and federal government, and current psychiatric and medical practice. It provides education designed to further the purposes the commenter urges.

Throughout the rule, several commenters had questions related to the applicability of the educational requirements of the subchapter to clients and employees in community programs. The department responds that clients in residential and inpatient community-based programs should receive HIV education. HIV education should also be available to outpatients if they request it, or if their treatment program includes modules on health/daily living skills. The TDMHMR HIV Prevention Program staff offer training for community and outpatient settings as well as facility settings. Employees in all programs and settings are required to have basic HIV training.

Two commenters noted that "sexual contact" is an ambiguous term. The department responds that it is defined in §405.292.

Regarding §405.284(b), one commenter questioned the extent to which a psychiatric hospital is responsible to provide appropriate medical assessment and treatment for persons with confirmed diagnoses of HIV infection or AIDS. The department responds that such patients should be provided the same care as others, i.e., provide treatment to the extent feasible and provide referral to other caregivers for services that cannot be provided.

Concerning §405.284(c)(2), a commenter cited a number of recent studies in which caregivers frequently and consistently revealed considerable feelings of aversion to HIV/AIDS, the patients, their lifestyle, and caregiving. The department responds that the commenter's research amply demonstrates the need for HIV education, i.e., that appropriate treatment of individuals with reactive HIV serostatus must be facilitated by education so that serostatus is not in itself an issue for treatment staff.

Concerning §405.284(d)(1) and §405.285(b), two commenters expressed concern that the HIV Prevention Program faculty lack experience in the field of mental health. The department responds that Exhibit B has been revised to fully describe the background of the faculty, who have considerable experience in the field of mental health as well as substance abuse and developmental disabilities.

Concerning the same paragraph, several commenters questioned the meaning of the requirement that "all" clients be provided HIV education. The department responds that this paragraph has been revised to take into account the fact that HIV education may be inappropriate or unnecessary for clients who lack capacity to understand the information. The paragraph has also been revised to more closely conform to the Texas Health and Safety Code, which requires education to be routinely offered (not provided). If HIV education is deemed inappropriate or unnecessary, staff must document in the social assessment the reasons for this determination.

Concerning §405.284(d)(2), three commenters questioned the meaning of the term "high risk behaviors" and asked who makes the determination that high risk behaviors are evident. The department responds that a definition of "high risk behaviors" has been added to §405.283 of the new subchapter, based on the definition used by the Centers for Disease Control: (1) unprotected vaginal, anal, or oral intercourse (sex); and (2) sharing of needles ("works") for injecting drug use. The individual treating physician, as well as other members of the treatment team, make the determination.

Also with reference to the same paragraph, a commenter noted that it is unrealistic to expect all sexual contact to be curtailed. The department responds that the prohibition applies only to patients who receive services in residential or inpatient programs, and that such a prohibition is consistent with community standards for other therapeutic environ-

ments and inpatient or residential healthcare programs in Texas.

With regard to §405.285(a), a commenter noted that staff turnover would require the HIV counselor certification program to be offered one or more times annually. The department responds that training is available on request.

Concerning the same section, a commenter cited a number of studies that indicate that people with mental illness are not able to understand HIV/AIDS education unless it is specifically tailored to their needs. The department concurs. The Texas Health and Safety Code directs, and the TDMHMR HIV Prevention Program curricula places, particular emphasis on meeting the special needs of people with mental illness and/or mental retardation.

With reference to §405.285(b), several commenters posed a number of questions concerning HIV education, including the length of the basic course (four hours), who can provide the training, and requirements for updates to the basic training as well as documentation requirements. The department has revised the subsection to modify the requirement for four hours of training for employees and instead requires that the basic curriculum be approved by the director of the HIV Prevention Program and that the training be provided by instructors trained and certified by HIV program instructors. The basic course is a one-time requirement for employees. Instructors are recertified annually. The number of instructors for any given facility will vary depending on the size of the facility and other local considerations; there are no ratios or minimum requirements concerning numbers of instructors. Training of instructors is provided, on request, through the HIV Prevention Program office. The training is to be documented in the employee training record at the facility. Additional comments were received regarding the need for different program models depending on the types of clients served. The department responds that advanced curricula which meet this need are described in the HIV Prevention Program information (Exhibit B) and are available upon request.

Concerning the same subsection, two commenters questioned why counselors must be "professional" staff. The department responds that the term "professional" is used broadly and is intended to denote a staff person who is otherwise qualified by education and experience to provide other types of counseling and/or education.

Regarding §405.286(e)(1), a commenter questioned what special tools would be used to screen clients for HIV risk, and would these tools become a part of the client's medical record. The department responds that a special tool is not used. The screening tool is the regular medical history and social assessment, both of which are part of the client's medical record.

Concerning the same paragraph, three commenters suggested that it is impossible to know or predict who may have HIV/AIDS. The commenters suggested that rather than offering HIV/AIDS testing to newly admitted

patients on the selective basis of risk factors, the testing should be routinely offered to all clients. The department concurs and language has been added.

With reference to §405.286(e)(3)(A), a commenter noted that in some community locations, a physician may not be the admitting professional. The department responds that the professional responsible for admitting the client is the professional responsible for making the risk assessment based on the history provided by the client or on the records which accompany the client.

Regarding §405.286(e)(3)(A)(i)-(v), which describes circumstances under which limitations may be placed on client activity, a commenter asked the department to describe the "behavioral characteristics" of an individual considered to have significant potential for transmitting HIV/AIDS. The department responds that clauses (i)-(v) have been deleted and reliance is instead placed on the concept of danger to self or others. In this context, the behavioral characteristic that would signify dangerousness to self or others is aggressive or reckless behavior aimed at sexual contact as defined in the rule.

A commenter stated the belief that guardians should be made aware of the results of HIV testing. The department responds that it must comply with laws governing confidentiality of HIV test results. The Texas Health and Safety Code, §81.103(d), does not provide for the notification of guardians, unless the guardian is the person legally authorized to consent to the test on the person's (client's) behalf.

With regard to §405.286(e)(3), which describes involuntary screening, a commenter questioned whether this is the only circumstance in which a general consent form is adequate. The department responds the law provides, and general community standards allow, for HIV testing under the general consent form at any time during the client's stay. However, TDMHR recommends that every attempt be made to obtain consent specific to the procedure.

Concerning §405.286(f)(1)(A), a commenter stated that if all clients are considered potentially infected, i.e., universal precautions are employed, then the test result would not materially alter the medical or social management of the patient. The department responds that the test result would clearly alter the medical management of the patient because additional medical intervention would be required and that some medical interventions might necessitate modification of social management (e.g., prevention or treatment of opportunistic infections).

Regarding §405.287(a), a commenter queried whether counseling must be provided at community centers or whether the client can be referred for counseling. Another commenter indicated the belief that follow-up counseling is not available locally through other sources, i.e., the Texas Department of Health. The department responds that referral is appropriate and that the entity conducting the testing is required to provide counseling as well, including the Texas Department of Health.

With reference to §405.288, a commenter questioned how treatment issues for an HIV-infected individual can be addressed without violating their confidentiality, and how employees' knowledge of HIV serostatus can be monitored. The department responds that employees involved in the medical care of the client have a need to know and would have access to that information, just as they would have access to other information contained in the client's medical record. It is the responsibility of the facility to ensure that employees are aware of and observe the legal and ethical mandates related to confidentiality of medical information.

Concerning §405.292, a commenter noted that behavioral and medical considerations by an attending physician may not be reasonable for people in community placements for which physician involvement is not always possible. The department responds that the requirement applies only to individuals in residential or inpatient programs and therefore should be possible to meet.

Concerning the hierarchy of limitations on client activities discussed in the same section, a commenter suggested that the infection control practitioner and client rights officer be routinely included in the interdisciplinary team (IDT) determinations concerning HIV-infected individuals. The department responds that facilities are empowered to configure IDTs to meet the needs of the individual client. Certainly the staff the commenter suggests would be appropriate members of an IDT for an HIV-infected individual.

Two commenters suggested that an individual with HIV/AIDS who recklessly endangers others should be considered for determination as manifestly dangerous and as appropriate confined at the Vernon Maximum Security Unit. The department responds that it has added the rules governing determination of manifest dangerousness and transfer to Vernon to the list of rules to be followed in §405.292, concerning limitation of client activity. Further, rules governing transfer to the Vernon facility are currently being revised to include criteria for the determination of dangerousness, e.g., predatory aggression, impulsivity, repetitive antisocial acts, etc.

In reference to §405.293(b), a commenter noted that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) provides that staff may request not to participate in an aspect of patient care where there is perceived conflict with the staff member's cultural values, ethics, or religious beliefs. The department responds that this standard was developed to address reproduction, e.g., sterilization and abortion-related healthcare issues, not serving the healthcare needs of persons with infectious diseases.

Regarding §405.293(d), a commenter requested clarification concerning mandatory HIV testing for employees with significant exposure. The department has revised the language to clearly indicate that the mandatory testing pertains only in cases in which the employee is the exposure source. Provisions related to Worker's Compensation are also clarified.

Concerning §405.295, a commenter requested that the section be rewritten to apply to small centers and outpatient operations. The department responds that the rule does not apply to outpatient operations.

With reference to Exhibit B, a commenter noted that it appears that the training material comes exclusively from the Centers for Disease Control and suggests a broader-based curriculum, with more models, might be more effective. The department responds that the curricula do not derive exclusively from CDC but are consistent with CDC guidelines.

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking powers.

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

AIDS—Acquired immune deficiency syndrome as defined by the National Centers for Disease Control and Prevention of the U.S. Public Health Service.

Facility—The campus- and community-based residential programs of a state hospital, state school, or state center of the Texas Department of Mental Health and Mental Retardation.

High risk behaviors—As defined by the National Centers for Disease Control and Prevention (CDC), behaviors involving:

(A) unprotected vaginal, anal, or oral intercourse (sex); or

(B) sharing of needles ("works") for injecting drug use.

HIV—Human immunodeficiency virus.

Sexual contact—Vaginal, oral, or anal sexual intercourse.

Test results—Any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

Universal precautions—An approach to infection control in which all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.

§405.281. Policy Overview

(a) Background. The presence of demonstrated antibody to the human immunodeficiency virus (HIV) is considered an indication that HIV infection is present and that there is potential for trans-

mission of the virus. Acquired immunodeficiency syndrome (AIDS) is the last stage of infection with the human immunodeficiency virus. This virus infects the white blood cell lymphocytes and other specific cells in blood and organ tissue, reducing the body's ability to ward off disease. The body substances containing the greatest amount of the virus are blood, semen, and vaginal secretions. All medical evidence indicates that HIV is transmitted through sexual contact (vaginal, anal, or oral) with a person who is already infected with HIV; through the exchange of infected blood such as through sharing of needles or syringes during injected drug use, and/or from transfusion or infusion of infected blood or blood products; and/or from mother to baby during pregnancy, birth (delivery), or through breast milk/breastfeeding. HIV infection is not transmitted through ordinary social, occupational, or household contacts of a non-sexual nature. The exercise of universal precautions and other infection control standards as mandated by the department and by the Texas Health and Safety Code serves to reduce the risk of transmission of HIV infection as well as other communicable diseases.

(b) Admission of persons known to be HIV infected. Persons with mental illness or mental retardation who have HIV infection will be admitted to TDMHMR facilities in accordance with established departmental admission criteria. On admission of a person with a confirmed diagnosis of HIV infection or acquired immunodeficiency syndrome, it is the responsibility of the department to provide appropriate medical assessment and treatment, including treatment regimens acknowledged to prevent opportunistic infections as described in Exhibit A of §405.295 of this title (relating to Exhibits).

(c) Confidentiality. All TDMHMR clients are entitled to privacy and preservation of their personal dignity. It is the responsibility of the department to promote confidentiality for the HIV-infected client without compromising the safety of others by ensuring that proper precautions are clearly understood without discriminatory labeling.

(1) Because of gaps in public education and consequently, misguided attempts to protect the public which arise from fear of the unknown, it is of special importance that information regarding testing for HIV antibodies and the results of such testing remain confidential within the narrow limits defined by the Texas Communicable Disease Prevention and Control Act. Written reference to the client's medical diagnosis belongs only in the client's medical records.

(2) Appropriate treatment of individuals with reactive HIV serostatus can only be guaranteed when that status is not in itself an issue for the treatment staff. The penalties for unauthorized disclosure of confidential information provided in the Texas Health and Safety Code, §81.103, attest to the seriousness with which the issue of confidentiality must be approached. In addition, federal civil rights laws, including the Rehabilitation Act of 1973, §504, and the Americans with Disabilities Act of 1990, protect persons with AIDS or AIDS-related conditions from discrimination by any program or activity which receives federal financial assistance.

(d) High risk behavior. Although the department is supportive of efforts to provide a normalized environment which respects the individual rights of clients—including the right to express one's sexuality—the serious consequences of behavior which could result in an increased risk of transmission of HIV infection cannot be ignored.

(1) Specific HIV education, including risk reduction, tailored to each client's level of understanding, must be routinely made available to all clients who are capable of understanding the information. The decision that HIV education is either unnecessary or inappropriate, and the reasons for this determination, must be documented in the client's social assessment.

(2) High risk behaviors, including sexual contact, must be curtailed while clients reside in TDMHMR facilities. Persons whose behavior is considered to place them at high risk for contracting or transmitting HIV infection and who cannot or will not change behaviors to reduce or eliminate that risk shall have individual treatment plans developed to require close monitoring to prevent the endangerment of others.

§405.285. Education.

(a) Education about the transmission of HIV infection and AIDS is the primary defense available to curtail the spread of the disease and its devastating consequences. The Texas Health and Safety Code, §§85.010, 85.113, and 85.114 mandate HIV/AIDS education for employees and clients of TDMHMR and any entity that contracts with or is funded or licensed by TDMHMR. The act further requires that educational programs be tailored to the specific needs of target audiences. The TDMHMR HIV Prevention Program, through the Office of Medical Support Services, provides an array of educational programs onsite at facilities to ensure that the requirements of law are met. Program educators have been certified as HIV/AIDS

instructors by the National Institute on Drug Abuse and the Texas Department of Health. A description of courses offered and target audiences is found in Exhibit B of §405.295 of this title (relating to Exhibits). All advanced courses have been approved for continuing education credit.

(b) The superintendent/director of each facility must, at a minimum, ensure that all employees receive a basic education in HIV/AIDS using a curriculum approved by the TDMHMR HIV Prevention Program director and presented by instructors trained and certified by HIV Prevention Program staff. Professional staff in numbers sufficient to meet the HIV counseling needs of individual facilities must also attend the TDMHMR four-day counselor training course and be certified as HIV counselors. It is essential that programming in health, normalization, and life management skills also provides specific and accurate information appropriate to the client group; therefore specific curricula are offered to assist staff in achieving that objective.

§405.286. Screening for HIV Antibody.

(a) Laboratory services. An interagency contract has been negotiated between Central Office and the Texas Department of Health (TDH) for serologic screening and confirmatory testing. A statement of current charges for initial screening and for confirmatory testing (Western Blot test) is available from the TDMHMR Office of Medical Support Services. All testing is to be consistent with the guidelines set forth in this subchapter.

(b) Confirmatory testing. A test for HIV antibody is not reactive unless the preliminary screening test, the ELISA, is confirmed by the Western Blot test. The TDH HIV test protocol provides Western Blot testing on all specimens which are reactive by ELISA methodology.

(c) Epidemiologic evaluation. Persons with a reactive Western Blot test, even though considered to be HIV infected, must be evaluated epidemiologically to determine if they pose a significant risk for transmitting the infection.

(d) Counseling. Consistent with the requirements of the Texas Health and Safety Code, §§81.109, 85.087, and 85.116, and the philosophy of this department, appropriate pre- and post-test counseling must be provided to all individuals who are to be tested for the HIV antibody. Counselors must meet the requirements in §405.287 of this title (relating to Counseling).

(e) Screening

(1) Routine screening. Routine screening of clients, including new admissions, is not to be performed

(2) Voluntary screening. All persons admitted should be assessed for their risk for having become HIV infected and, as appropriate, should be encouraged to be tested for HIV antibody in order for early treatment interventions to be offered. Voluntary HIV antibody testing is to be made available to all clients upon request.

(3) Other screening.

(A) In cases other than voluntary screening, screening may be performed only when, in the judgment of the attending or admitting physician, the client:

(i) clinically exhibits signs which are consistent with the Centers for Disease Control (CDC) case definition of AIDS or HIV-related illness; or

(ii) is considered to have significant potential, because of behavioral characteristics, to transmit the infection; or

(iii) has been potentially exposed to HIV infection; or

(iv) has previously been diagnosed as having HIV infection, or AIDS, and confirmation is required (serologic tests have been run elsewhere); or

(v) is documented to be the source of a significant exposure, as described in §405.291(a) of this title (relating to Management of Accidental Exposure to Blood/Body Substances), of another person, and then in accordance with established infection control protocols.

(B) The physician requiring the screening will document the medical/behavioral necessity for the screen in the physician's order section or progress notes section of the client's medical record.

(f) Informed consent. It is strongly recommended that informed consent be obtained, if possible, individuals who are to be tested.

(1) Pursuant to the Texas Health and Safety Code, §81.102, testing may be conducted without consent for residents and clients of TDMHMR residential facilities if:

(A) the test result would change the medical or social management of the person tested or others who are associated with that individual; and

(B) the test is conducted in accordance with this subchapter and any other guidelines approved by the department

(2) Pursuant to the Texas Health and Safety Code, §81.102 and §81.107, testing may be conducted without consent in order to manage accidental exposure to

blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the department in Exhibit C of §405.295 of this title (relating to Exhibits).

(3) Pursuant to the Texas Health and Safety Code, §81.106, a person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed during the time the general consent is in effect. Except as otherwise provided by the Texas Health and Safety Code, §81.106, the results of a test conducted under the authorization of the general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

(g) Employee screening. The risk of acquiring or transmitting HIV infection is related to the degree of percutaneous contact or mucous membrane contamination with blood, semen, or vaginal secretions containing the HIV. Studies have shown that there is a very low risk of transmission and seroconversion in healthcare workers who deal with persons with HIV infection, as long as universal precautions are utilized and there is no sexual contact with the HIV-infected individual. Further, studies have demonstrated that there is a low risk of seroconversion for HIV among healthcare workers who sustained needlesticks with no other risk factors present.

(1) Routine screening of employees or prospective employees is not to be performed.

(2) Procedures for management of employee exposure to HIV are set out in §405.291 of this title (relating to Management of Accidental Exposure to Blood/Body Substances) and in Exhibit C of §405.295 of this title (relating to Exhibits).

§405.287. *Counseling.*

(a) Each individual to be screened shall receive pre- and post-test counseling. For individuals who are likely to be discharged from the facility prior to receipt of test results, consent should be obtained for referral to the local public health department HIV/STD division for notification and follow-up if the test is reactive. Such referrals are, by law, handled by the health department in a totally confidential manner

(b) Pursuant to the Texas Health and Safety Code, §85.087, each facility must have professional staff who have been trained in the full HIV/AIDS Prevention Training Program Curriculum for HIV Anti-

body Test Counselors. Lists of individuals who have successfully completed the training are submitted to the state registry as required by the Texas health and Safety Code, §85.087, and are to be maintained by the facility infection control practitioner and staff development office. Only those individuals shall provide HIV antibody test counseling to clients or staff.

§405.288 *Confidentiality of Test Results*

(a) The results of HIV tests are confidential by law. Reports, records, and information may not be released or made public except as provided by the Texas Health and Safety Code, §§81.103, 81.104, and §85.115, which sets forth strict penalties for violations. Requests from insurance companies, the Social Security Disability Determination Division of the Texas Rehabilitation Commission, or other agencies or entities must be accompanied by the appropriate signed release form authorizing the release of HIV-specific information, consistent with the policies and procedures of the Association of American Medical Records Technicians.

(b) Test results will be reported by the Texas Department of Health to the Office of Medical Support Services at Central Office where they will be reviewed by the TDMHMR consultant in infectious diseases. A hard copy of the report will concurrently be mailed by the Office of Medical Support Services, in accordance with facility policy, to the chief medical technologist or facility infection control practitioner who will be responsible for notifying the physician who ordered the test. The physician shall be responsible for ensuring that post-test counseling by a trained counselor is promptly provided when the client is informed of the test result in accordance with §405.287 of this title (relating to Counseling). Facilities which have no laboratories have the option of having reports mailed to the physician ordering the test or to the facility infection control practitioner.

(c) The terms "AIDS," "ARC," or "HIV" shall not be placed on the outside of any client records. Neither shall lists be maintained to identify these clients. Because all clients are to be treated with universal precautions, signs indicating blood/body fluid precautions shall not be affixed to any surface

(d) All laboratory specimens shall be considered infectious and shall be transported in specimen transport bags, but without any labels which identify the HIV status. (No indication of HIV status is to appear on request slips or specimens)

§405.290 *Required Reporting of Test Results* Human immunodeficiency virus in-

fection that is confirmed by laboratory testing while an individual is receiving inpatient services from a TDMHMR facility is to be reported by the facility infection control practitioner to the Texas Department of Health in accordance with §§97.131-97.144 of this title (relating to Sexually Transmitted Diseases) including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV). Reporting forms and instructions for reporting can be obtained from the local, regional, or state health departments.

§405.291. Management of Exposure to Blood/Body Substances.

(a) Management of accidental exposure to blood/body substance should be consistent with the Public Health Services "Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, including Considerations Regarding Zidovudine Postexposure Use," provided in Exhibit D of the §405.295 of this title (relating to Exhibits). Accidental "exposure" in the TDMHMR setting is defined as a percutaneous injury (e.g., needlestick or other penetrating puncture of the skin with a used needle or other item) or contamination of a mucous membrane (splatter/aerosols into the eyes, nose, or mouth) or significant contamination of an open wound or non-intact skin with blood, semen, vaginal secretions, or other body substances which contain visible blood.

(b) All exposures to blood and body substances which meet the criteria in subsection (a) of this section must be reported promptly (within one hour) to the client's physician or employee's supervisor and, depending on facility policy, to the employee health officer (physician or nurse) and the infection control practitioner (or designee).

(c) Under the conditions defined in subsection (a) of this section, appropriate counseling shall be given by trained HIV antibody test counselors and shall include information on the potential risk of infection and specific measure to prevent transmission. Serologic testing for HIV antibody and other bloodborne pathogens should be performed according to the protocol provided in Exhibit C of §405.295 of this title (relating to Exhibits).

(d) Although there is no firm data that it is protective, due to the low toxicity that has been found using Zidovudine (ZDV) in healthy persons and some experimental animal model experience with other retroviruses where ZDV, given before or immediately after significant exposure decreased the rates of infection or seroconversion, ZDV should be available for immediate administration (within one hour of exposure and no longer than three

hours after exposure) and should be offered to persons who sustain significant accidental exposure to HIV until testing can be completed. The specific protocol for offering ZDV is provided in Exhibit C of §405.295 of this title (relating to Exhibits).

§405.292. Limitation of Client Activity. The behavioral and medical considerations of each client will be evaluated by the attending physician with appropriate consultation, and only those restrictions recognized to be necessary relative to containment of infection in each particular case will be imposed.

(1) Individual cases shall be thoroughly reviewed by the physician in consultation with appropriate members of the interdisciplinary team in accordance with the Texas Health and Safety Code restrictions regarding confidentiality of the information. The reviews will be at intervals specified in the client's treatment plan or when there are significant changes in the client's behaviors which might affect the client's potential for infecting other clients or staff. If danger to self or others is established, the least restrictive intervention shall be implemented by the interdisciplinary treatment team to ensure the safety of other clients and staff. Restrictions shall be justified on the basis of the client's behavior (e.g., aggressive sexual behavior) and shall be ordered, implemented, and periodically reviewed in keeping with the following subchapters, as appropriate:

(A) Chapter 402, Subchapter C of this title, relating to Transfer to Vernon Maximum Security Unit;

(B) Chapter 404, Subchapter E of this title, relating to Rights of Patients Receiving Mental Health Services;

(C) Chapter 405, Subchapter F of this title, relating to Restraint and Seclusion in Mental Health Facilities;

(D) Chapter 405, Subchapter G of this title, relating to Behavior Therapy Programs;

(E) Chapter 405, Subchapter H of this title, relating to Behavior Management-Facilities Serving Persons with Mental Retardation; and

(F) Chapter 405, Subchapter Y of this title, relating to Client Rights-Mental Retardation Facilities.

(2) Clients who are too ill medically to benefit from TDMHMR facility services shall be expeditiously referred to an appropriate medical facility.

§405.293. Personnel Issues.

(a) All employees, as indicated by their job descriptions, are expected to perform their duties, including providing care for clients with all communicable diseases, including HIV infection and AIDS.

(b) Employees who refuse to work with clients or with other employees who have HIV infection or AIDS and employees who exhibit discriminatory behavior toward these individuals may be considered insubordinate. Their actions shall be evaluated and handled in accordance with the TDMHMR Personnel Manual, §3.107 and §3.112 (Positive Performance Program and Separations, Suspensions, and Demotions).

(c) All employees, including those with HIV infection or AIDS, will be hired and/or retained in their jobs based on their ability to perform the job adequately and safely and consistent with Texas Health and Safety Code, §§85.201-85.206 and §85.012 and the Americans with Disabilities Act. Strict confidentiality of employee medical information shall be maintained as described in Exhibit E of §405.295 of this title (relating to Exhibits).

(d) If significant exposure occurs (as defined in §405.291(a) of this title (relating to Management of Accidental Exposure to Blood/Body Substances), and it is determined by the evaluating physician that the employee is the exposure source, the employee will be required to undergo the same testing that will be required of a client who is an exposure source according to TDMHMR infection control protocol as described in Exhibit C of §405.295 of this title (relating to Exhibits). This protocol is consistent with §81.102 of the Texas Health and Safety Code. If the employee is the person exposed, follow-up will also be in accordance with the protocol described in Exhibit C which is consistent with the Texas Health and Safety Code §81.050(j) for the purpose of qualifying for Worker's Compensation or any other similar benefits or compensations.

§405.294. Responsibility and Resources.

(a) It is the responsibility of the facility medical staff and infection control practitioner to facilitate implementation of this subchapter. The facility infection control practitioner shall be responsible for providing consultation and monitoring implementation of this subchapter.

(b) The director, HIV Prevention Program, Office of Medical Support Services, is responsible for providing requested consultation to facilities.

(c) The Office of Medical Support Services' HIV/AIDS Prevention Program staff are responsible for development and

presentation of required basic and advanced training modules for clients and employees.

(d) Facility administrators are responsible for ensuring that clients and employees receive the training.

§405.295. Exhibits. The following exhibits are referenced in this subchapter:

- (1) Exhibit A—Recommendations for Basic Evaluation of HIV-Infected Patients: CD4 Cell Counts, Use of Antivirals, and Prevention of Opportunistic Infections;
- (2) Exhibit B—HIV/AIDS Prevention Program;
- (3) Exhibit C—Management of Accidental Exposure to Blood/Body Substances—TXMHMR Protocol for Serologic Testing and Follow-up;
- (4) Exhibit D—Public Health Services Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, including Considerations Regarding Zidovudine Postexposure Use; and
- (5) Exhibit E—TDMHMR HIV/AIDS Workplace and Confidentiality Policy.

§405.296. References. The following laws and rules are referred to in this subchapter:

- (1) Texas Communicable Disease Prevention and Control Act, Texas Health and Safety Code, Chapters 81 and 85;
- (2) Rehabilitation Act of 1973, §504;
- (3) The Americans with Disabilities Act of 1990;
- (4) Chapter 402, Subchapter C of this chapter (relating to Transfer to Vernon Maximum Security Unit);
- (5) Chapter 404, Subchapter E of this chapter (relating to Rights of Patients Receiving Mental Health Services);
- (6) Chapter 405, Subchapter F of this chapter (relating to Restraint and Seclusion in Mental Health Facilities);
- (7) Chapter 405, Subchapter H of this chapter (relating to Behavior Management—Facilities Serving Persons with Mental Retardation); and
- (8) Chapter 405, Subchapter Y of this chapter (relating to Client Rights—Mental Retardation Facilities).

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

Issued in Austin, Texas, on November 22, 1994.

TRD-9451259

Ann K. Utley
Chairman, Texas Board of
Mental Health and
Mental Retardation
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 13, 1994

Proposal publication date: August 30, 1994

For further information, please call: (512) 208-4516

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.30

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §101.30 and revision to the State Implementation Plan (SIP), concerning the criteria and procedures for determining general conformity with the SIP in nonattainment and maintenance areas, with changes to the proposed text as published in the August 9, 1994, issue of the *Texas Register* (19 TexReg 6197). The new §101.30 is adopted as a revision to the SIP for the control of criteria pollutants (ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), particulate matter (PM₁₀), and lead) in the nonattainment and maintenance areas. Changes to the rule include several minor editorial changes suggested by the United States Environmental Protection Agency (EPA) in §§101.30(b)(15)(A), 101.30(c)(3)(C), 101.30(c)(12), 101.30(h)(1)(A), 101.30(h)(1)(D)(ii), and 101.30(h)(2). None of the editorial changes affected the requirements or meaning of the rule language. Changes to the SIP include adding the phrase "maintenance area" to any reference to "nonattainment area" regarding the applicability of the rule, adding the phrase "or are regionally significant" and replacing the word "similar" with the phrase "nonfederal as well as federal" in Section b. (Background Information), and placing the discussion concerning *de minimis* level in Section b. (Background Information) at the bottom of the page as a footnote. These revisions were required by the Federal Clean Air Act (CAA) Amendments of 1990 and the subsequent November 30, 1993 general conformity rulemaking by EPA. The EPA required that a SIP revision and an enforceable rule be adopted concerning general conformity no later than November 30, 1994.

This new rule is necessary to implement procedures for determining the general conformity of federal actions in nonattainment and maintenance areas with the SIP in force in those areas. The rule is necessary to allow EPA to make a finding that the general con-

formity SIP meets the requirements of the CAA, and the final EPA rule on general conformity in the Code of Federal Regulations (CFR), 40 CFR, Part 51. The new rule is essentially an adoption of the federal general conformity rules for the State of Texas. The federal rule allows the state, or the state's designated agency (TNRCC), to adopt a rule which is more stringent than the federal rule, if the state also applies the rule to all nonfederal actions within the nonattainment and maintenance areas. The TNRCC chose not to pursue a more stringent general conformity rule, although the TNRCC reserves the right to increase the stringency with future rulemaking.

Under the provisions of general conformity, any federal agency that is considering an action in a nonattainment or maintenance area which will cause the emissions of a criteria pollutant (or a precursor of that criteria pollutant) to increase above the *de minimis* level, or be regionally significant, will be required to mitigate that increase back to zero. The federal agency will also have to document the conformity analysis to demonstrate to the TNRCC that the action conforms to the applicable SIP for the nonattainment or maintenance area. In cases where the federal agency does not have, or cannot purchase, sufficient emissions reduction credits to mitigate the proposed increase, the federal agency may petition the state to amend the applicable SIP to make the reductions elsewhere in the nonattainment area. If the state does not agree to amend the SIP and the federal agency cannot find mitigation reductions elsewhere, then the action may be denied. There are many federal actions which have been determined to be exempt from these rules. Federal agencies must make their conformity determinations available for public review and comment.

With the exception of Federal Highways Administration and Federal Transit Authority transportation actions, this rule applies to all federal agencies in nonattainment and maintenance areas that either directly fund, or have approval control, for actions within those areas. Typical agencies and actions that will be affected by this rule include the Federal Aviation Administration (FAA) with airport actions and the Department of Defense with military installation closures and realignments.

This proposed rule contains definitions specific to general conformity, the applicability of federal actions to the rule, exemptions of several federal actions from the rule, and the procedures for determining general conformity with the SIP. The procedures specify the requirements of the general conformity determinations, the analysis procedure, the reporting and public comment requirements, the frequency of conformity determinations, the criteria by which conformity is determined, and the process of emissions mitigation. The rule also contains a savings provision which specifies when a federal agency shall follow the federal rule and when a federal agency shall follow the state rule.

Public hearings were held on August 31, 1994 in El Paso and Irving, Texas. Public hearings were also scheduled on September

1, 1994 in Beaumont, and on September 2, 1994 in Houston. However, because no one signed the roster to speak in Beaumont or Houston, the court reporter did not prepare an official transcript for those two hearings.

The El Paso City/County Health and Environmental District (EPCCHED) generally agreed with the rules and SIP revision as proposed.

The EPA generally supported the rule and SIP revision; however, they suggested several editorial changes to both the rule and the SIP narrative. In the rule, EPA suggested that the word "or" be replaced with "and/or" in §101.30(b)(15)(A), and in §101.30(h)(2). The EPA suggested that the phrase "as indicated in 40 CFR, §93.153(c)(3)" be deleted from §101.30(c)(3)(C) because the TNRCC is not adopting the EPA rules by reference. The EPA suggested that the phrase "state or federally" be changed to "state and federal" in §101.30(c)(12), and the phrase "applicable SIP or maintenance" be changed to "applicable SIP, attainment or maintenance" in §101.30(h)(1)(A). The EPA suggested that the word "determined" be changed to "determines" in §101.30(h)(1)(D)(ii). The EPA also suggested editorial changes to the preamble narrative of the rule. In the SIP narrative, EPA suggested that any reference to "nonattainment areas" also include a reference to "maintenance areas" throughout the SIP. In the SIP Section b., concerning Background Information, EPA suggested that the phrase "or are regionally significant" be added after the word "levels" in the first paragraph, and the word "similar" be replaced with the phrase "nonfederal as well as federal" in the second paragraph. Finally, EPA suggested that the discussion concerning "*de minimis level*" in Section b. be changed to a footnote to improve clarity, and the phrase "state agencies" be replaced with "nonfederal entities."

Although none of the editorial changes significantly affected the requirements or meaning of the rule language, the TNRCC staff made the editorial changes. The TNRCC staff also made the editorial changes to the SIP narrative as suggested.

The six other commenters: the American Lung Association of Fort Worth (ALA-FW), Flo Stahly of the Coppell City Council (Coppell), Jean Murph of the *Coppell Citizens' Advocate* Newspaper (*Advocate*), the Texas Citizens' Lobby (Citizens' Lobby), the Galveston-Houston Association for Smog Prevention (GHASP), and one individual suggested revisions to the general conformity rule and to the process of determining general conformity.

GHASP comments included over four typewritten pages of suggested changes to the rule, all of which would make the state rule more stringent than the federal rule. The GHASP suggestions included extending the federal *de minimis* level down to the major modification level for each nonattainment area, requiring a general conformity analysis on federal actions which occurred before March 15, 1994; changing definitions specified in the federal rule; changing the situations specifically listed in the federal rule for which general conformity requirements do not apply or are presumed to conform, changing

the federal definition of "a regionally significant action," requiring the TNRCC to perform the conformity analysis rather than the appropriate federal agency; changing the frequency of general conformity determinations; changing the federal criteria for determining general conformity; and changing the mitigation requirements to require an equal or greater emissions reduction for the proposed federal action.

The new rule is essentially an adoption of the federal general conformity rules for the State of Texas. Section 93.151 of the federal rule allows the state, or the state's designated agency (TNRCC), to adopt a rule which is more stringent than the federal rule, if the state also applies the rule to all nonfederal (state and local agency) actions within the nonattainment and maintenance areas. For example, if the state wished to make the *de minimis* level lower than the federal level, then the entire rule would have to apply to all state and local agency actions. The EPA set the *de minimis* level in an effort to limit time and resources invested by agencies in making determinations for thousands of federal actions annually, and to serve as a cutoff point to focus on those federal actions which are truly significant. A lower *de minimis* level would then add thousands of federal, state, and local actions annually to the general conformity determination process. The TNRCC chose not to pursue a more stringent general conformity rule, although the TNRCC reserves the right to increase the stringency with future rulemaking.

EPCCHED expressed a concern that the federal portion of the volatile organic compound (VOC) emissions have not been regulated or controlled as strictly as they should have been.

The general conformity rule was a statutory obligation under the FCAA, §176(c)(4), which authorized EPA and the states to regulate federal activities to a greater extent than they regulate private activities. All activities, private, state, and federal, must comply with specific SIP requirements and obtain pre-construction permits, if applicable. However, in accordance with the FCAA, §176, only federal agencies are required, as an additional matter, to determine whether an action will conform to the SIP.

One individual from the ALA-FW expressed a personal religious conviction against being required to take an oath before being allowed to testify at a public hearing. The individual also stated that the hearings are too restrictive because questions voiced during the hearing are not answered at the hearing and included as part of the public record.

Attendees who wish to present oral comments are not required to take an oath. They are asked by the court reporter to stand and be sworn, but anyone who chooses not to be sworn may present comments nonetheless. As stated in public hearing notices and in preambles to proposed rules, "Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer

questions before and after each hearing." Any questions from the audience during the open discussions before or after a hearing receive immediate responses from the staff. Questions rarely occur during the formal hearing, but, when they do, they receive a written response later in the analysis of testimony which becomes part of the official hearing record and is included in the preamble to the adopted rules and SIP published in the *Texas Register*.

ALA-FW questioned whether a federal project, such as the Superconducting/Supercollider, which had been cancelled before the general conformity rules were in effect, would be required to comply with general conformity in the event of a revival of the project.

If the project was located in a nonattainment area and was resurrected in such a manner that the original National Environmental Policy Act (NEPA) analysis was still valid, and that NEPA analysis had been completed by January 31, 1994, then the project would not have to go through general conformity. If the project was modified sufficiently upon resurrection, however, that the NEPA analysis was revised, then the general conformity rule would apply. In the specific case of the Ellis County Superconducting/Supercollider, the project was located in an attainment area for all criteria pollutants; therefore, general conformity would not apply at this time.

ALA-FW questioned whether a proposed airport in Ellis County would contribute to the nonattainment status of the Dallas/Fort Worth (DFW) ozone nonattainment area. ALA-FW also questioned why Ellis County was not included as part of the DFW ozone nonattainment area. Finally, ALA-FW questioned why Ellis County is not designated nonattainment for SO₂ when it is apparently in exceedance of the SO₂ standard.

The inclusion of certain outlying counties, such as Ellis and Johnson, was seriously considered when the current four-county nonattainment area designation was made by EPA in 1991. However, the emphasis of this proposed general conformity rule and SIP revision is not to determine how many counties should be included in the DFW ozone nonattainment area, but rather to implement a methodology whereby federal actions are reviewed for SIP compliance in nonattainment or maintenance areas. Although the outlying counties were not specifically included in the control strategy for DFW ozone attainment, the emissions from those outlying counties were included as part of the airshed modeled by the Urban Airshed Model (UAM). The UAM results demonstrate that even with the uncontrolled emissions from the outlying counties, the four-county nonattainment area will reach attainment with the current four-county control strategy. However, during the maintenance period of 20 years after redesignation to attainment, the emissions from the outlying counties will be periodically reviewed and considered as possible targets for reduction as the situation warrants. The current federal rule only applies to nonattainment or maintenance areas; however, EPA has expressed an intent to extend the general conformity rule to certain attain-

ment areas and unclassifiable areas. The EPA has not established a schedule for the additional rulemaking at this time. There are instances where an action in an attainment area can cause indirect emission increases within a nonattainment area. This action would have to be analyzed through the general conformity process, although the current federal rule does not provide guidance for this situation.

Coppell expressed a concern regarding the impact runway 16/34E will have on the quality of life enjoyed by the residents of their community. Coppell stated that the planned 16/34E runway is 3,000 feet longer than originally designed in the airport master plan, which will place airport traffic 2,000 feet away from Coppell residents. The residents are currently 7,000 feet from runway 17/35, but air traffic will be rerouted to runway 16/34E when runway 17/35 and other runways are repaired. Coppell stated that they have been working with the DFW airport board regarding the adverse noise impact, but were also concerned about the adverse impact of increased air traffic on Coppell air quality. Finally, Coppell requested that restrictions be placed on the use of runway 16/34E which will limit the times aircraft can land or take-off, and will limit those operations to aircraft with the quieter and more-efficient Stage III engines.

The Citizens' Lobby submitted a petition of approximately 4,200 signatures requesting that the airport expansion be halted. They stated that because the FCAA specifically excluded the FAA, and therefore airports, from the requirements of Transportation Conformity, then the FAA and airports should be required to make reductions under the 15% VOC SIP. In addition, because the airport facility under construction is not the facility plan submitted in the Environmental Impact Statement (EIS), they requested the TNRCC to petition EPA to withhold any additional federal funds from the expansion at DFW airport.

The Advocate stated that the runway expansion for DFW airport will double the aircraft operations and therefore double the aircraft emissions. The Advocate also asked that a moratorium be placed on any airport expansion project which will increase emissions. The Advocate stated that if the TNRCC is aware of an entity (DFW airport) that is causing one percent of an ozone problem, then that entity should receive special corrective action, rather than be allowed to double its current emissions. The Advocate requested verification that the DFW airport emissions represent approximately one percent of the total emissions in the DFW ozone nonattainment area.

During the development phase of the DFW Attainment Demonstration SIP, the TNRCC staff visited DFW airport and reviewed their efforts to make meaningful reductions of emissions. One of the discussion items was extended taxiing on the ground to get to and from the runway. As explained by the airport management staff, part of the plan for the new runway projects was a restructuring of the aircraft traffic flow to minimize the taxi times. This restructuring will not only be beneficial by reducing aircraft engine emissions,

but would be an economic incentive for the air carriers to save fuel costs. DFW airport has also improved management and operations procedures by using a hard-piped fuel distribution system thus eliminating the fuel trucks from fuel transfer operations, providing central electrical power and air conditioning at each aircraft gate thus eliminating the gasoline or diesel power carts normally used at the gates, installing floating roof seals and roof covers on all the tanks at the fuel farm, converting to alternative fuel or electric powered ground support equipment, and installing a state-of-the-art fire training facility which uses propane instead of jet fuel. In addition, the air carriers at DFW airport are converting their aircraft to the quieter and more fuel efficient Stage III engines. Finally, in regard to the emissions increase associated with the runway expansion, the UAM emissions inventory for DFW airport was projected to increase approximately 20% by 1996. The attainment demonstration modeling runs included about a 11% reduction associated with aircraft stage III engine emissions, while the actual aircraft emission reduction will be closer to 40%. Altogether, the UAM modeled the aircraft engine emissions total growth of about 50% compared to the 100% growth estimate stated by the commenters. This modeled 50% growth should account for the addition of the one runway under construction. A general conformity determination will be necessary for any aircraft emissions increases which are above the *de minimis* level for the DFW nonattainment area. The state includes aircraft emissions as part of the SIP emissions budget which will be used to demonstrate conformity in the future.

The Advocate stated that based on a conversation with the examiner after the hearing, they believe the TNRCC has accepted the DFW runway expansions as a done deal. The Advocate also stated that the City of Grapevine has a case pending with the Supreme Court regarding the runway expansion, and the issue has not been decided.

If a final NEPA analysis has been completed for the runway additions before January 31, 1994, then the action is grandfathered and the general conformity rule will not apply. This in no way, however, limits the rights of citizens or local communities to use litigation as a means to review the runway expansion project.

The Advocate expressed concern that the TNRCC was accepting emissions information from DFW airport officials instead of an independent party. The Advocate believes that DFW airport has a vested interest which conflicts with the interests of the state regarding airport emissions. The Advocate stated that EIS statements should be prepared through an independent study by an independent party.

Both the federal NEPA rules (which cover EIS analyses) and the federal general conformity rules require the federal agency, which has the funding or controlling authority over the applicable action, to perform the NEPA and general conformity analysis. As a matter of course, the federal agency must rely on emissions data from the organization that is actually constructing the project. The role of EPA

or the state agency which reviews NEPA or general conformity analyses is to ensure the data used in the analyses is valid, and that the correct assumptions and methodologies are used.

Coppell requested that a mobile air quality monitor be located in Coppell, similar to the monitor placed in Grapevine, to assist in determining the impact of airport-related emissions on their air quality.

The Citizens' Lobby requested that CO and nitrogen oxides (NO_x) be included as compounds monitored by the mobile air toxics monitoring unit in the City of Grapevine. The Citizens' Lobby requested the extra compounds so that the citizens in the vicinity of DFW airport could know the source of their illnesses and receive proper treatment.

The TNRCC acknowledges that a mobile air toxics monitoring unit was located in the City of Grapevine. The request for a mobile air toxics monitoring unit to be located in Coppell will be forwarded to the monitoring staff in the TNRCC. The TNRCC has already added two toxics monitors in the vicinity, one at the north boundary of DFW airport, and one at the south boundary of DFW airport. The TNRCC is also considering siting one or more toxics monitors on the airport property proper, and to add NO_x and CO capability to the monitors.

The Citizens' Lobby stated that Texas released 157 million pounds of toxic air emissions in 1992 which was the most of any state. They stated that the state must slow down, stop, address the situation, and become very hard-nosed if the situation is ever to be reversed.

The TNRCC agrees that the state led the nation in toxic air emissions in 1992; however, the FCAA amendments of 1990 devoted Title III, Air Toxics, to the resolution of those emissions. On the other hand, the FCAA devoted Title I, Nonattainment Areas, to the resolution of six criteria pollutants, one of which is ozone. The TNRCC staff is currently following the very prescriptive requirements and guidelines of Title I in the resolution of the DFW ozone problem as evidenced by the 15% Rate-of-Progress SIP, the Attainment Demonstration SIP, and the general conformity SIP. Although the toxic air emissions problem is not being addressed in this specific SIP, the TNRCC is implementing Title III for the state of Texas. This process will address the air toxics problem in a most expeditious manner.

The Citizens' Lobby stated that VOC, NO_x, and CO are three legs to the ozone stool and that the state is only addressing the ozone problem by removing one leg of the stool. They also stated that reducing just the VOC portion would only remove the dirty brown color and prevent the observation of the ozone which would still be in the air.

Ozone is a chemical which is generated by an extremely complex chemical process in which VOCs, NO_x, and to a minor extent CO react in the presence of sunlight. High ozone concentrations are achieved when external conditions, such as high ambient temperatures, low wind speeds, and a stagnant air mass, occur simultaneously with the introduc-

tion of large quantities of the precursor chemicals (VOCs, NO_x, and CO) into the air mass. Because we cannot easily change the ambient temperature, wind speed, or the presence of a stagnant air mass, a reasonable approach to reducing ozone is to reduce the quantity of one or more of the precursor compounds. Of the three precursor compounds, VOCs and NO_x have the most dramatic effect on the production of ozone, and are therefore targeted in the control strategy. The ozone producing chemical process is further complicated by the fact that the chemical reactions are reversible and depend on the relative quantities of VOCs and NO_x. There are some situations where VOC reductions alone will have the greatest reduction effect on ozone, other situations where NO_x reductions alone will have the greatest reduction effect on ozone, and still other situations where VOC and NO_x reductions are both required to greatly reduce ozone. The UAM is the tool used by the TNRCC to determine which reduction strategy is the most beneficial. For the DFW area, the UAM has demonstrated that ozone levels can be maintained below the standard of 120 parts per billion (ppb) with only the FCAA mandated 15% (net-of-growth) VOC reductions. The primary purpose of the general conformity rule in the DFW area is to ensure federal actions do not increase VOC and NO_x emissions so that the area exceeds its emissions budget. The TNRCC agrees that ozone will still be present in the DFW airshed after the SIP control strategy is implemented, however, the UAM predicts that ozone will not be generated in sufficient quantities to exceed the standard.

The Citizens' Lobby stated that the TNRCC is only considering emission controls and does not stress management and operations of the process. As an example, they stated that the DFW airport runway addition would cause an emissions increase of 160% due to extended taxiing on the ground to get to the new runways. They also stated that if DFW airport would use three parallel north-south runways (one for landing, one for taxiing, and one for taking-off), the airport could reduce emissions by 250% due to reduced taxiing.

During the development phase of the SIP, the TNRCC staff visited DFW airport and reviewed their efforts to make meaningful reductions of emissions. One of the discussion items was extended taxiing on the ground to get to and from the runway. As explained by the airport management staff, part of the plan for the new runway projects was a restructuring of the aircraft traffic flow to minimize the taxi times. This restructuring will not only be beneficial by reducing aircraft engine emissions, but would be an economic incentive for the air carriers to save fuel costs. DFW airport has also improved management and operations procedures by using a hard-piped fuel distribution system thus eliminating the fuel trucks from fuel transfer operations, providing central electrical power and air conditioning at each aircraft gate thus eliminating the gasoline or diesel power carts normally used at the gates, installing floating roof seals and roof covers on all the tanks at the fuel farm, converting to alternative fuel or electric powered ground support equipment, and installing a state-of-the-art fire training facility

which uses propane instead of jet fuel. Finally, the air carriers at DFW airport are converting their aircraft to the quieter and more fuel efficient Stage III engines. In the case of future projects at DFW airport, the airport management staff and the air carriers will be required to improve operations and management practices in order to provide emissions reductions for mitigation purposes.

One individual stated that the catalytic converters had been removed from all vehicles which are used by the airport.

According to the TNRCC Mobile Source Division, all vehicles which operate at DFW airport and which are registered for highway use, must pass the Inspection and Maintenance (I/M) testing. The I/M test will capture those vehicles which are missing their catalytic converter. If there are other unregistered airport vehicles which are missing their catalytic converter, then the airport management and/or vehicle owner/operator should have the vehicle repaired. As the airport service fleet is converted to alternative fueled or electric vehicles, this problem should be eliminated.

The *Advocate* relayed a statement from an air conditioning repairman who has repaired units all over the DFW Metroplex, but who has found units in which the air conditioning pans (water) have totally rusted out only in the vicinity of the City of Coppell. The repairman is concerned that the cause of the rust problem is the pollutants from the aircraft at DFW airport. The *Advocate* also stated that the four-city area surrounding DFW airport contains a grandfathered power plant which was built in 1959 and emits NO_x and SO₂. The *Advocate* believes that this power plant, which was grandfathered from permitting, is contributing to the poor air quality problem, especially when its emissions are combined with the DFW airport emissions.

The TNRCC agrees that NO_x emissions produce acid particulates which contribute to respiratory problems and acid rain; however, ambient air quality monitors in the DFW area have not revealed NO_x concentrations which exceed the standard. Regarding the rust problem with Coppell air conditioning units, the problem is more likely the result of the condition of the Coppell water system rather than acid rain. If NO_x emissions from DFW airport were the problem, then one would expect similar rusting effects in the cities of Grapevine, Euless, Southlake, and Irving which are adjacent to the airport. The general conformity rule cannot solve the problem with air conditioners, nor can it address the permitting problem with the grandfathered power plant. The rule can, however, prevent the emissions from DFW airport from increasing significantly as a result of future actions.

The Citizens' Lobby submitted a petition which contained over 80 people who believe that their health problems are related to the air emissions generated by DFW airport.

One individual stated that she had never had allergy problems until she moved to the DFW area as an adult. She stated that her physician has practiced in many states and had said that the allergies in the DFW area were the worst he had seen.

Another individual stated that when her family moved from Richardson to Coppell (near DFW airport), her previously healthy daughter has had a series of sinus infections ever since. She expressed concern that with the DFW airport runway expansion, her daughter's health will get worse. The Citizens' Lobby stated that DFW airport expansion was causing an increase in emissions in the vicinity of the airport. They also stated that the current emissions were causing serious respiratory and health problems for citizens in the vicinity of the airport. One individual stated that she had received letters from families in Coppell regarding the possible health effects of DFW airport.

One individual stated that she could tell that an ozone advisory was going to be announced by the way she felt. She stated that her breathing is very shallow on ozone alert days, and when the ozone level is very high, her chest hurts.

The TNRCC acknowledges that there may be detrimental health effects associated with ozone concentrations over the standard. There may also be detrimental health effects associated with the other criteria pollutants of lead, PM₁₀, CO, NO₂, and SO₂. In addition, there are many detrimental health effects associated with toxic compounds, many of them airborne, which exist in various concentrations all over the state and country. However, the emphasis of this general conformity SIP is not to solve the problems associated with all of the airborne pollutants and toxics, but rather to mitigate future increases of criteria pollutants in nonattainment or maintenance areas which are caused by federal actions. The TNRCC believes that the Attainment Demonstration SIP, when coupled with the general conformity rule, addresses the health effects near DFW airport associated with ozone and will make great strides toward the mitigation of those effects.

The Citizens' Lobby submitted a screen modeling package for the DFW airport which implies that the area surrounding the airport should be declared nonattainment for NO_x and CO.

The TNRCC disagrees that DFW airport should be declared nonattainment for either NO_x or CO on the basis of the SCREEN (not an acronym) model results submitted at the public hearing. The SCREEN model is considered to be a conservative model that is based on "worst case" assumptions about meteorological conditions that generally will result in over prediction of air pollution impacts. It is designed as a relatively simple screening tool to confirm whether a given source will not have an adverse impact assuming worst case conditions. In order to use the SCREEN model for DFW airport, it was necessary to make several simplifying assumptions. Chief among these was the assumption that all of the aircraft emissions are emitted from a single stationary point located five meters off the ground. Realistically, these emissions would have been spread out over a large area, and a portion of the emissions would be emitted from higher elevations as planes take off and land. This assumption and the general "worst case" nature of the model would be expected to result in pre-

dicted impacts that are higher than would really occur. As some evidence that the predicted results are probably higher than the actual concentrations, ambient monitoring results in the DFW area generally have not documented exceedances of the standards for CO or NO_x. The last recorded exceedance of the CO standard was in 1985, and was traced to unusual traffic events in the vicinity of a monitor located near downtown Dallas. There has never been a monitored exceedance of the NO_x standard in the DFW area. The CO levels in 1992 were less than one-third of the hourly standard. In addition, as part of the development of the EIS for the proposed runway expansion, the FAA conducted ambient air monitoring in the vicinity of terminal 2E. If the CO concentrations were as high as those predicted by the SCREEN model, then the CO monitors would have registered high levels due to their central location. The measured values, however, never exceeded four parts per million (ppm), while the SCREEN model predicted values greater than 35 ppm out to a distance of five kilometers. In any event, future airport actions must comply with general conformity requirements which will prevent significant increases of the precursor emissions of VOC, NO_x, and CO.

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§101.30. Conformity of General Federal and State Actions to State Implementation Plans.

(a) Purpose.

(1) The purpose of this rule is to implement §176(c) of the Federal Clean Air Act (FCAA), as amended (42 United States Code, §7401 *et seq.*) and regulations under the Code of Federal Regulations (CFR), 40 CFR, Part 51, Subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an applicable SIP. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA, §176(c) and 40 CFR, Part 51, Subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final

environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis; and sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under the FCAA, §176(c); and a written determination of conformity under the FCAA, §176(c) has been made by the federal agency responsible for the federal action by March 15, 1994.

(3) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable SIP does not exempt the action from any other requirements of the applicable SIP, the NEPA, or the FCAA.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC or Commission), the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected federal land manager—The federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 United States Code, §7472) that is located within 100 kilometers of the proposed federal action.

(2) Applicable state implementation plan (SIP)—The portion (or portions) of the SIP, or most recent revision thereof, which has been approved under the FCAA, §110 or promulgated under the FCAA, §110(c) (Federal Implementation Plan or FIP), or promulgated or approved pursuant to regulations promulgated under the FCAA, §301(d) and which implements the relevant requirements of the FCAA.

(3) Areawide air quality modeling analysis—An assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

(4) Cause or contribute to a new violation—A federal action that:

(A) causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise

not be in violation of the standard during the future period in question if the federal action were not taken; or

(B) contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

(5) Cause by, as used in the terms "direct emissions" and "indirect emissions,"—Emissions that would not otherwise occur in the absence of the federal action.

(6) Criteria pollutant or standard—Any pollutant for which there is established a NAAQS in 40 CFR, Part 50.

(7) Direct emissions—Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(8) Emergency—A situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(9) Emissions budgets—Those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its precursors allocated by the applicable implementation to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of actions, to any class of area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP.

(10) Emissions offsets, for purposes of subsection (h) of this section—Emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations; surplus to reductions required by and credited to other applicable SIP provisions; enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under the United States Environmental Protection Agency's (EPA) new source review requirements.

(11) Emissions that a federal agency has a continuing program responsibility for—Emissions that are specifically caused by an agency carrying out its authorities, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(12) Federal action—Any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency, or instrumentality of the federal government supports in any way; provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 United States Code or the Federal Transit Act (49 United States Code, §1601 *et seq.*) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(13) Federal agency—A federal department, agency, or instrumentality of the federal government.

(14) Increase the frequency or severity of any existing violation of any standard in any area—To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(15) Indirect emissions—This term does not have the same meaning as given to an indirect source of emissions under §110(a)(5) of the FCAA, but for general conformity are those emissions of a criteria pollutant or its precursors that:

(A) are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;

(iv) emissions related to the use of federal facilities under lease or temporary permit;

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

(16) Local air quality modeling analysis—An assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

(17) Maintenance area—Any geographic region of the United States previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A.

(18) Maintenance plan—A revision to the applicable SIP, meeting the requirements of the FCAA, §175A.

(19) Metropolitan Planning Organization (MPO)—That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code, §134 and 49 United States Code, §1607.

(20) Milestone has the meaning given in the FCAA, §182(g)(1) and §189(c)(1)—A milestone consists of an emissions level and the date on which it is required to be achieved.

(21) National Ambient Air Quality Standards (NAAQS)—Those standards established pursuant to the FCAA, §109 and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM₁₀), and sulfur dioxide (SO₂).

(22) NEPA—The National Environmental Policy Act of 1969, as amended (42 United States Code, §4321 *et seq.*)

(23) Nonattainment area (NAA)—Any geographic area of the United States which has been designated as nonattainment under the FCAA, §107 and described in 40 CFR, Part 81.

(24) Precursors of a criteria pollutant are:

(A) for ozone, nitrogen oxides (NO_x) [unless an area is exempted from NO_x requirements under the FCAA, §182(f)] and volatile organic compounds (VOC); and

(B) for PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable SIP as significant contributors to the PM₁₀ levels.

(25) Reasonably foreseeable emissions—Projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(26) Regionally significant action—A federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(27) Regional water or wastewater projects—Projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(28) Total of direct and indirect emissions—The sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsection (c)(3), (4), (5), or (6) of this section are not included in the "total of direct and indirect emissions," except as provided in subsection (c)(10) of this section. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability.

(1) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 United States Code or the Federal Transit Act (49 United States Code, §1601 *et seq.*) shall meet the procedures and criteria of §114.27 of this title, regarding Transportation Conformity, and the Transportation Conformity SIP, in lieu of the procedures set forth in this rule.

(2) For federal actions not covered by paragraph (1) of this subsection, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subparagraphs (A) or (B) of this paragraph.

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas (NAAs): Figure 1: §101.30(c)(2)(A).

(B) For purposes of paragraph (2) of this subsection, the following rates apply in maintenance areas: Figure 2: §101.30(c)(2)(B).

(3) The requirements of this rule shall not apply to:

(A) actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (2) of this subsection;

(B) the following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis*:

(i) judicial and legislative proceedings;

(ii) continuing and recurring activities, such as permit renewals, where activities conducted will be similar in scope and operation to activities currently being conducted;

(iii) rulemaking and policy development and issuance;

(iv) routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

(v) civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

(vi) administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits,

program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;

(vii) the routine, recurring transportation of material and personnel;

(viii) routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform, as operational groups, or for repair or overhaul;

(ix) maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(x) with respect to existing structures, properties, facilities, and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

(xi) the granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted;

(xii) planning, studies, and provision of technical assistance;

(xiii) routine operation of facilities, mobile assets, and equipment;

(xiv) transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

(xv) the designation of empowerment zones, enterprise communities, or viticultural areas;

(xvi) actions by any of the federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency, or instrumentality of the United States;

(xvii) actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy;

(xviii) actions that implement a foreign affairs function of the United States;

(xix) actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, titles, or real properties;

(xx) transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants;

(xxi) actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States;

(C) actions where the emissions are not reasonably foreseeable, such as the following actions:

(i) initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level;

(ii) electric power marketing activities that involve the acquisition, sale, and transmission of electric energy;

(D) individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable SIP, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable SIP. Such land management plan shall have been found to conform within the past five years.

(4) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof).

(A) the portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (FCAA, §173) or the prevention of significant deterioration (PSD) program (Title I, Part C of the FCAA).

(B) actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (5) of this subsection.

(C) research, investigations, studies, demonstrations, or training other than those exempted under paragraph (3)(B) of this subsection, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the state agency primarily responsible for the SIP.

(D) alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(E) direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the NSR/PSD permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(5) federal actions which are part of a continuing response to an emergency or disaster under paragraph (4)(B) of this subsection and which are to be taken more than six months after the commencement of the response to the emergency or disaster under paragraph (4)(B) of this subsection are exempt from the requirements of this section only if:

(A) the federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

(B) for actions which are to be taken after those actions covered by paragraph (5)(A) of this subsection, the federal agency makes a new determination as provided in paragraph (5)(A) of this subsection.

(6) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria

set forth in either paragraph (7)(A) or (7)(B) of this subsection and the procedures set forth in paragraph (8) of this subsection are presumed to conform, except as provided in paragraph (10) of this subsection.

(7) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (7)(A) or (7)(B) of this subsection:

(A) the federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) cause or contribute to any new violation of any standard in any area;

(ii) interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) increase the frequency or severity of any existing violation of any standard in any area; or

(iv) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or purposes of:

(I) a demonstration of reasonable further progress;

(II) a demonstration of attainment; or

(III) a maintenance plan; or

(B) the federal agency shall provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (2) of this subsection, based, for example, on similar actions taken over recent years.

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (7)(A) or (7)(B) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) the federal agency shall identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

(B) the federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, the Texas Department of Transportation (TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(C) the federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(D) the federal agency shall publish the final list of such activities in the *Federal Register*.

(9) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (2) of this subsection, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, then the action is defined as a regionally significant action and the requirements of subsections (a) and (e)-(j) of this section shall apply for the federal action.

(10) Where an action, presumed to be *de minimis* under paragraph (3)(A) or (B) of this subsection, or otherwise presumed to conform under paragraph (6) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (7)(A) of this section, that action shall not be considered *de minimis* or presumed to conform and the requirements of subsections (a) and (e)-(j) of this section shall apply for the federal action.

(11) The provisions of this section shall apply in all nonattainment and maintenance areas.

(12) Any measures used to affect or determine applicability of this rule, as determined under this subsection, must result in projects that are in fact *de minimis*, must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state and federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the fede-

ral agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this implementation plan revision is approved by EPA, enforceability through the applicable SIP of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

(d) **Conformity Analysis.** Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR, Part 51, Subpart W and this section shall make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

(e) **Reporting Requirements.**

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section.

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section. As a matter of policy, the

emissions budget that would otherwise be available for projects of any federal agency under subsection (h) of this section shall be reduced by 50% [or other percentage as the state determines] in the case of any federal agency that does not provide to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section.

(f) **Public Participation and Consultation.**

(1) Upon request by any person regarding a specific federal action, a federal agency shall make available for review its draft conformity determination under subsection (h) of this section with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.

(2) A federal agency shall make public its draft conformity determination under subsection (h) of this section by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(3) A federal agency shall document its response to all the comments received on its draft conformity determination under subsection (h) of this section and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

(4) A federal agency shall make public its final conformity determination under subsection (h) of this section for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within 30 days of the final conformity determination.

(g) **Frequency of Conformity Determinations.**

(1) The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under subsection (e) of this section, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redetermination so long as the

emissions associated with such activities are within the scope of the final conformity determination reported under subsection (e) of this section.

(3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (c)(1) of this section, a new conformity determination is required.

(h) **Criteria for Conformity Determination of General Federal Actions.**

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant, will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements:

(A) for any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP attainment or maintenance demonstration;

(B) for ozone or NO₂, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no increase in emissions of that pollutant;

(C) for any criteria pollutant, except ozone and NO₂, the total of direct and indirect emissions from the action shall meet the requirements:

(i) specified in paragraph (2) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) specified in paragraph (1)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (2) of this subsection;

(D) for CO or PM₁₀;

(i) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis; or

(ii) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection;

(E) for ozone or nitrogen dioxide, and for purposes of paragraphs (1)(C)(ii) and (1)(D) (ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause. Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section.

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP.

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the TNRCC makes a written commitment to EPA which includes the following:

(-a-) a specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(-b-) identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(-c-) a demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of TNRCC policy, a commitment will be made only if the TNRCC determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions; and

(-e-) written documentation including all air quality analyses supporting the conformity determination.

(III) Where a federal agency made a conformity determination based on a state commitment under paragraph (1) (E)(i)(II) of this clause, such a state commitment is automatically deemed to call for a SIP revision by EPA under the FCAA, §110(k)(5), effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP;

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.27 of this title, concerning Transportation Conformity, or the Transportation Conformity SIP, or 40 CFR, Part 93, Subpart A;

(iii) the action, or portion thereof, fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP, or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) where EPA has not approved a revision to the relevant SIP, attainment demonstration, or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years as described in subsection (i)(4) of this section do not increase emissions with respect to the baseline emissions; and:

(I) the baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(-a-) calendar year 1990;

(-b-) the calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR, Part 81; or

(-c-) the year of the baseline inventory in the applicable PM₁₀ SIP;

(II) the baseline emissions are the total of direct and indirect emissions calculated for the future years, described in subsection (i)(4) of this section using the historic activity levels described in paragraph (1)(E)(iv)(I) of this subsection and appropriate emission factors for the future years; or

(v) where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projects that are in the applicable SIP, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (i)(1) of this section.

(2) The areawide and/or local air quality modeling analyses must:

(A) meet the requirements in subsection (i) of this section; and

(B) show that the action does not:

(i) cause or contribute to any new violation of any standard in any area; or

(ii) increase the frequency or severity of any existing violation of any standard in any area.

(3) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable SIP, unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements; and such action is otherwise in compliance with all relevant requirements of the applicable SIP.

(4) Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in

compliance with subsection (j) of this section, before the determination of conformity is made.

(i) Procedures for Conformity Determination of General Federal Actions.

(1) The analyses required under this rule shall be based on the latest planning assumptions.

(A) All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or the state agency authorized under state law to make such estimates.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be approved by the MPO or other agency authorized to make such estimates for the area.

(2) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area shall be used for the conformity analysis as specified below:

(i) the EPA must have published in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

(ii) a grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period, or no more than three years before the *Federal Register* notice of availability of the latest emission model, may

continue to use the previous version of the model specified by EPA, if a final determination as to conformity is made within three years of such analysis.

(B) For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emissions data are available, such as actual stack test data for stationary sources which are part of the conformity analysis.

(3) The air quality modeling analyses required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication number 450/2-78-027R), unless:

(A) the guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

(B) written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(4) The analyses required under this rule shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

(A) the FCAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(B) the year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

(C) any year for which the applicable implementation plan specifies an emissions budget.

(j) Mitigation of air quality impacts.

(1) Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emissions reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emis-

sions reductions), and enforcement of such measures shall be described, including an implementation schedule containing explicit timelines for implementation.

(2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (1) of this subsection.

(3) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

(4) In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (1) of this subsection.

(5) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with subsections (h) and (i) of this section and this paragraph. Any proposed change in the mitigation measures is subject to the reporting requirements of subsection (e) of this section and the public participation requirements of subsection (f) of this section.

(6) Written commitments to mitigation measures shall be obtained prior to positive conformity determination and such commitments must be fulfilled.

(7) After this implementation plan revision is approved by EPA, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(k) Savings Provisions. The federal conformity rules under 40 CFR, Part 51, Subpart W establish the conformity criteria and procedures necessary to meet the requirements of the FCAA §176(c) until such time as this conformity SIP revision is approved by EPA. Following EPA approval of this SIP revision (or a portion thereof), the approved (or approved portion of the) state criteria and procedures would govern con-

formity determinations, and the federal conformity regulations contained in 40 CFR, Part 93 would apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451208

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Effective date: December 12, 1994

Proposal publication date: August 9, 1994

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

◆ ◆ ◆
**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part IX. Commission on
Jail Standards**

The following adopted repeals and new sections submitted by the Commission on Jail Standards will be serialized beginning in the December 6, 1994 issue of the *Texas Register*. The effective date of these adoptions is December 19, 1994.

**Chapter 260. County
Correctional Centers**

General

§§260.1-260.8 (repeal)

§§260.1-260.4 (new)

**CCC Design, Construction and
Furnishing Requirements**

§§260.20-260.95 (repeal)

§§260.100-260.163 (new)

**Chapter 261. Existing
Construction Rules**

**Existing Jail Design, Construc-
tion and Furnishing Require-
ments**

§§261.1-261.88 (repeal)

§§261.100-261.171 (new)

**Existing Lockup Design, Con-
struction and Furnishing Re-
quirements**

§§261.101-261.113, 261.115-261.183 (repeal)

§§261.200-261.266 (new)

§§261.300-261.361 (new)

**Existing Low-Risk Design,
Construction and Furnishing
Requirements**

§§261.191-261.265 (repeal)

Chapter 263. Life Safety

General

§§263.1-263.4 (repeal)

§§263.1-263.3 (new)

Design and Materials

§§263.10-263.23 (repeal)

§§263.10-263.21 (new)

Detection and Alarm Systems

§§263.30-263.33 (repeal)

§§263.30-263.33 (new)

**Plans and Drills for Emergen-
cies**

§§263.40-263.44 (repeal)

§§263.40-263.42 (new)

**Life Safety and Emergency
Equipment**

§§263.50-263.57 (repeal)

§§263.50-263.56 (new)

Records and Reports

§§263.70-263.71 (repeal)

§§263.70-263.71 (new)

**Additional Information/Recom-
mendations**

§§263.20-263.83 (repeal)

**Part XIII. Texas
Commission on Fire
Protection**

The following adopted repeal, amendments and new sections submitted by the Texas Commission on Fire Protection will be serialized beginning in the December 6, 1994 issue of the *Texas Register*. The effective date of these adoptions is December 14, 1994.

**Chapter 521. Fire Extinguisher
Rules**

§§521.6, 521.7, 521.10, 521.21 (amendments)

**Chapter 541. Fire Sprinkler
Rules**

§§541.7, 541.13, 541.14, 541.18, 541.19, 541.20, 541.21, 541.22, 541.23 (new and amendment)

§§541.19, 541.20-541.22 (repeal)

**TITLE 40. SOCIAL SER-
VICE AND ASSIS-
TANCE**

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

**Chapter 50. Day Activity and
Health Services**

The Texas Department of Human Services (DHS) adopts the repeal of §§50.901-50.904, 50.1901-50.1903, 50.2901, 50.2903-50.2910, 50.3901-50.3915, 50.4901, 50.4902, and 50.5901; and adopts new §§50.1-50.5, 50.101-50.105, 50.201, 50.202, 50.301, 50.302, 50.401-50.410, 50.501, 50.502, 50.601, 50.701-50.704, and 50.801-50.803 in its day activities and health services chapter. New §§50.2, 50.101, 50.301, 50.302, 50.403, and 50.703 are adopted with changes to the proposed text as published in the September 16, 1994, issue of the *Texas Register* (19 TexReg 7237). The repeal of §§50.901-50.904, 50.1901-50.1903, 50.2901, 50.2903-50.2910, 50.3901-50.3915, 50.4901, 50.4902, and 50.4901; and new §§50.1, 50.3-50.5, 50.102-50.105, 50.201, 50.202, 50.401, 50.402, 50.404-50.410, 50.501, 50.502, 50.601, 50.701-50.703, and 50.801-50.803 are adopted without changes to the proposed text and will not be republished.

The justification for the repeals and new sections is to incorporate some day activity and health services rules into Chapter 98, Adult Day Care Facilities; create new rules to clar-

ity current policy; and make minor clarifications to the remaining day activity and health services rules. These changes result from the September 1, 1993, transfer from the Texas Department of Health to DHS of responsibility for the licensure of adult day care and adult day health care facilities. DHS also will be adopting related amendments, repeals, and new sections in Chapter 98, Adult Day Care Facilities.

The repeals and new sections will function by merging the licensure rules concerning day activity and health services into one set of rules.

During the public comment period, DHS received comments from Mother Earth Adult Day Care, Adult Day Care Association of Texas, the University of North Texas Health Science Center at Fort Worth, Seniors We Are, Inc., Madison Adult Day Care Center, the Texas Dietetic Association, and several individuals. A summary of the comments and DHS's responses follow:

Comment concerning §50.1: One commenter stated that the definition for dietitian consultant should be added to this section.

Response: The definition for dietitian consultant is included in Chapter 98, Adult Day Care Facilities. DHS does not agree that it is necessary to add to this definition and is adopting this section without change.

Comment concerning §50.4(3): One commenter stated that to ensure the provision of high quality nutrition, the dietitian should assist the nurse in developing the health assessment/plan of care.

Response: DHS disagrees with this comment. DHS believes that the dietitian is fulfilling the requirements to ensure provision of high quality nutrition through the dietary consultation requirement, and it would be a duplication to include this in the health assessment/plan of care. DHS is adopting this paragraph without change.

Comment concerning §50.4(4)(B): One commenter stated that DHS should provide a definition for social activities that program staff responsible for developing activities could use as a guideline.

Response: Section 5750, Other Supportive Services, and Appendix IV, Examples of DAHS Activities, in the DAHS Provider Manual contain examples of different social activities. DHS is adopting this subparagraph without change.

Comment concerning §50.4(5)(A): One commenter stated that client's family should have the option of transporting the client to and from the facility depending on the client's needs.

Response: DHS agrees with this comment and has added procedures to the DAHS Provider Manual that allow this.

Comments concerning §50.202(3)(D):

1) One commenter stated that staff qualifications should clarify RN/LVN requirements for insertion and maintenance of naso-gastric (ng) or other feeding devices.

Response: DHS disagrees with this comment. This section addresses medical eligibility criteria, not staff qualifications. However, the nurse uses his medical professional training within the scope of his license to perform these requirements.

2) One commenter stated that performing gastric and ng tube feedings would require more skilled staff. The present reimbursement rate would not cover additional skilled staff.

Response: DHS disagrees with this comment. The current reimbursement rate based on cost reports has been stable for several years.

3) One commenter stated that for safety reasons, clients should not be transported with untrained staff if they have gastric and ng tubes.

Response: DHS disagrees with this comment. Each client must be assessed by the DAHS facility nurse to determine how transportation needs can be met. DHS is adopting this subparagraph without change.

Comment concerning §50.301(a): One commenter stated that there is a conflict between this subsection and §98.42(a)(2)(D). The commenter also wanted to know if the nurse was required to be on duty for ten hours when the facility had to be open ten hours per day.

Response: DHS agrees that this subsection and §98.42(a)(2)(D) are in conflict. Therefore, DHS is deleting §50.301(a) and has addressed this comment in §98.42(a)(2)(D).

Comments concerning §50.301(b): Several commenters stated that the term "enrollment" should be changed to "attendance" because all facilities have to over enroll in an effort to ensure adequate and actual attendance.

Response: DHS agrees with the comments. The term "enrollment" is changed to "attendance." In addition, DHS has changed attendance from 61 to 60 because it was published in error.

Comments concerning §50.301(c): Several commenters stated that the facility nurse should be allowed to be absent from the facility up to two hours without creating undue hardship on clients.

Response: DHS does not agree with these comments. However, because this requirement was also published in Chapter 98, DHS is deleting subsection (c) and has addressed these comments in Chapter 98. As a result of the comments concerning §50.301, the rule has been reformatted.

Comment concerning §50.401: One commenter stated that if a facility could not meet the medical or transportation needs of the client, the facility should not be given an unjust burden to meet one client's needs, often at regional nurse discretion. Also, if a client is disruptive to the facility or is a potential danger to self, staff, or other clients, the facility should refuse to serve such a client. Additionally, when a client's needs cannot be met, the facility should be able to determine if it can meet a client's needs to maintain safety for all clients.

Response: DHS disagrees with this comment and is adopting this section without change. The DHS regional nurse will give prior approval for DAHS services only if the client meets or exceeds the medical criteria established for DAHS, as specified in §50.202 of this title (relating to Medical Criteria). New §50.409 specifies procedures for suspending services to a client who threatens the health and safety of himself or others. DHS will develop procedures for facilities to request a meeting with DHS when it appears a client may not be appropriate for services.

Comments concerning §50.403(a): Several commenters stated that caseworkers cannot be relied upon to refer clients to the program. Marketing studies indicate the majority of new participants are admitted to adult day care as the result of word-of-mouth and publicity activities. Other commenters stated that this requirement would be an economic cost to small business that would prevent starting adult day care facilities which are primarily owned by economically deprived and minority persons. The commenters also stated that this rule is overly burdensome to small businesses which invest \$40,000-\$50,000 to build a center and meet the facility requirements of DHS.

Response: DHS agrees with the comments and is deleting subsection (a). As a result, subsection (d) has been moved to subsection (a) and other subsections are renumbered.

Comment concerning §50.409(a)(3): One commenter stated that services to a client should not be suspended when a client goes into the hospital because not all hospitalizations are long term.

Response: DHS disagrees with this comment and is adopting this paragraph without change. Anytime a client goes into the hospital, nursing home, etc. (regardless if it is overnight) services to a client should be suspended because the client is not receiving services at the facility.

Comment concerning §50.601(e): One commenter requested that facilities be allowed to use their own transportation and attendance forms if prior approval is given by DHS.

Response: While DHS currently disagrees with this comment, DHS will review this issue further. Daily transportation and attendance forms were developed to provide a uniform and consistent method of documenting service delivery. Because financial and administrative exceptions are applied to the correct completion of these forms, it is very important that these forms be used.

In addition to changes resulting from public comments, DHS is adopting §§50.2(a)(1) and 50.101(1) with a change to correct the name of DHS's Licensing section and §50.2(b) to change the word "application" to "approval letter." In §50.302(b), DHS is deleting paragraph (3) because it is already addressed in §98.42. DHS is adopting §50.403(b) with a change in the order of paragraphs (1) and (2) and §50.403(c)(1) with a change in the order of subparagraphs (A) and (B). Also, §50.403(d) is adopted with a correction regarding the number of days, and §50.704(1)

is adopted with a change that makes the paragraph consistent with the other paragraphs.

Program Overview

• 40 TAC §§50.1-50.5

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.2. General Requirements for Participation.

(a) To contract with the Texas Department of Human Services (DHS) to provide day activity and health services (DAHS), the facility must:

(1) be licensed by DHS's Licensing section as an adult day care facility; and

(2) meet all DAHS program standards.

(b) The facility must also participate in the Child and Adult Care Food Program (CACFP). The facility must submit documentation of participation in the CACFP to DHS. Documentation consists of a copy of the CACFP agreement and/or a copy of the approval letter for participation in the CACFP.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451347 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Contracting

• 40 TAC §§50.101-50.105

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Com-

mission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.101. *Effective Date of Contract.* The effective date of a day activity and health services contract is the date the Texas Department of Human Services (DHS) receives the license or license notice from:

- (1) DHS's Licensing section; or
- (2) the facility.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451348 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Eligibility

• 40 TAC §§50.201, §50.202

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451349 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Facility Staffing Requirements

• 40 TAC §§50.301, §50.302

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.301. *Nurse Requirements.* When attendance at the facility exceeds 60 clients, both a registered nurse and a licensed vocational nurse must be present at the facility at least eight hours per day.

§50.302. *Housekeeper/driver.*

(a) A facility may employ a part-time or full-time housekeeper.

(b) A facility may employ a part-time or full-time driver. The driver must:

(1) operate the facility's vehicles in a safe manner;

(2) maintain accurate daily transportation and mileage records, and records of expenses for purchase of gas and oil; and

(3) receive adult cardiopulmonary resuscitation (CPR) certification.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451350 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Service Requirements

• 40 TAC §§50.401-50.410

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.403. Facility-Initiated Referrals.

(a) An applicant or his physician may contact a facility to request an immediate placement.

(b) The applicant may be admitted to a day activity and health services facility as soon as verbal physician's orders are obtained if he appears to:

(1) be Medicaid eligible;

(2) have an immediate need for placement as defined by the Texas Department of Human Services (DHS); and

(3) meet the medical/functional need criteria based on the information collected on DHS's Client Health Assessment/Plan of Care form.

(c) When immediate placement is requested:

(1) the facility interviews the applicant to determine whether he:

(A) appears to be Medicaid eligible. The facility determines Medicaid eligibility by reviewing the information on the applicant's Medical Care Identification Card; and

(B) meets the criteria for immediate placement;

(2) the nurse:

(A) conducts a health assessment/plan of care to determine whether the applicant appears to have a medical need for the service. The nurse determines medical need by completing DHS's Client Health Assessment/Plan of Care form; and

(B) obtains verbal or written physician orders, if the applicant appears to meet the medical/functional need criteria;

(3) the facility verbally notifies the DHS caseworker or intake unit of the immediate placement the day the applicant contacts the facility. The facility follows up the notification in writing within seven days using DHS's Case Information form. This verbal notification is a request for community care for aged and disabled (CCAD) services.

(d) The facility must request written prior approval for the applicant from the regional nurse within 30 days from the date of the physician orders.

(e) If the facility submits documentation that fails to support the prior approval, the facility must submit any

additional information the regional nurse requests. This additional information must be postmarked within seven days of the date of request, unless the regional nurse gives written permission for an extension.

(f) If the facility fails to submit prior approval forms or additional documentation within required time frames, or if the additional documentation is not adequate, the regional nurse cancels the facility-initiated prior approval and the facility is not reimbursed for services.

(g) If DHS's Client Health Assessment/Plan of Care form or Physician's Order for Day Activity and Health Services form is missing, or if any of the critical omissions or errors stated in paragraphs (1)-(11) of this subsection have occurred in the required documentation, the facility cannot obtain prior approval.

(1) The nurse fails to sign or date DHS's Client Health Assessment/Plan of Care form or omits the registered nurse/licensed vocational nurse credentials that should follow his signature.

(2) Documentation on DHS's Client Health Assessment/Plan of Care form does not support the medical eligibility criteria specified in §50.202 of this title (relating to Medical Criteria).

(3) Items A, B, in Sections II and III of DHS's Client Health Assessment/Plan of Care form are not completed or completed incorrectly and medical need cannot be determined.

(4) For renewal of prior approval, DHS's Client Health Assessment/Plan of Care form has a date that is earlier than 30 days before the end of the prior approval period.

(5) DHS's Physician's Order for Day Activity and Health Services form does not include the MD or DO credential of the physician who signed the form.

(6) DHS's Physician's Order for Day Activity and Health Services form does not include the license number of the physician who signed it.

(7) The physician who signed the order is excluded from participation in Medicare or Medicaid.

(8) The physician's signature is not on DHS's Physician's Order for Day Activity and Health Services form.

(9) The physician's signature date is missing or illegible and the facility's stamped date is missing from DHS's Physician's Order for Day Activity and Health Services form.

(10) The facility's stamped date used instead of the physician's date on DHS's Physician's Order for Day Activity and Health Services form does not include

the provider agency's name, abbreviated name, or initials.

(11) For renewal of prior approval, the physician's order has a date that is earlier than 30 days before the end of the prior approval period.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451351

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

◆ ◆ ◆
Billing

• 40 TAC §50.501, §50.502

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451352

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

◆ ◆ ◆
Recordkeeping Requirements

• 40 TAC §50.601

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451353 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Monitoring/Quality Assurance/Audits

• 40 TAC §§50.701-50.704

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.703. *Administrative Errors.* Administrative errors include, but are not limited to, the following:

(1) the facility:

(A) leaves the month and year of service blank at the top of the Texas Department of Human Services' (DHS's) Daily Attendance Record form, but the month and year can be verified elsewhere on the same form. DHS applies the error to the total number of units reimbursed for the billing period;

(B) enters a date of signature on DHS's Daily Attendance Record form that is before the date of the last day services are provided. DHS applies the error to the total number of units reimbursed after the signature date;

(C) fails to sign DHS's Daily Attendance and/or Daily Transportation Record form. DHS applies the error to the total number of units reimbursed for the billing period;

(2) daily transportation records indicate client was transported to the facility and daily attendance records do not list client as being in the facility. DHS applies

the error to the total number of units reimbursed for the dates of the billing period in question.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451354 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Sanctions

• 40 TAC §§50.801-50.803

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451360 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Program Overview

• 40 TAC §§50.901-50.904

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451339 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Eligibility Requirements

• 40 TAC §§50.1901-50.1903

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451340 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Provider Eligibility

• 40 TAC §§50.2901, 50.2903-50.2910

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451337 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Standards of Operation

• 40 TAC §§50.3901-50.3915

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451333 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Recipients' Rights

• 40 TAC §§50.4901, §50.4902

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical as-

sistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451345 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

Utilization Review

• 40 TAC §50.5901

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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

Issued in Austin, Texas, on November 23, 1994.

TRD-9451346 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1995

Proposal publication date: September 16, 1994

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

The following adopted repeals, amendments and new sections submitted by the Texas Department of Human Services will be serialized beginning in the December 6, 1994 issue of the *Texas Register*. The effective date of these adoptions is January 1, 1995.

Chapter 98. Adult Day Care Facilities

Subchapter A. Introduction

§§98.1, 98.2 (amendments)

Subchapter B. Application Procedures (new and amendment)

§§98.11-98.21 (new and amendments)

§§98.15-98.18, 98.20 (repeal)

Subchapter C. Standards for Adult Day Care Facilities

§§98.41-98.44 (new and amendments)

§§98.42, 98.43 (repeals)

Subchapter D. Facility Construction Procedures

§98.61 (amendment)

Subchapter E. Inspections, Surveys, and Visits

§§98.81, 98.82 (amendments)

Subchapter F. Enforcement

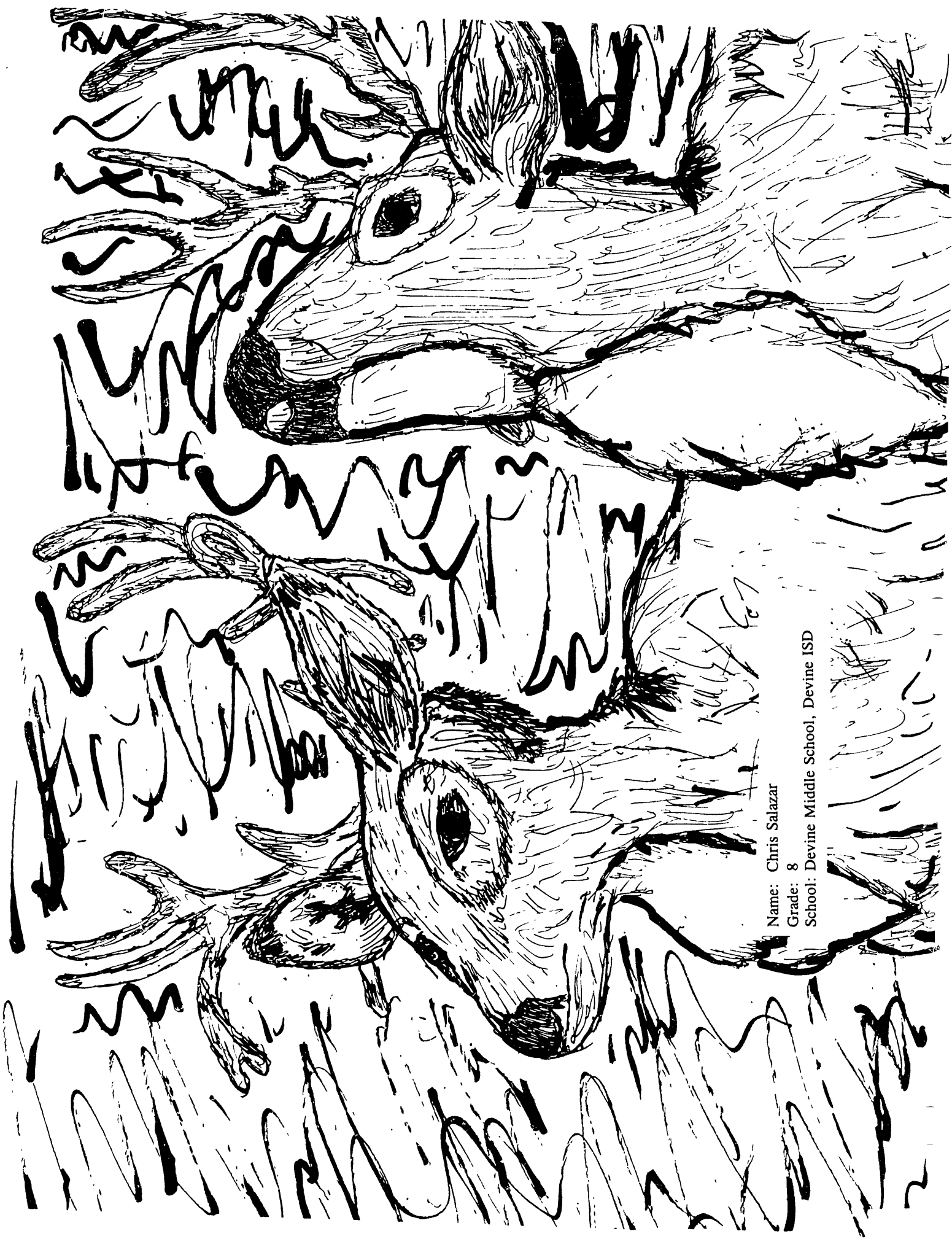
§§98.101, 98.102, 98.104 (repeals)

§§98.102-98.105 (new and amendments)

Subchapter G. Miscellaneous Provisions

§98.121 (repeal)

§§98.122-98.123 (new and amendment)



Name: Chris Salazar

Grade: 8

School: Devine Middle School, Devine ISD

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics 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, "Figure 2" followed by the TAC citation.

Figure 1: 30 TAC §101.30(c)(2)(A)

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas (NAAs):

	<u>Tons/Year</u>
Ozone (VOC or NO _x)	
Marginal or moderate NAAs inside an ozone transport region	
VOC	50
NO _x	100
Other ozone NAAs outside an ozone transport region	100
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Carbon Monoxide	
All NAAs	100

SO₂ or NO₂

All NAAs

100

PM₁₀

Moderate NAAs

100

Serious NAAs

70

Pb

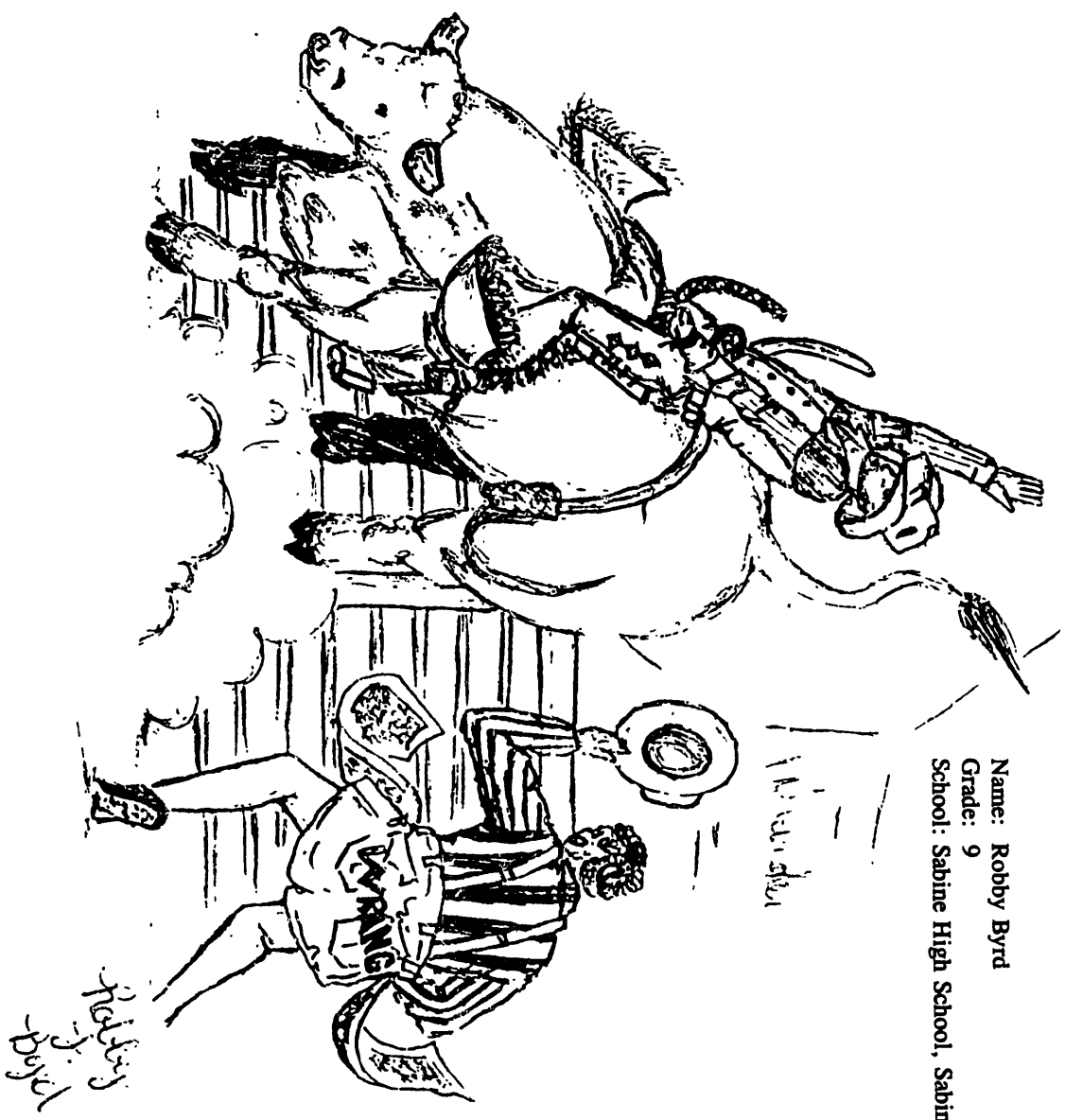
All NAAs

25

Figure 2: 30 TAC §101.30(c) (2) (B)

(B) For purposes of paragraph (2) of this subsection, the following rates apply in maintenance areas:

	<u>Tons/Year</u>
Ozone (NO _x), SO ₂ , or NO ₂	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon Monoxide	
All maintenance areas	100
PM ₁₀	
All maintenance areas	100
Pb	
All maintenance areas	25



Name: Robby Byrd
Grade: 9
School: Sabine High School, Sabine ISD

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).

Texas Department of Agriculture

Wednesday, November 30, 1994, 8:00 a.m.

Harvey Hotel, 3100 I-40 West
Amarillo

Texas Wheat Producers Board

AGENDA:

Action: Call meeting to order; Board member resignation; seat new Board member

Discussion and Action: TDA representative; minutes of last meeting; financial reports; directors meeting in Dallas; Board biennial election; next meeting date

Executive Session: To discuss salary of personnel in accordance with Texas Government Code Annotated, §551.074.

Reconvene in Public Session: Take action on executive session.

Report: Wheat Foods Council meeting; TDA Grain Warehouse Law review; TDA 1995 Farm Hill Task Force; European Trade Team; USWA Board Team

Adjourn

Contact: Bill Nelson, 2201 Civic Circle, Amarillo, Texas 79109-1853, (806) 352-2191.

Filed: November 22, 1994, 2:15 p.m.

TRD-9451244

Monday-Tuesday, December 12-13, 1994, 1:30 p.m. and 8:00 a.m., respectively.

900 North Shoreline Boulevard, Marriott Bayfront Hotel

Corpus Christi

Texas Grain Sorghum Producers Board

AGENDA:

Call to order

Discussion and action: minutes; financial reports; supplement to budget-EOP Project; auditors requests-approval of carryover from GSP Operating Account, 1993-1994 audit approval, limit on capital outlay; funding considerations; research proposals from seven organizations

Discussion: updates/reports-Summit on Risk Management report, sorghum mission, marketing/promotion cooperation

Other business

Adjourn

Contact: Jack Eberspacher, P.O. Box 560, Abernathy, Texas 79311-0560, (806) 298-4501.

Filed: November 23, 1994, 10:29 a.m.

TRD-9451342

Thursday, December 15, 1994, 10:30 a.m. (Rescheduled from November 29, 1994, 10:30 a.m.)

Texas Department of Agriculture, 4502 Englewood Avenue

Lubbock

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §§103.001-103.015 (Vernon 1982) by M. W. Carrot Co., Inc. as petitioned by R. B. Todd Company, Inc.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: November 29, 1994, 10:46 a.m.

TRD-9451515

Texas Commission on Alcohol and Drug Abuse

Tuesday, December 13, 1994, 8:30 a.m.

710 Brazos, Eighth Floor Conference Room
Austin

Board of Commissioners

AGENDA:

Call to order; approval of October 11, 1994, minutes; public comments; appointments to the Multicultural Affairs Advisory Council; appointments to the Statewide Advisory Council; federal, congressional and legislative update; action on legislative concerns for the 74th legislative session; report on employment, productivity and addictions; report on treatment initiatives activities: Treatment Alternatives to Incarceration Program (TAIP), Substance Abuse Felony Punishment Facility Program (SAFP); In-Prison Therapeutic Community Program (TTC), Continuum of Care (TTC), TCADA/TDCJ Training Center, and Youth Initiative; report on Program Development and Initia-

tives Committee activities; action on historically underutilized business policy; report on Grant and Contract Review Committee; action by consent on adoption of amendments to counselor licensure rules and adoption of proposed amendments to the counselor licensure rules; report on Offender Credentialing Committee activities; ; report on annual (fourth quarter) report on measures; report on Audit Committee activities; action on amendments to policies and procedures; executive director's report; chairman's report; and adjourn.

Contact: Otis E. Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720.

Filed: November 28, 1994, 4:20 p.m.

TRD-9451504

◆ ◆ ◆
Texas Catastrophe Property Insurance Association

Tuesday, December 6, 1994, 9:00 a.m.

4140 Governor's Row, Wyndham Austin Hotel at Southpark

Austin

Board of Directors

AGENDA:

I. Call to order, II. Anti trust reminder-approval of minutes of September 20, 1994 and minutes of October 14, 1994, III. Report of chairman, IV. Report of general manager, V. Report of underwriting manager, VI. Report of secretary/treasurer, VII. Report of operations manager, VIII. Approval of 1995 budget, IX. Catastrophe procedures, X. Any other business, XI. Adjourn

Contact: Charles F. McCullough, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: November 22, 1994, 4:07 p.m.

TRD-9451263

◆ ◆ ◆
Coastal Coordination Council

Friday, December 2, 1994, 10:00 a.m.

Capitol Extension, Room B1.012, 1400 Congress Avenue

Austin

Coastal Coordination Council

AGENDA:

I. Call to order and opening remarks
II. Approval of minutes of the September 16, 1994, meeting
III. Adoption of amendment to boundary rule

a. Discussion of comments received

b. Report from boundary work group and OSPRA line proposal

IV. Discussion of proposed memorandum of agreement with Corps of Engineers regarding streamlined processing of state and federal regulatory approvals for activities in coastal wetlands and coastal waters

V. Report from Implementation Work Group on process for approval of consistency review thresholds and certification of agency rules for consistency with the CMP

a. Discussion of APA in relation to thresholds

b. Discussion of coordination of threshold implementation

c. Discussion of Executive Committee's role in implementation

d. Discussion of effective date of CMP

VI. Report on cost-benefit study

VII. Discussion of legislative initiatives

VIII. Public comment period

IX. Adjournment

Contact: Susan Slocum, 1700 North Congress Avenue, Room 617, Austin, Texas 78701, (512) 463-5385.

Filed: November 22, 1994, 2:15 p.m.

TRD-9451243

◆ ◆ ◆
Texas Department of Commerce

Monday, December 5, 1994, 9:30 a.m.

John H. Reagan Building, Room 106

Austin

Texas Manufacturing Institute

AGENDA:

9:30 a.m. Call to order

9:35 a.m. Old business

9:45 a.m. New business

A. Follow-up from last TMI board meeting

B. Management report on the TMAC

C. Structure of the TMI

D. Communication with Texas lawmakers

Noon. Adjourn

Contact: Michael Klonsinski, 410 East Fifth Street, Room B4, Austin, Texas 78701, (512) 320-9561.

Filed: November 22, 1994, 4:58 p.m.

TRD-9451297

Texas Cosmetology Commission

Saturday, December 3, 1994, 9:00 a.m.

Wyndham Southpark Hotel, 4140 Governor's Row

Austin

Commission Meeting

AGENDA:

Call to order; introductions; minutes; CIPS presentation; staff reports; approval of fiscal year 1995 operating budget; presentation of requests for approval of hours accrued over 48 months ago; Sandra Trahan, regarding instructors course in public high schools; Lana Lamb, regarding tuition problems; Victor Balderas, regarding rule change proposals; presentation of recommended procedure for approval of old hours; rule adoptions--\$§9.1-9.76; \$§83.1-83.30; \$5.1; and \$87.1 and possible votes on adoptions; executive session--litigation and personnel; open meeting for vote on executive session; adjourn.

Contact: Alicia C. Watson, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: November 22, 1994, 11:59 a.m.

TRD-9451227

Sunday, December 4, 1994, 10:00 a.m.

Wyndham Southpark Hotel, 4140 Governor's Row

Austin

Legislative Committee Meeting

AGENDA:

Call to order; introductions; discussion of proposed legislative changes; and adjourn.

Contact: Alicia C. Watson, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: November 22, 1994, Noon.

TRD-9451229

Sunday, December 4, 1994, 2:00 p.m.

Wyndham Southpark Hotel, 4140 Governor's Row

Austin

Examination Committee Meeting

AGENDA:

Call to order; introductions; discussion of new instructor examination; discussion of new manicure instructor exam; discussion of new facial instructor examination; and adjourn.

Contact: Alicia C. Watson, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: November 22, 1994, Noon.

TRD-9451228

◆ ◆ ◆
Texas County and District Retirement System

Wednesday, December 7, 1994, 9:00 a.m.

303 West 15th Street

Austin

Investment Committee Meeting

AGENDA:

Chairperson will open meeting. Approve minutes of preceding meeting. Receive report from investment officer. Consider and act upon investment officer's 1995 compensation, the need for legal representation in 1995, proposed 1995 investment staff budget, proposed investment staff addendum to personnel policy, and proposed changes to corporate resolution. Set date and location of March 1995 meeting. Adjourn meeting.

Contact: Dianna Amescua, 400 West 14th Street, Austin, Texas 78701, (512) 469-9668, Ext. 21.

Filed: November 23, 1994, 3:17 p.m.

TRD-9451400

Wednesday-Thursday, December 7-8, 1994, 1:30 p.m. and 9:00 a.m., respectively.

Guest Quarters Hotel, 303 West 15th Street

Austin

Board of Trustees

AGENDA:

Chairman opens meeting. Approve minutes of September 15-16, 1994 board meeting. Approve applications for service and disability retirement benefits. Approve applications for TCDRS participation and SDBF extended coverage. Discuss interest earnings on investments and determine interest rate for 1994. Adopt resolutions regarding transfer to Distributive Benefits Account of Endowment Fund, from Endowment Fund-General Reserves Account to Expense Fund, and Letter of Credit Resolution. Approval financial statements. Adopt budget. Receive reports from chairman, director, actuary, legal counsel and investment officer. Consider and act on proposal for decision in regard to claim of Lillie Houston, investment policy, proposal for legislation, and proposed amendments to personnel policies. Appoint independent auditor/tax consultant. Building Committee meeting. Select contractor. Elect officers.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: November 28, 1994, 4:57 p.m.

TRD-9451506

◆ ◆ ◆
Texas Commission for the Deaf and Hearing Impaired

Saturday, December 3, 1994, 9:00 a.m.

1102 South Congress Avenue, Building T-2

Austin

Board for Evaluation of Interpreters (BEI)

AGENDA:

Call to order; approval of October 15, 1994 meeting minutes; public comments; chairperson's report; BEI report; TSID report; application/evaluation fees for intermediary interpreter applicants; calendar update; executive session: review of applicant testing materials; certification, recertification, revocation; old business; new business.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: November 22, 1994, 11:58 a.m.

TRD-9451225

◆ ◆ ◆
Texas Diabetes Council

Texas Diabetes Institute, 701 South Zarzamora Street

San Antonio

AGENDA:

The council will discuss and possibly act on an update of the additional site for Operation Defeat Diabetes; and other business not requiring council action.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 22, 1994, 2:24 p.m.

TRD-9451247

Friday, December 9, 1994, 9:30 a.m.

Texas Diabetes Institute, 701 South Zarzamora Street

San Antonio

AGENDA:

The council will discuss and possibly act on: approval of the minutes from October 14, 1994; the American Diabetes Association "Diabetes Day at the Capitol"; subcommittee reports (proposed site for operation: Defeat Diabetes; and managed care); diabetes public information campaign; S.T.O.P.

Diabetes—community-based project; economic cost study; and Texas Diabetes Institute.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 22, 1994, 2:25 p.m.

TRD-9451248

◆ ◆ ◆
Texas Interagency Council on Early Childhood Intervention

Thursday, December 1, 1994, 9:00 a.m.

4412 Spicewood Springs Road, Building 600

Austin

Interagency Council on Early Childhood Intervention

AGENDA:

According to the agenda, the Interagency Council on Early Childhood Intervention will open with public comment; will be briefed on early intervention specialists competency based personnel standards; discuss transitioning of ECI families currently receiving services at Travis State School; discuss and approve the following; minutes from the October 25, 1994, meeting, Advisory Committee and director's forum report, certain sections of the Texas Administrative Code, repeals and new rule concerning council meetings, service delivery, and procedural safeguards, staff's recommendation to cancel the fiscal year 1995 contract with Edgewood Independent School District, staff's recommendation to extend the fiscal year 1995 contract with Texarkana Opportunities, Inc. through February 28, 1995, proposed legislative initiatives including an MOU with the Texas Education Agency pertaining to auditorially handicapped and visually handicapped services, and interagency collaboration efforts directed for young children in nursing homes; and FYI.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: November 23, 1994, 10:20 a.m.

TRD-9451336

◆ ◆ ◆
Texas Education Agency

Wednesday, December 14, 1994, 9:30 a.m.

Room 2-170, William B. Travis Building,
1701 North Congress Avenue

Austin

State Board of Education (SBOE)

AGENDA:

An orientation session for new members of the SBOE will be held on Wednesday, December 14, 1994, at 9:30 a.m. This session will cover areas of interest to the new members. All members of the SBOE have been invited to participate in this orientation.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: November 29, 1994, 8:44 a.m.

TRD-9451507

◆ ◆ ◆
**Advisory Commission on
State Emergency Commu-
nications**

Friday, December 2, 1994, 11:15 a.m.

Hobby Building, Room 102, 333 Guadalupe Street

Austin

Poison Control Coordinating Committee Meeting

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment, hear reports and discuss and take commission action, as necessary, on: approval of previous committee meeting minutes, old business; brief status update from each poison center in the Texas Poison Center Network; report of the Texas Department of Health and the Advisory Commission on State Emergency Communications on operations of the Texas Poison Center Network; report of the Subcommittee on Education; report of the Subcommittee on Medical Management and Protocols; report of the Subcommittee on Operations; report of the Subcommittee on Telecommunications; report of the Subcommittee on Finance; new business; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Jim Goerke, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6911.

Filed: November 23, 1994, 4:13 p.m.

TRD-9451408

**Texas Employment Commis-
sion**

Tuesday, December 6, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes: staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 49; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: November 28, 1994, 4:10 p.m.

TRD-9451500

◆ ◆ ◆
**Finance Commission of
Texas**

Friday, December 9, 1994, 9:00 a.m.

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

AGENDA:

I. Call the meeting together, review and approval minutes of previous meeting.

II. Discussion and review of Finance Commission matters; receive status report from Review Committee on its study of current structure and organization of Finance Commission agencies and possibly vote on consolidation; discussion of and vote on the process of hiring a permanent Consumer Credit Commissioner; discussion of and vote on the appointment of Vernon Arthur Mitchell, Jr. to Guaranty Fund Advisory Council; and receive a report on Finance Commission building repairs.

III. Hear report from the Office of Consumer Credit Commissioner on industry status, departmental operations, discuss and possibly vote on legislative recommendations.

IV. Hear report from the Savings and Loan Department on industry status, departmental operations, discuss and vote to publish for comment proposed amendment to Rule 7 TAC §77.71, discuss and possibly vote on legislative recommendations.

V. Hear report from the Banking Department on industry status, departmental operations, discuss and possibly vote on legislative recommendations, discuss and possibly vote on a petition for rulemaking by Equitable Trust Company, and adjourn.

VI. Reconvene in executive session, and adjourn.

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: November 29, 1994, 9:50 a.m.

TRD-9451510

◆ ◆ ◆
**Fire Fighters' Pension Com-
mission**

Wednesday-Friday, December 7-9, 1994, 9:00 a.m.

12675 North Research

Austin

Fire Protection Personnel Advisory Committee

AGENDA:

Call to order. Discussion/approval of prior minutes. Overview/briefing of agenda items. New matters.

Discussion/possible action on rule recommendations for performing staffing studies. Report of Testing Committee. Discussion/possible action on changes to Emergency Care Attendant certification; National Fire Academy and college course requirements for higher levels of certification.

Discussion/possible action on proposed new rules and changes to 37 TAC §§423, 427, 429, 431, 435, 437, 439, 491, 495, and rules pending before the commission relating to paid fire protection personnel, part-time fire protection employees, and local fire departments regulated under Government Code Chapter 419, Subchapter B.

Discussion and possible action on future meeting dates, agenda items and locations.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: November 28, 1994, 1:12 p.m.

TRD-9451473

Thursday-Friday, December 8-9, 1994, 2:00 p.m. and 9:00 a.m., respectively.

Wyndham Hotel, IH-35 South at Ben White Boulevard

Austin

Administrative Division

AGENDA:

The Senate Bill 411 Statewide Volunteer Fire Fighters' Retirement Fund Board of Trustees will meet for the purpose of presentations by the consultant, actuary, and CPA, as well as staff reports; discussion and possible action on committee reports, CPA contract and Pension Review Board voluntary contribution.

Contact: Helen Campbell, 3910 South IH-35, #235, Austin, Texas 78704, (512) 462-0222.

Filed: November 23, 1994, 10:59 a.m.

TRD-9451363

Saturday-Sunday, December 10-11, 1994, 9:00 a.m.

12675 North Research

Austin

Volunteer Fire Fighter Advisory Committee

AGENDA:

Call to order. Discussion/approval of prior minutes. New Matters.

Discussion/possible action on proposed new rules and changes regarding 37 TAC Chapters 471-473, 475-479, 481, 483, 485, 487, and 489.

Discussion/possible action on suggestions for increasing communication with volunteer fire fighters about the commission volunteer certification program.

Discussion/possible action on future meetings.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: November 28, 1994, 1:11 p.m.

TRD-9451472

General Land Office

Tuesday, December 6, 1994, 2:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes, opening and consideration of bids received for the December 6, 1994 sealed bid land sale; opening and consideration of bids received for the December 6, 1994 special oil and gas lease sale; pooling applications, Laredo (Lobo) Field, Webb County; Giddings (Austin Chalk-3), Brazos and Grimes County; Thompson North, Fort Bend County; consideration of resolution regarding the negotiation and execution of contracts and any other instruments or agreements necessary to dispose of gas royalty taken in-kind; Coastal public lands-leases, easements and easement amendments; Baffin Bay, Kleberg County; Hynes Bay, Calhoun County-Matagorda Bay, Calhoun County; Galveston Bay, Chambers County; Copano Bay, Aransas County; structure (cabin) permit amendments and renewals, Espiritu Santo Bay,

Calhoun County; Laguna Madre, Kleberg County; Laguna Madre, Willacy County; and Laguna Madre, Kleberg County; commercial lease applications, renewals and amendments, Taylor Lake, Harris County; Cayo del Grullo, Kleberg County; Oak Island Chambers County; Lower Laguna Madre, Cameron County; Caney Creek, Matagorda County; Matagorda Bay, Matagorda County; Clear Lake, Cameron County; and Laguna Madre, Cameron County; consideration of coastal public lands easement amendment, Laguna Madre, Cameron County; consideration of public purpose lease to the City of Galveston, Gulf of Mexico, Galveston County; executive session-pending and proposed litigation; executive session-acquisition of property, El Paso County; open session-consideration of acquisition of property, El Paso County; executive session-land trade, Harris County; open session-consideration of land trade, Harris County; executive session-discussion of bids received at the December 6, 1994 sealed bid land sale on property located in Travis County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: November 28, 1994 4:17 p.m.

TRD-9451502

Interagency Council for Genetic Services

Friday, December 9, 1994, 9:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Texas Genetic Network

AGENDA:

The committee will discuss and possibly act on: introduction of new network coordinator; format of meetings; public comments; approval of the minutes of August 24, 1994; Interagency Council for Genetic Services (discussion of Texas Department of Health (TDH) role in providing contract genetic services to AK.); TEXGENE subcommittee reports (Education; Laboratory Services, Clinical Services; Data Collection, Ethics; and Ad Hoc Committee-PRIMED (Preventive Regional Initiatives for Minority and Ethnic Diseases); reports from agency representative regarding the activities of their respective agencies or institutions (Texas Department of Health (report on seven-day test on the TDH BABYLOVE phone line), Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; the University of Texas System; private service providers, community-based sickle cell agencies; and

consumers), announcements/comments not requiring committee action (ACMG meeting announcement March 1996 in San Antonio; and Scientific Advisory Committee to the Birth Defects Monitoring Division-\$5,000 allocation); program coordinator items (budget status; and review of reimbursement procedure for travel charges); progress toward grant objectives member/committee assignments; and next meeting date in March 1995.

Lunch will be available. A working lunch is planned with an update on the Texas Birth Defects Monitoring Division by Mark Canfield, Ph.D., Director, Birth Defects Monitoring Division, Bureau of Epidemiology and a presentation by Mary Jo Harrod, Ph.D., Department of Obstetrics and Gynecology, University of Texas Southwestern Medical Center at Dallas.

Contact: Veronyca C. Waller, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting

Filed: November 28, 1994, 3:42 p.m.

TRD-9451496

Friday, December 9, 1994, 1:00 p.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will discuss and possibly act on: introduction new network coordinator, public comments; approval of the minutes of August 24, 1994; discussion of Texas Department of Health (TDH) role in providing contract genetic services to AK; TEXGENE report; agency activities/future plans (Texas Department of Health; and Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services; University of Texas System; and representative of contractors); program coordinator items (budget status); progress toward legislative mandates/members assignments; announcements/comments not requiring council action; and next meeting-March 1995.

Lunch will be available. A working lunch is planned with an update on the Texas Birth Defects Monitoring Division by Mark Canfield, Ph.D., Director, Birth Defects Monitoring Division, Bureau of Epidemiology and a presentation by Mary Jo Harrod, Ph.D., Department of Obstetrics and Gynecology, University of Texas Southwestern Medical Center at Dallas.

Contact: Veronyca C. Waller, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7695 or T D D (512)

458-7708 at least two days prior to the meeting.

Filed: November 28, 1994, 3:42 p.m.

TRD-9451495

◆ ◆ ◆
**Office of the Governor,
Criminal Justice Division**

Thursday, December 8, 1994, 6:00 p.m.

Hyatt Hotel, 208 Barton Springs Road
Austin

Texas Crime Stoppers Advisory Council/Regular Meeting

AGENDA:

I. Call to order, II. Approve minutes of August 20, 1994 and October 7, 1994, meetings, III. Texas Department of Criminal Justice Crime Stoppers program report, IV. Review of certification application, V. Team manager's report, VI. 1995 conference report, VII. Education Committee report, VIII. Schedule next meeting date, IX. Adjourn.

Contact: Paula Alvarez-Crampton, P.O. 12428, Austin, Texas 78701, (512) 463-1784.

Filed: November 29, 1994, 10:52 a.m.

TRD-9451516

◆ ◆ ◆
Texas Commission on Human Rights

Thursday, December 8, 1994, 10:00 a.m.

105 West 15th Street, Room 106

Austin

AGENDA:

Discussion and vote on agenda item(s) covered in executive session as necessary or required; welcoming of guests; minutes; administrative reports; current administrative enforcement project; final report on fiscal year 1994 administrative enforcement project; meeting with EEOC commissioners; meeting with Legislative Task Force; legislative issues for the 74th Legislative Session; EEO compliance training; 100 Day Financial Report; personnel policies; annual report; Affirmative Action Plan; training on legal theories of housing and employment discrimination; commissioner issues; unfinished business.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: November 28, 1994, 4:17 p.m.

TRD-9451501

Texas Incentive and Productivity Commission

Monday, December 5, 1994, 10:00 a.m.

Cléments Building, Fourth Floor, Room #406, 15th and Lavaca

Austin

Revised Agenda

AGENDA:

Change to Item IV. "Consideration of employee suggestions for approval"

Add the following suggestion: 582-0156
Dwayne D. Price

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: November 23, 1994, 9:43 a.m.

TRD-9451324

◆ ◆ ◆
Texas Department of Insurance

Monday, December 5, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

AGENDA:

454-94-1863.C

To determine whether the application of Kevin Craig Lesturgeon, San Antonio, Texas, for a Group IV, Variable Contract Agent's License should be denied.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 23, 1994, 1:29 p.m.

TRD-9451387

Monday, December 5, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

AGENDA:

454-94-1725.E

Request by Travelers Indemnity Company of Rhode Island for a hearing regarding funds paid in the claims settlement of Clifford Lambert, claimant-facility appeal.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 23, 1994, 1:30 p.m.

TRD-9451388

Monday, December 5, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

454-94-1726.E

Request by Travelers Indemnity Company of Rhode Island for a hearing regarding withholding of funds to cover claims overpayment in the case of Gerald Byrd, claimant-facility appeal.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 23, 1994, 1:30 p.m.

TRD-9451389

Monday, December 5, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

454-94-1854.C

To consider whether disciplinary action should be taken against Michael Wayne Owens, Seminole, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code # 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 23, 1994, 1:30 p.m.

TRD-9451390

◆ ◆ ◆
Lamar University System

Thursday, December 1, 1994, 9:00 a.m.

John Gray Institute, 855 Florida

Beaumont

Board of Regents

AGENDA:

Call to order-chair's report-chancellor's report

Executive session

Reconvene open meeting/recess for committee meetings

Advancement Committee

Student Relations and Services Committee

Finance and Audit Committee

Academic Affairs Committee

Reconvene Board of Regents meeting

Consider approval of committee reports

Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: November 22, 1994, 4:56 p.m.

TRD-9451296

Thursday, December 1, 1994, 9:00 a.m.

John Gray Institute, 855 Florida

Beaumont

Revised Agenda

Board of Regents

AGENDA:

Add: Finance and Audit Committee

Consider utilization of fee revenue at Lamar University-Orange. (Item 1093)

Action: approval

Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: November 23, 1994, 4:55 p.m.

TRD-9451411

Texas Board of Professional Land Surveying

Friday, December 16, 1994, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

Board Meeting

AGENDA:

The Board will meet to approve the minutes of the previous meeting; to discuss and possibly excuse absences; to hear a presentation from Bobby Hall to the Board concerning certifications; to discuss and possibly act on active complaints and show cause actions; to hear and possibly act on recommendations from committee reports; to discuss and possibly act on revisions of Board Rules 663.19(e), 663.19(f), 663.18(a) and 661.121; to hear a presentation from Gene Probst to the Board concerning standards; to discuss and possibly act on correspondence to and from the Board; to discuss and possibly act on the Department of Insurance's proposed Procedural Rule P-41; to discuss and possibly act on requirements of aerial surveys; to discuss and possibly act on the 1996 and 1997 budget; to select future meeting dates; to sign resolutions for Hank Clements and Art Osborn; to discuss old business and to consider new business. 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 Sandy Smith at (512) 452-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: November 29, 1994, 9:51 a.m.

TRD-9451513

Texas Commission on Law Enforcement Officer Standards and Education

Monday, December 5, 1994, 10:00 a.m.

John H. Reagan State Office Building, Room 104, 105 West 15th Street

Austin

Texas Peace Officers' Memorial Advisory Committee

AGENDA:

Call to order and roll call of members; consider and take action on 30 law enforcement officers for enrollment and 21 law enforcement officers for induction in the Texas Peace Officers' Memorial; recognition of regional directors and visitors; approval of minutes of the May 23, 1994 committee meeting; receive information to bid from fund raising professionals, consider services to be included in a request to bid, and take action concerning the process of selecting a fund raising professional; selection of meeting dates for the March and June 1995 committee meetings; receive reports from committee members, regional directors, and the director; receive public comments on any subject without discussion; and adjourn.

Contact: Edward T. Laine, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: November 23, 1994, 9:06 a.m.

TRD-9451311

Monday, December 12, 1994, 1:30 p.m.

Room E2.016 Capitol Extension

Austin

AGENDA:

Work Session Meeting

Call to order, invocation and Pledge of Allegiance; recognition of visitors; recognition of employees for service awards; executive director's report; report on Information Resources Management Plan computer system proposal; Ad Hoc Committee report and recommendations concerning alternative means of course delivery of mandated and in-service training; report on Mental Health Officer certification; Appointment and License Committee report; and adjourn.

Contact: Vera Kocian, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: November 22, 1994, 12:01 p.m.

TRD-9451233

Tuesday, December 13, 1994, 9:00 a.m.

E2.016, Capitol Extension

Austin

AGENDA:

Quarterly Meeting

Call to order, invocation and Pledge of Allegiance; recognition of visitors; approval of minutes of the August 4 and September 12-13, 1994, commission meetings; Bill Blackwood Law Enforcement Management Institute of Texas update; approval of reappointments to LEMIT advisory board; approval of computer system proposal and deficiency grant application; selection of meeting date for March 1995 commission meeting; take license action on final orders for cancellation, denial, and revocation of licenses; report on voluntary surrenders received and accepted; reports and comments on any subject without discussion will be received; and adjourn.

Contact: Vera Kocian, 1033 La Posada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: November 22, 1994, 12:01 p.m.

TRD-9451232

Texas Department of Licensing and Regulation

Thursday, December 8, 1994, 10:30 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Manufactured Housing

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Ron Hester doing business as H & W Transport, Inc. for violation of the Texas Revised Civil Statutes Annotated, Article 5221f, §7(d), Article 9100, 16 TAC §69.125(e)(1), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: November 28, 1994, 1:11 p.m.

TRD-9451471

Texas Council on Offenders with Mental Impairments

Wednesday, December 7, 1994, 1:30 p.m.

8610 Shoal Creek Boulevard, Board Room,
TDCJ, Pardons and Parole Building

Austin

Planning/Legislative Committee

AGENDA:

I. Introductions

II. Approval of minutes

III. Status of Senate Bill 252 MOU's

TDMHMR/TCCMHMR Centers, Inc.

TDOA

TRC

TCB

TDC&HI

TDHS

TCLEOSE, TCJS and TCOMI

IV. Legislative issues for 74th Legislature

Adjournment

Each item includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: November 28, 1994, 1:40 p.m.

TRD-9451477

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Wednesday, November 30, 1994, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

Second addendum to the contested agenda:

Item concerns a resolution to regulatory procedures to addressing recent flooding in southeast Texas.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: November 22, 1994, 4:19 p.m.

TRD-9451269

Wednesday, December 7, 1994, 9:30 a.m.

12118 North Interstate 35, Building E

Austin

AGENDA:

The Commission will consider approving the following matters: water utility matters; district matters; Superfund contract; settled hearings; in addition, the Commission will consider items previously posted for open

meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: November 29, 1994, 9:50 a.m.

TRD-9451511

Wednesday, December 7, 1994, 9:30 a.m.

12118 North Interstate 35, Building E

Austin

The Commission will consider approving the following matters: water quality enforcements; solid waste enforcements; air quality enforcements; petroleum storage tank enforcements; water right matters; rules; proposal for decisions; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: November 29, 1994, 9:51 a.m.

TRD-9451512

Thursday, December 8, 1994, 9:30 a.m.

6300 Ocean Drive, Texas A&M University Corpus Christi, Conrad Blucher Institute

Corpus Christi

Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to order/introduction/minutes

II. Program update

III. Discussion/approval of concept paper to re-focus CCMP development efforts

IV. Discussion/approval of interim-final priority problems list

V. Presentation: Clean Rivers Program

VI. Update on all-conference workshop

VII. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: November 23, 1994, 3:18 p.m.

TRD-9451401

◆ ◆ ◆
Texas Board of Nursing Facility Administrators

Monday, December 5, 1994, 9:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Examination Ad Hoc Committee

AGENDA:

The committee will discuss and possibly act on role delineation survey; and guidelines for developing questions.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 22, 1994, 2:24 p.m.

TRD-9451246

Thursday, December 8, 1994, 10:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Education Committee

AGENDA:

The committee will receive public comment, and discuss and possibly act on: educational issues; educational requests; waiver requests; and recommendations for proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1994, 11:18 a.m.

TRD-9451367

Thursday, December 8, 1994, 1:30 p.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: public comment; complaints-94-0001 to 94-00049; complaints referred by the Complaints Committee to investigators of the provisional licensing certification division; dismissed complaints; and recommendation of proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1994, 1:32 p.m.

TRD-9451394

Thursday, December 8, 1994, 3:00 p.m.
Room S-402, The Exchange Building, 8407 Wall Street
Austin

Finance Committee

AGENDA:

The committee will receive public comment, and discuss and possibly act on: update/overview of program budget; and recommendations for proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1994, 1:32 p.m.

TRD-9451396

Friday, December 9, 1994, 9:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

AGENDA:

The board will discuss approval of the minutes from the September 16, 1994 meeting; and discuss and possibly act on: public comment; committee reports (Complaints; Education and Finance); proposed rules; board chairman report/comments; executive secretary's report (Ad Hoc Committee for State Standards Examination; National Association of Boards of Examiners for Nursing Home Administrators Report; preceptor seminar update; travels and talks; continued concerns; and setting of board and committee meetings for 1995.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: November 23, 1994, 1:32 p.m.

TRD-9451395

◆ ◆ ◆
Texas State Board of Physical Therapy Examiners

Tuesday, December 6, 1994, 10:00 a.m.

3001 South Lamar Boulevard, Suite 101

Austin

Board Meeting

AGENDA:

I. Public comment

II. Approval of minutes of September 29, 1994 board meeting

III. Review of rule requiring foreign-trained applicants to be licensed in the country where they received their education

IV. Consideration of requested waiver of CE by Shenal Shah Arimilli

V. Review and possible final adoption of proposed rules

VI. Committee reports

A. Education Committee/Rules Committee
Review and possible approval of drafted rules by the board

B. Investigation Committee

VII. PT Coordinator's report

Update on Registration of Facility Program

VIII. Executive director's report

A. Health Professions Council

B. Interagency contract

C. Executive Council report

D. Update on state mandated reports

IX. Presiding officer's report

X. Adjournment

Contact: Gerard Swain, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: November 22, 1994, 1:31 p.m.

TRD-9451240

◆ ◆ ◆
Public Utility Commission of Texas

Thursday, December 1, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting at which the Commissioners will consider the following: The Commission will set the rate of interest on deposits held by utilities for calendar year 1995, pursuant to Texas Civil Statutes, Article 1440a (Vernon Supplement 1994). In addition, the Commission will set the interest rate to be applied in calendar year 1995 to overcharges and certain undercharges by a utility, pursuant to Public Utility Commission Substantive Rule 23.45(g), Project Number 11620-Hear public comment and consider for adoption §23.94 concerning Small Local Exchange Carrier Reg-

ulatory Flexibility, and Docket Number 7952-Complaint of Metro-Link Telecom, Inc. against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 22, 1994, 3:51 p.m.

TRD-9451258

Thursday, December 1, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Revised Agenda

AGENDA:

In addition to the previously submitted agenda, the Commissioners will also consider Docket Number 12957-application of Houston Lighting and Power Company for approval of experimental tariff for special contract pricing, rate schedule SCP.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1994, 9:54 a.m.

TRD-9451325

Thursday, December 1, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

Administrative

AGENDA:

There will be an administrative meeting for discussion, consideration, and possible action on comments to be filed with the National Telecommunications and Information Administration (NTIA) on inquiry on universal service and open access issues (Docket Number 940955-4255); letter to the chief executive officers of SPP Member Utilities with operations in the State of Texas; comments to the FERC in response to the notice of proposed rulemaking on stranded investment; AG Opinion request construing §6(j) of PURA; interaction with Legislative Committees and/or Sunset Commission; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1994, 10:29 a.m.

TRD-9451343

Thursday, December 1, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

Administrative

AGENDA:

In addition to the previously submitted agenda, the Commissioners will discuss: 2g.—discussion and approval of Commission response to the Texas Governor's Requested Integrated Resource Planning (IRP) Studies.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 23, 1994, 11:52 a.m.

TRD-9451380

◆ ◆ ◆
Railroad Commission of Texas

Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

Pending and/or contemplated litigation.

Toch Operating Company v. RRC, et al, Cause Number 03-93-00538-CV, in the Third Court of Appeals, Austin.

Contact: Brenda Loudermilk, P.O. Box 12967, Austin, Texas 78711, (512) 463-7154.

Filed: November 23, 1994, 1:28 p.m.

TRD-9451386

Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Personnel Division director's report on division administrations, budget, procedures, and personnel matters. The commission may meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: November 23, 1994, 9:56 a.m.

TRD-9451329

The Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: November 23, 1994, 9:56 a.m.

TRD-9451328

Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: November 23, 1994, 9:55 a.m.

TRD-9451327

Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

1. Division director's report on AFRED administration, procedures, budget, program contracts, grants, personnel and policy matters relating to propane research, marketing and public education programs.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: November 23, 1994, 9:54 a.m.

TRD-9451326

Monday, December 5, 1994, 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 attached 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: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: November 23, 1994, 9:57 a.m.

TRD-9451332

Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

The Commission will consider and act on the Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.E., P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: November 23, 1994, 9:56 a.m.

TRD-9451330

Monday, December 5, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters. The Commission will consider and act on the Information Resource manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: November 23, 1994, 9:57 a.m.

TRD-9451331

◆ ◆ ◆
Texas Real Estate Commission

Monday, December 5, 1994, 8:30 a.m.

Conference Room 236B, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

MCE Participation Committee

AGENDA:

Discussion and possible action to recommend policy on participation of Commission members in MCE courses.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: November 23, 1994, 12:13 p.m.

TRD-9451397

Monday, December 5, 1994, 9:30 a.m.

Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA:

The commission will consider and possibly act on: staff reports; committee reports; request from the Texas Real Estate Inspector Committee for information relating to standard report form; adoption of proposed amendments to 22 TAC §537.11 and new §§537.40-537.42 concerning standard contract forms; adoption of resolution commending James F. Hayes, member Broker-Lawyer Committee; discussion of possible amendments to 22 TAC §535.164 concerning disclosure of agency; discussion and possible action to approve a Spanish language version of Agency Disclosure Form 3; discussion and possible action to approve MCE providers and courses or other providers and courses; discussion and possible action to propose amendment to 22 TAC §539.137 concerning semiannual reports of residential service companies; discussion and possible action to propose amendments to 22 TAC §535.61 concerning acceptance of courses and §535.66 concerning proprietary schools and 22 TAC §§535.71-535.73 concerning mandatory continuing education; discussion and possible action to approve preparation of draft legislation; discussion and possible action to establish evaluation process for administrator; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and appointment to the Texas Real Estate Broker-Lawyer Committee pursuant to §551.074; discussion and possible action to make an appointment to the Texas Real Estate Broker-Lawyer Committee; authorization of payments from recovery funds; consideration of complaint information; entry of orders in contested cases; Motion for Rehearing, Hearing Number 94-83-940915; Motion for Rehearing, Number 94-85-940352; Motion for Rehearing, Number 94-98-941038; Motion for Rehearing, Hearing Number 93-94-930570; Motion for Rehearing, Number 93-50-930570.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: November 23, 1994, 8:58 a.m.

TRD-9451310

Texas Senate

Monday, November 28, 1994, 10:00 a.m.

400 Congress Avenue, Capitol Extension, Room E1.036

Austin

Senate Interim Committee on Home Equity Lending

AGENDA:

I. The committee will meet to finalize and adopt its report. Public testimony will be accepted.

Contact: Lisa Mayes, P.O. Box 12068, Austin, Texas 78711, (512) 463-0128.

Filed: November 22, 1994, 4:18 p.m.

TRD-9451266

Thursday, December 1, 1994, 1:30 p.m.

1400 Congress Avenue, Capitol Extension, Room E1.036

Austin

Joint Interim Committee on the Cultural Endowment Fund

AGENDA:

I. The committee will meet to consider the final report. Public testimony will be accepted.

Contact: Lisa Mayes, P.O. Box 12068, Austin, Texas 78711, (512) 463-0128.

Filed: November 22, 1994, 4:19 p.m.

TRD-9451268

Thursday, December 8, 1994, 9:00 a.m.

1400 Congress Avenue, Capitol Extension, Room E1.012

Austin

Senate Committee on International Relations, Trade and Technology

AGENDA:

I. Call to order

II. Review and adopt Interim Committee report

III. Update on General Agreement on Tariffs and Trade (GATT)/Office of State Federal Relations

IV. Testimony from state agencies

V. Adjournment

Contact: JoHannah Whitsett, P.O. Box 12068, Austin, Texas 78711, (512) 463-0989.

Filed: November 22, 1994, 4:19 p.m.

TRD-9451267

Council on Sex Offender Treatment

Friday, December 2, 1994, 10:00 a.m.

DFW Airport North Holiday Inn, 4441 Highway 114 and Esters Boulevard

Irving

Clinical Polygraph Committee Members and the Texas Association of Polygraph Examiners Committee

AGENDA:

I. Convene, David Cory, chair

II. Briefing from Eric Holden and the Texas Association for Polygraph Examiner's Committee

III. Review of Texas Association for Polygraph Examiner's Proposal

IV. Public comment

V. Adjourn

Contact: Al Montes, P.O. Box 12546, Austin, Texas 78711, (512) 463-2323.

Filed: November 23, 1994, 8:07 a.m.

TRD-9451303

The Texas A&M University System, Board of Regents

Wednesday, November 30, 1994, 3:00 p.m.

Texas A&M University MSC, Board of Regents Meeting Room, Clark Street

College Station

Facilities Planning and Building Committee

AGENDA:

Appropriations for designs; actions on bids; initiation of projects; reports on the status of construction projects; confirm report of contract actions by the chancellor or chief executive officers; confirm report on construction project appropriations by chancellor, selection of architects/engineers.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 23, 1994, 8:58 a.m.

TRD-9451308

Thursday, December 1, 1994, 8:30 a.m.

Texas A&M University, MSC, Room 292, Joe Routh Boulevard

College Station

Committee for Academic Campuses

AGENDA:

Approval of university ring for Texas A&M International University; reports on enroll-

ment management, tenure taskforce; Mexico City office, and the educational programs and facilities in the Killeen/Fort Hood area.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 23, 1994, 8:57 a.m.

TRD-9451306

Thursday, December 1, 1994, 8:45 a.m., or upon adjournment of the meeting of the Committee for Academic Campuses

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Committee for Service Units

AGENDA:

Approval of license agreements with Biosis, Sociedad Anomina for calcium hydroxide pretreatment of biomass, Highland Interests, Inc. for calcium hydroxide pretreatment of biomass, Trinity Industries, Inc. for the slotted rail terminal, Energy Absorption Systems, Inc. for the slotted rail terminal.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 23, 1994, 8:57 a.m.

TRD-9451305

Thursday, December 1, 1994, 9:00 a.m., or upon adjournment of the meeting of the Committee for Service Units

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Finance and Audit Committee

AGENDA:

Authorization to issue Revenue Financing System Bonds, Series 1995; approval of delayed repayment of TAMUG's debt to Special Mineral Income Fund; approval of continued funding of PVAMU's AUF Endowment Matching Program; establishment of quasi-endowments; confirmation of new field trip fee; authorization for the president of TAMU to pay for the costs of hot and chilled water facilities on the west campus and related costs; approval of an automatic teller machine contract for TAMU-CC, vending services contract for TFS; budget and fiscal transfers, salary increases and new positions, gifts, grants, loans and bequests.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 23, 1994, 8:57 a.m.

TRD-9451304

Thursday, December 1, 1994, 9:30 a.m., or upon adjournment of the meeting of the Finance and Audit Committee

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Legislative Committee

AGENDA:

Authorization to seek legislation during the 74th Texas Legislature and receive a report on the system's legislative initiatives.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 23, 1994, 8:58 a.m.

TR J-9451307

Thursday, December 1, 1994, 10:45 a.m., or upon adjournment of the meeting of the Legislative Committee and the Stiles Farm Foundation Meeting

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Board of Regents

AGENDA:

Approval of university ring for Texas A&M International University; authorization to issue Revenue Financing System Bonds, Series 1995; approval of delayed repayment of TAMUG's debt to Special Mineral Income Fund; approval of continued funding of PVAMU's AUF Endowment Matching Program; establishment of quasi-endowments; confirmation of new field trip fee; authorization for the president of TAMU to pay for the costs of hot and chilled water facilities on the west campus and related costs; approval of an automatic teller machine contract for TAMU-CC; vending services contract for TFS; budget and fiscal transfers, salary increases and new positions; gifts, grants, loans and bequests; authorization to seek legislation during the 74th Texas Legislature; appropriations for designs; actions on bids; initiation of projects; reports on the status of construction projects; selection of architect/engineers; confirm report of contract actions by the chancellor or chief executive officers; confirm report of construction project appropriations by the chancellor; approval of license agreements with Biosis, Sociedad Anomina for calcium hydroxide pretreatment of biomass, Highland Interests, Inc. for calcium hydroxide pretreatment of biomass, Trinity Industries, Inc. for the slotted rail terminal, Energy Absorption Systems, Inc. for the slotted rail terminal; emeritus titles; approve minutes; appointments and promotions; terminations; academic tenure; acquisition, lease, exchange, disposition and value of real estate; renewal of natural gas pipeline easement;

designation of land for a Student Leadership Center; reports from system and university administration; pending and threatened litigation; consult with system attorneys; personnel matters; naming of streets and facilities; negotiated contracts for prospective gifts or donations.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 23, 1994, 8:58 a.m.

TRD-9451309

Texas Southern University

Thursday, December 1, 1994, 1:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Finance and Buildings and Grounds

AGENDA:

Meeting to consider: matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, contract awards; and informational items.

Contact: Madison Scott, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: November 28, 1994, 2:09 p.m.

TRD-9451486

Thursday, December 1, 1994, 3:15 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Personnel, Student Services and Academic Affairs Committee

AGENDA:

Meeting to consider: progress reports of academic activities and programs; personnel actions.

Contact: Madison H. Scott, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: November 28, 1994, 2:09 p.m.

TRD-9451485

Texas Department of Transportation

Wednesday-Thursday, November 30-December 1, 1994, 9:00 a.m. and 8:30 a.m., respectively.

200 East Riverside Drive, Room 101

Austin

Delegations: Bell, Dallas and Tarrant counties. Public hearing at 9:30 on aviation projects at various locations. Approve minutes.

Awards/recognitions/resolutions. Contract awards/rejections/defaults/assignments. Programs. Routine minute orders. District/division/special office reports. Transportation planning: authorize revisions to the 1995-1997 Statewide Transportation Improvement Program, Multimodal Transportation; approval of Texas Aeronautical Facilities Plan and various statewide aviation projects; resolution of the commission's position regarding the National Transportation System; and approve selection of a private consultant and authorization of a contract for a comprehensive transit study. Rulemaking: 43 TAC Chapters 1, 2, 11, and 17. Executive session for legal counsel and land acquisition matters. At 1:00 p.m. consider Texas Statewide Transportation Enhancement Program, selection of projects and authorization of funding for the second program call. If meeting lasts beyond a reasonable hour, the Commission will reconvene at 8:30 on December 1, 1994, at the same address and room location.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: November 22, 1994, 1:56 p.m.

TRD-9451241

Texas Turnpike Authority

Thursday, December 1, 1994, 9:30 a.m.

3015 Raleigh Street

Dallas

Addison Airport Toll Tunnel Finance Committee

AGENDA:

Roll call of committee members

Introduction of guests

1. Briefing on proposed Dallas North Tollway Series 1994 Parity Revenue Bonds (Addison Airport Toll Tunnel) by Texas Turnpike Authority financial advisor, bond counsel, general counsel and staff.

2. Executive session—pursuant to Article 6252-17, Vernon's Revised Civil Statutes:

Section 2(r)—briefing by TTA staff, consultants, attorneys, and advisors on legal matters relating to the issuance of the DNT Series 1994 Parity Revenue Bonds (Addison Airport Toll Tunnel).

3. Consider approval of sale, and execution of the Bond Purchase Agreement and other instruments and procedures relative to the issuance of the DNT Series 1994 Parity Revenue Bonds (Addison Airport Toll Tunnel).

4. Briefing by financial advisor and staff on the financial feasibility of the proposed Two Nations Turnpike

5. Briefing by financial advisor and staff on financing consideration related to 190T.

6. Briefing by staff on the prospects for financial feasibility of the Lago Vista Bridge.

Adjournment.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: November 22, 1994, 3:37 p.m.

TRD-9451254

University of Texas at Arlington

Wednesday, December 7, 1994, 12:45 p.m.

501 South Nedderman, Room 323, Life Science Building

Arlington

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of minutes of May 11, 1994 meeting.

2. Report of protocols submitted since May 11, 1994.

3. UTA spokesperson for animal research.

4. Scheduling of orientation session for animal research personnel.

5. Discussion of December 7, 1994 facilities inspection.

6. Institutional endorsement of animal research.

Contact: Verne C. Cox, Box 19528, Arlington, Texas 76019, (817) 273-3164.

Filed: November 22, 1994, 11:05 p.m.

TRD-9451224

The University of Texas Health Center at Tyler

Thursday, December 1, 1994, 11:30 a.m.

Highway 271 at Highway 155, Room 116 Tyler

Animal Research Committee

AGENDA:

Approval of minutes

Chairman report

Veterinarian report

Old business

New business

Adjournment

Contact: Cindy Pessink, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7594.

Filed: November 28, 1994, 8:27 a.m.

TRD-9451414

Texas Workers' Compensation Research Center

Wednesday, December 7, 1994, 10:00 a.m.

Capitol Extension, Room E1.016, 1400 Congress Avenue

Austin

Board of Directors

AGENDA:

A meeting of the Board of Directors of the Texas Workers' Compensation Research Center originally scheduled for December 7, 1994, has been cancelled and rescheduled for Wednesday, January 11, 1995, at 10.00 a.m. at a location to be announced.

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811.

Filed: November 28, 1994, 10:16 a.m.

TRD-9451466

Texas Youth Commission

Tuesday, December 6, 1994, 9:00 a.m.

4900 North Lamar Boulevard, Room 1420-1430

Austin

Board Meeting

AGENDA:

Selection of architect/engineer for design of secure facility

Delegation of authority to award construction contracts for renovations to comply with the American with Disabilities Act

Approval of proposed policy on site selection of TYC facilities

Overview of Sheffield Bootcamp Program

Approval of agency guiding principles on legislative proposals

Review of multidisciplinary plan for juvenile justice reform

Approval of agency legislative initiatives

Contact: Steve Robinson, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5001.

Filed: November 28, 1994, 3:57 p.m.

TRD-9451498

Thursday, December 8, 1994, 8:30 a.m.

4900 North Lamar Boulevard

Austin

Joint Juvenile Justice Committee

AGENDA:

I. Approval of minutes

II. Fiscal year 1995 update on community corrections/TYC commitments

III. NCCD consultation on Risk Assessment Project. Update on Travis County, TYC, TJPC meeting.

IV. Yarbrough group proposal

V. Mentally impaired offenders

VI. Legislative activity update

Contact: Patricia Hayes, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5076.

Filed: November 23, 1994, 1:31 p.m.

TRD-9451391

Regional Meetings

Meetings Filed November 22, 1994

The Angelina and Neches River Authority Board of Directors met at the Crown Colony Country Club, Azalea Room, 900 Crown Colony, Lufkin, November 29, 1994, at 3:30 p.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, Fax (409) 632-2564. TRD-9451250.

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, December 1, 1994, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9451226.

The Austin Travis County MHRM Center Finance and Control Committee met at 1430 Collier Street, Austin, November 29, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9451249.

The East Texas Council of Governments JTPA Board of Directors met at the Roy H. Laird Country Club, 1306 Houston Street, Kilgore, December 1, 1994, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9451295.

The Golden Crescent Regional Planning Commission Executive Committee will meet at the Regional Airport, Building 102, Board Room, Victoria, December 7, 1994,

at 4:00 p.m. Information may be obtained from Rhonda C. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9451256.

The Golden Crescent Regional Planning Commission Board of Directors will meet at the Regional Airport, Building 102, Victoria, December 7, 1994, at 5:00 p.m. Information may be obtained from Rhonda C. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9451255.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, December 14, 1994, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9451293

The Permian Basin Regional Planning Commission Policy Advisory Committee met at 2910 La Force Boulevard, Midland, November 30, 1994, at 8:30 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9451230.

The Texas Association of Regional Councils Board of Directors will meet at the Austin North Hilton and Towers, Hill Country Room, Austin, December 2, 1994, at 9:30 a.m. Information may be obtained from Sheila Jennings or James Ray, 508 West 12th, Austin, Texas 78701, (512) 478-4715. TRD-9451253.

The Trinity River Authority of Texas Resources Development Committee met at 5300 South Collins Street, Arlington, November 29, 1994, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9451252.

The City of Wichita Falls Metropolitan Planning Organization met at 1300 Seventh Street, City Council Conference Room, Memorial Auditorium, Wichita Falls, November 30, 1994, at 8:30 a.m. Information may be obtained from Steve Seese, P.O. Box 1431, Wichita Falls, Texas 76307, (817) 761-7451. TRD-9451257.

The Wise County Appraisal District Appraisal Review Board met at 206 South State Street, Decatur, December 1, 1994, at 9:00 a.m. Information may be obtained from Mickey Hand, 206 South State, Decatur, Texas 76234, (817) 627-3081. TRD-9451294.

Meetings Filed November 23, 1994

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Aqua Office, Bastrop, December 5, 1994, at 7:30 p.m. Information may be obtained from Carol Kidura, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9451407.

The Austin Transportation Study Executive Committee met at 301 West Second Street, Second Floor Conference Room 240, Austin Municipal Annex, Second and Lavaca, Austin, November 30, 1994, at 10:00 a.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767 or 301 West Second Street, Austin, Texas 78701, (512) 499-2275. TRD-9451312.

The Central Appraisal District of Johnson County Board of Directors met at 109 North Main, Suite 201, Room 202, Cleburne, December 1, 1994, at 4:30 p.m. Information may be obtained from Priscilla A. Bunch, 109 North Main, Cleburne, Texas 76031, (817) 558-8100. TRD-9451410.

The Fisher County Appraisal District Fisher CAD Board of Directors will meet at the Fisher County Courthouse, Court Room, Roby, December 8, 1994, at 8:00 a.m. Information may be obtained from Betty Mier, P. O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9451379.

The Hunt County Appraisal District Appraisal Review Board will meet at 4801 King Street, Greenville, December 15, 1994, at 1:30 p.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9451409.

The Johnson County Rural Water Supply Corporation Public Relations Committee met at 2849 Corporation Office, Highway 171 South, Cleburne, November 29, 1994, at 5:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9451393.

The Johnson County Rural Water Supply Corporation (Special Called Meeting) met at 2849 Corporation Office, Highway 171 South, November 29, 1994, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9451392

The Kempner Water Supply Corporation Board of Directors met at Highway 190, Kempner, November 29, 1994, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9451399.

The Lampasas County Appraisal District Appraisal Review Board met at 109 East Fifth Street, Lampasas, November 29, 1994, at 9:00 a.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9451341.

The North Texas Regional Library System Board of Directors will meet at the Keller Public Library, 640 Johnson Road,

Keller, December 15, 1994, at 1:30 p.m. Information may be obtained from Cheryl Smith, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 355-6076. TRD-9451412.

The Sabine River Authority of Texas Board of Directors will meet at the Fredonia Hotel, 200 Fredonia, Nacogdoches, December 2, 1994, at 10:00 a. m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-2192. TRD-9451334.

The Texas Political Subdivisions Joint Self-Insurance Funds Board of Trustees will meet at 5410 LBJ Freeway, Dallas, December 2-3, 1994, at 8:00 a.m. Information may be obtained from James R. Gresham, 14315 Midway Road, Suite 300, Dallas, Texas 75244, (800) 588-0013. TRD-9451398.

The Texas Regional Planning Commissions' Employee Benefit Plan Agency Board of Trustees met in the Mesquite Room, Austin North Hilton, 6000 Middle Fiskville Road, Austin, November 30, 1994, at 2:00 p.m. Information may be obtained from Gary Pitner, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381. TRD-9451322.

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply Corporation, Route 5, Box 50361, Winnsboro, November 28, 1994, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 423-3525. TRD-9451405.

The Trinity River Authority of Texas Utility Services Committee met at 5100 South Collins Street, Arlington, November 30, 1994, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9451402.

The West Central Texas Municipal Water District Board of Directors met at 410 Hickory, Abilene, November 30, 1994, at 9:30 a.m. Information may be obtained from David Bell, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254. TRD-9451406.

The Wood County Appraisal District Appraisal Review Board met at 217 North Main, Quitman, November 28, 1994, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9451358.

◆ ◆ ◆
**Meetings Filed November 28,
1994**

The Education Service Center, Region VII Board of Directors will meet at 2344

Old Longview Road, Henderson, December 8, 1994, at 7:00 p.m. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9451479.

The Ellis County Appraisal District Board of Directors met at 400 Ferris Avenue, Waxahachie, December 1, 1994, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9451413.

The Garza Central Appraisal District Board of Directors will meet at 124 East Main, Post, December 15, 1994, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518, TRD-9451493.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, December 1, 1994, at 5:00 p.m. Information may be obtained from Sherri Schaible, P.O., Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9451497.

The Houston-Galveston Area Council Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor, Room A, Houston, December 9, 1994, at 9:30 a.m. Information may be obtained from Alan C. Clark, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9451478.

The Jasper County Appraisal District JCAD Board of Directors met at 137 North Main, Jasper, December 1, 1994, at 7:00 p.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9451468.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, December 12, 1994, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9451415.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, December 6, 1994, at 9:30 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9451492.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization will meet at 600 West Expressway, US 83, Pharr, December 5, 1994, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9451505.

The Millersview-Doole Water Supply Corporation Board of Directors will meet one block west of FM 765 and FM High-

way 2134, Millersview, December 5, 1994, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9451467.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, January 12, 1994, at 7:00 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9451494.

The Texas Rural Communities Inc. Board of Directors met at 1016 LaPosada Drive, Suite 280, Austin, December 1, 1994, 9:00 a.m. Information may be obtained from Leslie Janca, 1016 LaPosada Drive, Suite 200, Austin, Texas 78752. TRD-9451484.

The Stephens County Rural WSC Regular Monthly Board met at 301 West Elm Street, Breckenridge, December 1, 1994, at 9:00 a.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9451475.

The Political Subdivisions Joint Self-Insurance Funds Board of Trustees will meet at 5410 LBJ Freeway, Dallas, December 2-3, 1994, at 8:00 a. m. Information may be obtained from James R. Gresham, 14135 Midway Road, Suite 300, Dallas, Texas 75244, 1 (800) 588-0013. TRD-9451490.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, December 6, 1994, at 4:00 p.m. Information may be obtained from Tyler Gad, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9451503.

The Texas Water Conservation Association Risk Management Fund Board of Trustees met at San Marcos, Lakeway Resort and Conference Center, Austin, November 30-December 1, 1994, at 8:00 and 1:00 p.m. respectively. Information may be obtained from Leroy Goodson, 221 East Ninth Street, Suite 206, Austin, Texas, 78701, (512) 472-7216. TRD-9451444.

The West Central Texas Council of Governments Private Industry Council will meet at the Administrative Offices WCTCOG, 1025 East North 10th Street, Abilene, December 7, 1994, at 10:00 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9451491.

◆ ◆ ◆
**Meetings Filed November 29,
1994**

The Brazos Valley Development Council Board of Directors will meet at The Brazos Center, Room 108, 3232 Briarcrest, Bryan, December 7, 1994, at 1:30 p.m. Information

may be obtained from Tom Wilkinson, Jr.,
P.O. Drawer 4128, Bryan, Texas
77805-4128, (409) 775-4244, Fax: (409)
775-3466. TRD-9451514.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Egg Penalty Matrix

The Texas Department of Agriculture (TDA) is publishing the following penalty matrix to inform the regulated public. This matrix has been developed for the enforcement of Texas Agriculture Code (the Code), Chapter 132 and the rules adopted pursuant to this chapter. TDA's authority for enforcement of this chapter is found in §12.020 of the Code, whereby TDA may assess and collect administrative penalties against violators of this chapter in an amount not to exceed \$500 per violation. Each day that a violation occurs or continues to occur may be considered a separate violation for purposes of penalty assessment. This penalty matrix is designed to ensure that TDA's administrative enforcement actions are fair, uniform, consistent and appropriate. The penalties provided in the matrix are intended to deter future violations of the Code and to penalize violators. The penalty matrix will be effective 30 days from the date of publication in the *Texas Register* and will be used to calculate penalties for violations which occur after the effective date.

The violations covered by the matrix are broken into categories based upon the specific type of violation or the type of threat posed to the consumer by the violative conduct. For each violation, reference is made to the section in Chapter 132 that establishes the violation. Reference is also made to violations of department regulations adopted under Chapter 132 found at 4 TAC Chapter 15. Each category of violation is then broken down by class based upon the seriousness of the violation. The most serious violations are listed under Class I and the least serious under Class III. Penalties are then established by determining whether the violation is a first violation or a repeat violation. Second and repeat violations are those which follow a previous violation of any type for which an administrative enforcement action was taken. While some violations may be appropriately placed in a number of different categories, each violation has been placed under the category most appropriate for effective enforcement.

Category A covers violations which pose a potential threat to human health. This category carries with it the most severe administrative penalties because it covers the most serious types of violations. It is TDA's highest priority to enforce the portions of this chapter which ensure the health and safety of the consumer. The highest penalties apply to violations which threaten the health of the consumer and are inconsistent with a direct order of TDA that the activity involved not be undertaken. For example, the highest penalty assessed under the matrix is for violation of a stop sale order, where an individual has sold eggs despite having been told by TDA that the eggs cannot be sold.

Category B covers violations that mislead the consumer, and are generally related to labeling. The penalties proposed for violations of this type are to ensure that the public is not misled by representations regarding egg quality, size, or grade.

Category C violations are those which interfere with TDA's ability to protect consumers, either by failing to maintain required records or by refusing to allow TDA access to records. A number of other reporting violations are also included within Category C.

Category D violations include those which constitute a substantial disregard for the law, but which do not directly threaten the health of the consumer. This category includes a number of licensing and reporting violations which are less serious than those in Category C. Finally, Category E violations involve a failure to pay or collect fees provided under the chapter. This category carries the smallest penalties because the violations pose no threat to the consumer.

Penalties calculated pursuant to the matrix may be adjusted upward or downward by an amount not to exceed 15% based on previous compliance and efforts to correct any error. Such adjustments may be made on a case by case basis.

Penalty Matrix.

Category A: Potential Human Health Hazard

I.

132.071 Selling eggs in violation of Stop Sale Order.

132.082 Selling inedible eggs.

II.

132.045 Failure to handle eggs under reasonably sanitary conditions.

132.046 Failure of shipped eggs to be transported under refrigeration sufficient to maintain a case temperature of at least 60 degrees.

III.

132.041 Grading or sizing eggs by a method other than by candling and weighing.

132.044 Failure to remove from retail display on a daily basis cartons containing cracked eggs, leaking eggs or some combination of cracked and leaking eggs. (4 TAC §15.46(d))

Category B: Misleading the Consumer

I.

132.042 Offering for sale eggs which are offered as graded eggs but are not graded by either consumer or wholesale grade and weight classes.

- 132.044 Grade of eggs not stated.
- 132.044 Size of eggs not stated.
- 132.044 Quantity of eggs not stated.
- 132.044 Reference is made to grade or type other than that claimed.

II.

132.044 Removal of eggs from the case or container in which the retailer received them.

132.044 Failure of each breakaway portion of a container to contain full information about the size and grade, quantity of eggs in divided portion, Texas egg license number and address of grader/packer.

132.047 Uncartoned eggs offered for sale in a container that fails to contain all information required under 132.044.

III.

132.084 Advertising eggs by price without indicating the full, correct and unabbreviated designation of size and grade

132.084 Advertising or selling shell eggs below grade "A" by advertising as fresh, yard, selected, hennery, etc., or words having a similar meaning.

Category C: Impeding Departmental Powers

I.

132.005 Denial of access to business during normal business hours to take samples of eggs and containers.

132.006 Failure of out-of-state location shipping eggs to Texas to make records or invoices available for TDA inspection, where size and grade determinations are made out of state.

132.061 Failure to make records available at all reasonable times for inspection by TDA.

132.072 Failure of licensee under probated suspension to limit practice to the areas prescribed by TDA.

132.072 Failure of licensee under probated suspension to comply with continuing education requirements set by TDA

132.072 Failure of licensee under probated suspension to report to TDA as required.

II.

132.044 Texas Egg License number of dealer/wholesaler not displayed legibly on top or either of the two sides of carton near address, city and state of grader/packer.

132.061 Failure of a licensed dealer/wholesaler or processor to keep on file for two years a complete record of all eggs bought or sold, including name of person to whom sold or from whom bought, number of cases in each transaction, and the date of the transaction

132.062 Failure of licensed dealer/wholesaler or processor to deliver a signed invoice with each transaction listing date, quantity, grade and size

III.

132.023 Failure of out-of-state license applicant to file with TDA a designation of resident agent for service of process.

132.044 Failure to legibly state on carton the address of Texas licensed facility where eggs were graded, labeled and/or packed.

Category D: Disregarding the Law

I.

132.021 Buying or selling eggs in Texas without first obtaining a license.

132.021 Failure of a licensed dealer/wholesaler, processor or broker to submit a monthly egg reporting form not later than the tenth day of the following month.

132.021 Failure of a licensed dealer/wholesaler to accurately report egg business during any month.

132.022 Failure to apply for licensing under the appropriate category.

132.022 Failure of dealer/wholesaler to obtain a separate license for each separate facility from which eggs are graded and/or stored. (4 TAC §15.43).

132.022 Failure of processor to obtain a separate license for each separate facility from which eggs are processed. (4 TAC §15.43).

132.024 Buying or selling eggs after August 31 of any license year without renewing license.

II.

132.044 Failure of labeling information to be placed in a legible fashion on the top panel of carton in a space free of any competing printed matter.

132.044 Failure of printed matter to contrast sharply with the background of the space imprinted.

132.046 Failure of shipped eggs to be at least grade "A".

III.

132.022 Failure of retailers to obtain a separate license for each outlet from which eggs are sold. (4 TAC §15.43)

132.041 Grading and sizing at some place other than licensee's place of business in Texas or designated location out of state.

132.041 Grading or sizing of eggs by someone unlicensed under this chapter.

132.044 Failure to label eggs as ungraded where appropriate, followed by producer's name, only when packed by producer and sold directly to consumer or through a retailer whose total egg sales do not exceed four cases per week.

132.044 Failure of a producer exempt under 132.002 to label stock cartons with "Produced by" followed by producer's name and address where eggs are sold by producer directly to consumer or through a retailer whose total egg sales do not exceed four cases per week.

132.044 Failure to provide packer's license number on label.

132.044 Failure of label to contain required information in legible type or print on either or both ends.

Category E: Failing to Pay or Collect Fees

I.

132.006 Failure of out-of-state licensee to reimburse TDA for the actual and necessary expenses incurred in inspections authorized under this section.

132.021 Failure to submit the correct fee with the monthly reporting form where due.

II.

132.022 Failure of dealer/wholesaler to pay appropriate license fee according to volume of eggs handled at each separate facility. (4 TAC §15.43)

132.022 Failure of processor to pay appropriate license fee according to volume of eggs handled at each separate facility. (4 TAC §15.43)

132.025 Failure of applicant to pay initial license fee prior to issuance of license.

132.025 Failure of license renewal applicant to pay license renewal fee prior to August 31 of previous license year.

132.025 Failure to pay late fee charged for late payment of renewal fee. (Code §12.024)

III.

132.043 A licensed processor fails to pay fee on first use or change in form of eggs processed. (4 TAC §15.47(a)(6))

132.043 A licensee who first establishes grade, size and classification of egg fails to collect fee on first sale of eggs.

Texas Department of Agriculture

CATEGORY	FIRST VIOLATION			SECOND VIOLATION			SUBSEQUENT VIOLATIONS		
	CLASS I	CLASS II	CLASS III	CLASS I	CLASS II	CLASS III	CLASS I	CLASS II	CLASS III
A.	\$200 per violation, stop sale	\$75 per violation, stop sale	NNC, stop sale	\$350 per violation, stop sale	\$150 per violation, stop sale	\$75 per violation, stop sale	\$500 per violation, stop sale, license suspension/revocation	\$300 per violation, stop sale	\$150 per violation, stop sale
B.	\$100 per violation, stop sale	\$50 per violation, stop sale	NNC, stop sale	\$200 per violation, stop sale	\$100 per violation, stop sale	\$50 per violation, stop sale	\$400 per violation, stop sale	\$200 per violation, stop sale	\$100 per violation, stop sale
C.	\$75 per violation	\$50 per violation, stop sale	NNC, stop sale	\$150 per violation	\$75 per violation, stop sale	\$50 per violation, stop sale	\$300 per violation	\$150 per violation, stop sale	\$75 per violation, stop sale
D.	NNC, stop sale	NNC, stop sale	Advisory Letter, stop sale	\$100 per violation, stop sale	\$50 per violation, stop sale	NNC, stop sale	\$200 per violation, stop sale	\$75 per violation, stop sale	\$50 per violation, stop sale
E.	NNC	Advisory Letter	Advisory Letter	\$100 per violation per month	NNC	NNC	\$200 per violation per month	\$50 per violation per month	\$50 per violation per month

Issued in Austin, Texas, on November 23, 1994.

TRD-9451385 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: November 23, 1994

◆ ◆ ◆
**Office of Consumer Credit
Commissioner
Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, and 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04 and 1.05).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	11/28/94-12/04/94	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	12/01/94-12/31/94	10.00%	10.00%

⁽¹⁾Credit for personal, family or household use. ⁽²⁾Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451358 Leslie L. Pettijohn
Acting Commissioner

Filed: November 23, 1994

◆ ◆ ◆
**Texas Environmental Awareness
Network
Notice of Monthly Meeting**

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, December 14, 1994, at 9:00 a.m. at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744; by phone at (512) 389-4360; or by fax at (512) 389-4394.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451357 John Williams
Secretary
Texas Environmental Awareness Network

Filed: November 23, 1994

◆ ◆ ◆
**Texas Department of Health
Emergency Cease and Desist Order**

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Jerry R. Ellis, D.D.S. (registrant-

R14503) of Midlothian to cease and desist using the Orix AET dental x-ray unit (Model Number 288010; Serial Number 20405N8418B) to perform dental intraoral x-ray procedures until all health-related violations found during a recent inspection of the facility are corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 21, 1994.

TRD-9451200 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: November 21, 1994

◆ ◆ ◆
**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.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Austin	Diagnostic Network of America	L04806	Austin	0	10/10/94
Dallas	BetaGene, Inc.	L04801	Dallas	0	09/30/94
San Antonio	Heart and Vascular Institute of Texas	L04799	San Antonio	0	10/12/94
Wichita Falls	North Texas Isotopes	L04810	Wichita Falls	0	10/07/94

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Austin	St. David's Community Hospital	L00740	Austin	57	09/21/94
Baytown	Baycoast Medical Center	L02462	Baytown	16	09/27/94
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	21	10/11/94
Channelview	Lyondell Petrochemical Company	L00064	Channelview	31	10/04/94
Corpus Christi	Memorial Medical Center	L00265	Corpus Christi	54	09/20/94
Dallas	Maxum Diagnostic Center	L03125	Dallas	30	10/04/94
Dallas	Texas Instruments, Inc.	L00946	Dallas	66	10/04/94
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	29	09/29/94
Deer Park	Rollins Environmental Services (TX), Inc.	L02870	Deer Park	13	10/11/94
Denison	The Pillsbury Company	L03727	Denison	7	10/03/94
Denton	Denton Regional Medical Center	L02764	Denton	27	10/11/94
Duncanville	The Center	L03717	Duncanville	11	10/05/94
El Paso	Columbia Diagnostic Center	L03395	El Paso	22	10/11/94
Fort Worth	Harris Methodist Hospital Southwest	L04146	Fort Worth	6	09/21/94
Houston	The Institute for Rehabilitation and Research	L04000	Houston	12	09/21/94
Houston	Ben Taub General Hospital	L01303	Houston	39	10/11/94
Kilgore	Roy H. Laird Memorial Hospital	L03496	Kilgore	8	09/20/94
Lubbock	Saint Mary of the Plains Hospital and Rehab. Center	L01547	Lubbock	39	10/05/94
Mauriceville	S & T International, Inc.	L03652	Mauriceville	24	10/03/94
Paris	St. Joseph's Hospital and Health Center	L03199	Paris	11	10/03/94
Pasadena	Microtec Services, Inc.	L04656	Pasadena	1	10/06/94
Pasadena	Albemarle Corporation	L04072	Pasadena	9	10/10/94
Port Arthur	Star Enterprise - Port Arthur Plant	L00067	Port Arthur	28	10/11/94
Port Neches	Huntsman Corporation	L04067	Port Neches	8	10/03/94

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Tahoka	Lynn County Hospital District	L03383	Tahoka	9	09/15/94
Throughout Texas	Independent Testing Laboratories	L03795	Houston	24	10/03/94
Throughout Texas	NSSI/Sources and Services, Inc.	L02991	Houston	16	10/03/94
Throughout Texas	Magnum Wireline, Inc.	L03184	Giddings	7	09/27/94
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	38	09/27/94
Throughout Texas	Duininck Brothers and Gilchrist	L03987	Grapevine	5	09/29/94
Throughout Texas	SOLOCO, Inc.	L04708	Metairie, LA	1	06/10/94
Throughout Texas	SOLOCO, Inc.	L04708	Metairie, LA	2	09/15/94
Throughout Texas	SOLOCO, Inc.	L04708	Metairie, LA	3	09/22/94
Throughout Texas	Longview Inspection	L01774	Houston	85	09/27/94
Throughout Texas	Team Consultants, Inc.	L04012	Dallas	5	10/06/94
Throughout Texas	Maxim Engineers, Inc.	L02653	Dallas	21	10/07/94
Throughout Texas	Desert Industrial X-Ray	L04590	Odessa	5	10/06/94
Throughout Texas	ProTechnics II, Inc.	L03835	Houston	23	10/12/94
Throughout Texas	Rodriguez Engineering Consulting	L04700	Austin	1	09/23/94
Throughout Texas	San Antonio River Authority	L02706	San Antonio	6	09/13/94

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Abilene	Abilene Regional Medical Center	L02434	Abilene	34	10/06/94
Dallas	Donald L. Levene, M.D., FACC	L03817	Dallas	10	09/15/94
El Paso	Southwestern General Hospital	L02338	El Paso	18	10/11/94
Fort Worth	Fort Worth Police Department	L04374	Fort Worth	3	09/27/94
Gonzales	Gonzales County Hospital District	L03473	Gonzales	4	10/11/94
Houston	Indo-Medix, Inc.	L03714	Friendwood	5	10/07/94
La Grange	Fayette Memorial Hospital	L03572	La Grange	7	10/03/94
Throughout Texas	Rogers Engineering Services	L03733	Brenham	11	10/10/94

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Dallas	T. K. Matt and Associate	L04594	Dallas	2	09/23/94
Fort Worth	Williams Instruments, Inc.	L01472	Fort Worth	6	10/12/94
Groesbeck	Limestone Medical Center	L03426	Groesbeck	5	10/07/94
Houston	Roche Biomedical Laboratories, Inc.	L04294	Houston	2	10/11/94
Jourdanton	Tri-City Community Hospital	L03510	Jourdanton	4	10/12/94
Throughout Texas	Chemical Waste Management, Inc.	L02907	Port Arthur	13	09/27/94
Throughout Texas	Diversified Remediation, Inc.	L04672	Houston	1	09/13/94

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.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
-----	----	-----	----	-----	-----
Abilene	Abilene Cardiology Consultants, P.A.	L04315	Abilene	9	11/07/94
Alice	Alice Physicians and Surgeons Hospital	L02390	Alice	15	11/09/94
Amarillo	Northwest Texas Hospital	L02054	Amarillo	41	11/04/94
Arlington	Arlington Memorial Hospital	L02217	Arlington	38	11/14/94
Austin	Brackanridge Hospital	L00268	Austin	53	11/03/94
Austin	Texas Department of Public Safety	L00902	Austin	13	10/28/94
Azle	Harris Methodist Northwest	L03230	Azle	15	10/31/94
Cheek	Metalforge, Inc.	L02261	Beaumont	22	10/28/94
College Station	Galen Hospitals of Texas, Inc.	L02559	College Station	20	11/04/94
Columbus	Columbus Eye Associates	L00915	Columbus	13	11/02/94
Corpus Christi	Bay Area Medical Center	L04723	Corpus Christi	1	11/02/94
Corpus Christi	Memorial Medical Center	L00265	Corpus Christi	55	11/14/94
Deer Park	Quantum Chemical Corporation	L00204	Deer Park	40	11/07/94
El Paso	Columbia Medical Center - East	L02551	El Paso	23	11/08/94
Marlinden	Valley Diagnostic Medical and Surgical Clinic, P.A.	L02933	Marlinden	19	11/14/94
Houston	St. Luke's Episcopal Hospital & Texas Heart Institute	L00581	Houston	52	11/08/94
Houston	River Oaks Imaging and Diagnostic	L04342	Houston	12	11/10/94
Humble	Mohan Jacob, M.D., P.A.	L04442	Humble	2	11/02/94
La Porte	E.I. du Pont de Nemours & Company	L00314	La Porte	63	10/31/94
Laredo	TransTexas Gas Corporation	L03956	Laredo	12	10/31/94
Lolita	ANTOPP Corporation	L04720	Lolita	2	10/28/94
Midland	Physicians & Surgeons Hospital	L03386	Midland	18	10/31/94
Pasadena	Pasadena Bayshore Medical Center	L00153	Pasadena	46	11/14/94
San Antonio	South Texas Regional Blood Bank	L04381	San Antonio	3	11/02/94
San Antonio	Cardiology Clinic of San Antonio, P.A.	L04489	San Antonio	7	11/04/94
San Antonio	MedCenter Imaging	L04098	San Antonio	14	11/08/94
Sugarland	Fort Bend Imaging, Inc.	L04459	Sugarland	3	11/02/94
Throughout Texas	International Radiography & Inspection Services	L04769	Wichita Falls	2	10/27/94
Throughout Texas	Reinhart and Associates, Inc.	L03189	Austin	25	10/27/94
Throughout Texas	Eagle X-Ray	L03246	Mont Belvieu	47	10/28/94
Throughout Texas	H & G Inspection Company, Inc.	L02181	Houston	86	10/31/94
Throughout Texas	Industrial NDT Company, Inc.	L04570	Deer Park	11	10/31/94
Throughout Texas	SGS Industrial Services	L04460	Deer Park	16	10/31/94
Throughout Texas	Shell Development Company	L02116	Houston	28	10/31/94

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 November 21, 1994.

TRD-9451365 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: November 23, 1994

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.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	40	10/31/94
Throughout Texas	X-Ray Equipment Company	L01485	Mansfield	24	11/04/94
Throughout Texas	SITECH, Inc.	L04073	Port Neches	29	11/08/94
Throughout Texas	Mobil Oil Corporation	L00603	Beaumont	54	11/07/94
Tyler	Mother Frances Hospital	L01670	Tyler	52	11/04/94
Tyler	The Trinity Clinic, P.A.	L04517	Tyler	3	11/08/94
Tyler	East Texas Medical Center	L00977	Tyler	59	11/14/94
Victoria	Citizens Medical Center	L00283	Victoria	51	11/14/94
Wichita Falls	North Texas Isotopes	L04810	Wichita Falls	1	11/02/94

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Throughout Texas	DNTI, Inc.	L04337	Corpus Christi	4	10/27/94
Throughout Texas	Stop Rate Testers, Inc.	L03700	Odessa	5	11/09/94
Wharton	Gulf Coast Medical Center	L01388	Wharton	28	10/28/94

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Throughout Texas	NBAR, Inc.	L04329	Granbury	2	10/27/94
Throughout Texas	Soil Analytical Services, Inc.	L04242	College Station	3	10/28/94

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Abilene	Abilene Cardiology Consultants, P.A.	L04315	Abilene	0	11/01/94
Dallas	North Texas Heart Center, P.A.	L04608	Dallas	0	11/03/94
Lubbock	Cardiology Associates of Lubbock	L04468	Lubbock	0	11/02/94

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 November 21, 1994.

TRD-9451368

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

Filed: November 23, 1994

◆ ◆ ◆
**Notice of Intent to Revoke Certificates
of Registration**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: P M Circuits, Irving, R19787; Surgi-Care Center of Midland, Inc., Midland, Z00624; The Heart Institute For C.A.R.E., Amarillo, R04712; New Braunfels Chiropractic Associates, New Braunfels, R11229; Palo Duro Animal Hospital, Inc., Canyon, R11989; Whitesboro Veterinary Clinic, Whitesboro, R12417; Godley Veterinary Clinic, Godley, R20456; Manuel Fred Bubba Hirsch, D.D.S., Trinity, R03247; Tom F. Cockerell, Jr., D.D.S., Fort Worth, R08858; Paul G. Wilke, D.D.S., San Antonio, R10034; Frederick E. Olden, D.D.S., M.S.D., Inc., Dallas, R10197; C. Gary Simmons, D.D.S., Spring, R20459; Carrizo Springs Dental Clinic, Carrizo Springs, R11408.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 21, 1994.

TRD-9451202

Susan K. Steeg
General Counsel
Texas Department of Health

Filed: November 21, 1994

**Notice of Intent to Revoke Radioactive
Material Licenses**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Fort Bend Hospital, Inc., Missouri City, L03457; 5-Star Toxicological Analysis & Consulting., Dallas, L04199.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 21, 1994.

TRD-9451201

Susan K. Steeg
General Counsel
Texas Department of Health

Filed: November 21, 1994

◆ ◆ ◆
Notice of Rescission of a Complaint

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following complaint: Intent to Revoke a Certificate of Registration, issued October 26, 1994, to Spring Oaks Radiology, 8300 Waterbury, Suite 442, Houston, Texas, 77055, holder of Certificate of Registration Number R18960.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 21, 1994.

TRD-9451189

Susan K. Steeg
General Counsel
Texas Department of Health

Filed: November 21, 1994

Public Hearing on LoneSTAR Select Contracting Program

The Texas Department of Health (department) will be conducting a public hearing regarding proposed amendments to the selective contracting program rules (25 Texas Administrative Code, Chapter 29, §29.2801) which were published in the November 22, 1994, issue of the *Texas Register* (19 TexReg 9269). The hearing will be held at 1:30 p.m., on Tuesday, December 13, 1994, at the Texas Department of Health, 11044 Research Boulevard, Building D, Room 404, Austin, Texas 78759.

Written comments will be accepted until December 22, 1994. Written comments and questions regarding the hearing should be addressed to Larry Fisher, Program Specialist, LoneSTAR Select Contracting Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 794-6894.

Issued in Austin, Texas, on November 23, 1994.

TRD-8451452 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: November 28, 1994

Texas Department of Housing and Community Affairs

Notice of Public Hearing

State of Texas' Comprehensive Housing Affordability Strategy (CHAS) 1995 Annual Plan and 1994 Performance Report.

Notice is hereby given of a public hearing to be held at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, on Tuesday, December 6, 1994, 3:00-4:30 p.m. This is a public hearing regarding the State of Texas 1995 Five Year Plan (the Plan) and the 1994 Performance Report (the Report) of the Comprehensive Housing Affordability Strategy (CHAS) prepared by the Texas Department of Housing and Community Affairs in compliance with instructions from the U.S. Department of Housing and Urban Development (HUD). The five-year plan outlines the State's housing needs, priorities for allocating available funds for housing-related activities, the residents to be assisted, and an investment plan which identifies the resources available to address those priorities. The Performance Report contrasts what was planned for fiscal year 1994 and what was actually accomplished.

Please note that the CHAS' 1995 Annual Plan will be essentially unchanged from the 1994 Annual Plan as we are in the second of a five year cycle. The priorities and policies remain the same.

The following are the State's priorities, a sampling of the categories of residents to be assisted, and the resources which will be available to address these priorities: Priority 1: Texans with household incomes from 0-80 percent of Median Family Income (MFI); Priority 2: Texans who pay over 30 percent of their income on mortgage or rent plus utilities; Priority 3: Texans who live in substandard housing; Priority 4: Texans living in the Colonias within 100 miles of the Texas/Mexico border; Priority 5: Texans who have special needs; Priority 6: Texans with children under six exposed to Lead Based Paint (LBP) poisoning; Priority

7: Texans living in poverty with children under ten years of age; Priority 8: Texans who are homeless; Priority 9: Texas of minority age who are runaways; Priority 10: Texas women with children who have been battered; Priority 11: Texans who are frail elderly; and Priority 12: Texans who are elderly and homeless.

Categories of Persons/Entities to be assisted: Existing homeowners, first-time homebuyers, renters, elderly, homeless, persons with special needs, non-profit organizations and units of local government.

Resources: TDHCA Administered: HOME; HOPE I, II and III; Community Development Block Grant (CDBG), Low Income Housing Tax Credits (LIHTC), Single Family Housing Bonds, Multi-family housing bonds, Section 8 Rental Assistance, Energy Assistance Programs, Emergency Shelter Grants, Housing Trust Fund and Emergency Nutrition/Temporary Emergency Relief Program (ENTERP). Administered by other agencies: Farmers Home Administration (FmHA), Low Income Housing Preservation Program, Aid to Families with Dependent Children (AFDC), Section 612 Community Mental Health Services, Home Ownership for Persons with Aids (HOPWA), Section 811 Supportive Housing for the Disabled, Section 202 Supportive Housing for the Elderly, Shelter Plus Care, Federal Emergency Management Administration Emergency Food and Shelter Program (FEEMA), Federal Home Loan Bank Affordable Housing (FHLB) Program and any other existing and/or future resources which address the housing needs of extremely low, very low, low, and moderate income persons as well as persons with special needs in the State of Texas.

Written Comment Period.

Written comments on the CHAS and the Performance Report may be submitted to the address submitted below no later than January 6, 1995 at 3:00 p.m. In addition, copies of the 1995 Annual Plan and the 1994 Performance Report will be available for public review beginning with the December 6, 1994 public hearing referred to above by contacting: David Armstrong, Housing Resource Center Manager, Texas Department of Housing and Community Affairs, P.O. Box 13942, Austin, Texas 78711-3941, (512) 475-3976.

Issued in Austin, Texas, on November 23, 1994.

TRD-8451478 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: November 28, 1994

Texas Department of Human Services Request for Information

The Texas Department of Human Services (TDHS) requests assistance from the Vendor community in an attempt to determine what business opportunities are available for outsourcing some standard operating services including printing, inserting and general mail services currently performed by the Production Services Division of the Texas Department of Human Services (TDHS).

This RFI requests information which will permit the agency to obtain financial information which will aid TDHS in determining best value to the state for either purchasing of these services from a vendor, or to continue

internal provision of these services. The availability of the services, demonstrated ability of vendors to meet our customer commitments regarding quality and timeliness of the service, proposed method of transitioning and assuming responsibility for delivery of the service, cost for the service to be provided, and funding available to obtain the service, will be factored into the final decision by the agency.

The scope of this RFI is limited to the following activity: To acquire information on relative costs and benefits to the State of Texas by outsourcing the purchase of services for printing, insertion, and mailing of computer generated products in comparison to continued performance of these services internally. This will be realized by Offerors' responses to the RFI itself and the TDHS evaluation of same.

The information obtained in response to this RFI, including options or suggestions received, may be incorporated in subsequent procurement documents and actions, if deemed appropriate by TDHS.

Offerors may make clearly identified recommended changes, or alternatives, which can better meet the specifications of the original RFI. TDHS will regard such changes as being suggestions and may not necessarily agree to modify our original specifications.

TDHS will make available one copy each of this RFI on 3.5" diskette in WordPerfect 5.1 and a hard copy for their convenience in preparing a response. The specifications and terms and conditions of the original RFI are not to be changed. These materials will be available for distribution to interested vendors effective December 1, 1994.

The department contact person coordinating the release of these RFI materials will be: Bobbie Ann Fisher, Manager, MIS Procurement Development Unit, Procurement and Contracts Management Section, Texas Department of Human Services, 701 West 51st Street, P.O. Box 149030, Mail Code C-747, Austin, Texas 78714-9030.

Interested vendors may submit requests in writing to the address referenced above or by contacting Miss Fisher at (512) 450-4102.

TDHS requests that vendors who wish to reply to this Request for Information (RFI) return all applicable materials to the attention of the Department Contact Person no later than 4:00 p.m. CST, Monday, January 2, 1995.

Issued in Austin, Texas on November 22, 1994.

TRD-9451223 Nancy Murphy
Section Manager for Media and Policy
Services
Texas Department of Human Services

Filed: November 22, 1994

Texas Department of Insurance Correction of Error

The Texas Department of Insurance submitted Notice of Hearings, which were published in the November 22, 1994, issue of the *Texas Register* (19 TexReg 9313 and 9314).

Due to errors by the agency the following changes are being requested.

On page 9313 the Notice of Hearing was published with the wrong date and time, it should read "January 3, 1995 at 9:00 a.m."

On page 9314 the Notice of Hearing was also published with the wrong date and time, it should read "January 3, 1995, 9:00 a.m.. The agency also inadvertently used the wrong language, "The Department will consider the adoption of repeal...", it should read "The Department will consider the adoption of new..."

On page 9272 the Texas Department of Insurance submitted a proposed repeal to §§25.1-25.12. In the preamble, first paragraph, 29th line instead of "January 3, 1994" the date should read "January 3, 1995".

On page 9276 the Texas Department of Insurance submitted a proposed new §§25.1-25.13. In the preamble, eighth paragraph, first line the Department inadvertently published "The Department will consider the adoption of repeal..." it should read "The Department will consider new..." In the same paragraph, fifth line the date should read "January 3, 1995".

Notices of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2131, on January 3, 1995, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the repeal of 28 TAC §§25.1-25.12, 25.101-25.205, 25.301-25.307, 25.401-25.404, 25.501-25.509, 25.601-25.606, 25.701-25.718, 25.801-25.806, concerning the licensing, regulation, and examination of insurance premium finance companies.

The repeal sections were published in the November 22, 1994, issue of the *Texas Register* (19 TexReg 9272). The purpose of the hearing is to afford all interested persons an opportunity to appear and testify orally or in writing either in support of or in opposition of the repeal sections.

The statutory authority for the repeal sections is cited in the November 22, 1994 issue of the *Texas Register* (19 TexReg 9272).

Issued in Austin, Texas, on November 22, 1994.

TRD-9451265 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: November 22, 1994

The Commissioner of Insurance will hold a public hearing under Docket Number 2132, on January 3, 1995, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider adoption of new 28 TAC §§25.1-25.13, 25.21-25.33, 25.41-25.65, 25.71-25.76, 25.81-25.90 concerning the licensing, regulation, and examination of insurance premium finance companies.

The proposed new sections were published in the November 22, 1994, issue of the *Texas Register* (19 TexReg 9276). The purpose of the hearing is to afford all interested persons an opportunity to appear and testify orally or in writing either in support of or in opposition to the new section.

The statutory authority for the new sections is cited in the November 22, 1994 issue of the *Texas Register* (19 TexReg 9276).

Issued in Austin, Texas on November 22, 1994.

TRD-9451284 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: November 22, 1994

Texas Commission on Jail Standards Consultant Contract Award

Pursuant to the provisions of Texas Civil Statutes, Article 6252-11C, the Texas Commission on Jail Standards furnishes this notice of consultant contract award.

The request for proposals was published in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8494). The consultant will perform internal auditing services meeting the requirements of the Texas Internal Auditing Act.

The consultant contract has been awarded to Rene E. Gonzalez, Garza/Gonzalez & Associates, 212 Stumberg, Suite 208, San Antonio, Texas 78204. The total value of the contract shall not exceed \$13,900. The contract period is December 1, 1994 through August 31, 1995. All internal audit reports are due to the Commission by August 31, 1995.

Issued in Austin, Texas, on November 22, 1994.

TRD-9451231 Rhonda C. Long
Planner
Texas Commission on Jail Standards

Filed: November 22, 1994

Texas Natural Resource Conservation Commission Notices of Award

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of a consulting services contract award for a characterization of the current status and historical trends in freshwater inflows.

The notice for request for proposals was published in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4779).

Description of Services. The contractor will compile information regarding the results of all previous efforts to evaluate, analyze, and project freshwater inflows, uses and needs. The following major products will be produced: Quarterly Reports; Final Report, August 31, 1995.

Effective Date and Value of Contract. The contract will be effective from November 21, 1994, through August 31, 1995. The total cost of the contract is \$40,000.

Name of the Contractor. The contract has been awarded to the U.S. Geological Survey, Texas District, 8011 Cameron Road, Austin, Texas 78754.

Persons who have questions concerning this award may contact Richard Volk, Corpus Christi Bay National Estuary Program, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451377 Mark Jordon
Director, Water Policy Division
Texas Natural Resource Conservation
Commission

Filed: November 23, 1994

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of a consulting services contract award for an Inventory and Analysis of Bay Management Structure.

The notice for request for proposals was published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4451).

Description of Services. The contractor will provide an inventory and analysis of the existing regulatory and institutional framework regarding resource management within the Corpus Christi Bay National Estuary Program study area. The following major products will be produced: Quarterly Reports; Final Report, August 31, 1995.

Effective Date and Value of Contract. The contract will be effective from November 22, 1994, until August 31, 1995. The total cost of the contract is \$50,000.

Name of the Contractor. The contract has been awarded to Apogee Research, Inc., 4350 East West Highway, Suite 600, Bethesda, Maryland 20814.

Persons who have questions concerning this award may contact Richard Volk, Corpus Christi Bay National Estuary Program, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451376 Mark Jordon
Director, Water Policy Division
Texas Natural Resource Conservation
Commission

Filed: November 23, 1994

Public Notices

The Texas Natural Resource Conservation Commission published for public comment proposed new Chapter 281, concerning applications processing, in the November 18, 1994, issue of the *Texas Register*. A number of errors were inadvertently published, all but one of which are addressed in a Notice of Correction of Error published elsewhere in this issue of the *Texas Register*.

The error unaddressed in the Notice of Correction of Error is the accidental inclusion in the rules package of proposed new §281.43, concerning Referral to the Commission, as part of Subchapter C, concerning Air Quality Permits. Although the TNRCC has filed a withdrawal of the proposed rule (also in this issue of the *Texas Register*), this public notice is published in the interests of avoiding possible confusion regarding the withdrawn section.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451384 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: November 23, 1994

The Texas Natural Resource Conservation Commission hereby provides official notification of the publication of a new form for applications for reimbursement from the Petroleum Storage Tank Remediation Fund. The new application form (E-Z Form) is available to interested persons from the PST Reimbursement Section at the TNRCC offices located at 12118 North H-35, Park 35, Building E, Austin, Texas 78753. The E-Z Form is also available at the TNRCC Regional Field Offices.

The effective date of the E-Z Form is November 1, 1994. The current application for reimbursement, originally published on December 1, 1992 (revised December 1, 1993), will continue to be accepted.

For further information or inquiries concerning this matter, please call Dan Neal at (512) 239-2001.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451383 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: November 23, 1994

◆ ◆ ◆

Public Utility Commission of Texas

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 Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for General Services Administration, Austin, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 53-Station Addition to the Existing PLEXAR-Custom Service for General Services Administration-Austin pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13656.

The Application. Southwestern Bell Telephone Company is requesting approval of a 53-station addition to the existing Plexar-Custom service for General Services Administration-Austin. The geographic service market for this specific service is the Austin, 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 Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 22, 1994.

TRD-9451245 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 22, 1994

◆ ◆ ◆

Public Notice of Workshop

The Public Utility Commission of Texas will conduct a public workshop concerning Project Number 12202-Scope of Competition Report on Regulated Telecommunications Markets at 1:30 p.m., Monday, December 12, 1994, in the Commissioners' Hearing Room at the Commission Offices at 7800 Shoal Creek Boulevard, Austin, Texas 78757. The purpose of the workshop is to receive public comment on a draft of the Commission's Scope of Competition Report, which is due to the Legislature before January 15, 1995. A draft of the report will be available at the Commission's Telephone Division beginning Wednesday, December 7, 1994. For additional information please contact Roger E. Pena, Assistant General Counsel, (512) 458-0287; Candice Clark, Senior Policy Analyst, (512) 458-0332; or Todd Baker, Economic Analyst, (512) 458-0149.

Issued in Austin, Texas, on November 23, 1994.

TRD-9451403 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 23, 1994

◆ ◆ ◆

Requests Comments on IntraLATA Dialing Parity

The Public Utility Commission of Texas has established Project Number 13219 regarding intraLATA dialing parity. The Commission seeks comments and information from interested parties in response to the following questions. The Commission requests that parties respond to the questions in the order in which they are presented below and encourages parties to include an executive summary of their comments.

1. In the past, the Commission has declined to require intraLATA presubscription. Have economic, regulatory, legal, or technical changes suggested the need for revisions to the Commission's policies with respect to intraLATA competition?

2. What benefits will be realized from the implementation of intraLATA equal access by the Two-PIC or Modified Two-PIC method? (The Two-PIC method permits a customer to select one carrier for interLATA service and another carrier for intraLATA service; the Modified Two-PIC method permits a customer to select the LEC or its interLATA PIC as its intraLATA PIC. A description of these methods is available from the PUC Telephone Division.) To whom will such benefits accrue, and how can they be measured?

3. Should the PUC require intraLATA equal access in exchanges that do not offer interLATA equal access? Should the PUC require intraLATA equal access where there has been no bona fide request for the service?

4. LECs: How much revenue does your company receive annually from providing 1+ intraLATA toll service in Texas? What is your company's average intraLATA revenue per minute (ARPM) for this service? What is your annual revenue from operator-assisted intraLATA calls?

5. EXCs: How much revenue does your company receive annually from providing 10XXX intraLATA toll service in Texas? What is your company's ARPM for this service? What is your annual revenue from operator-assisted intraLATA calls?

6. Assuming that intraLATA presubscription is permitted without other regulatory changes, what percentage of intraLATA toll revenue do you estimate LECs will lose? What percentage of the lost intraLATA toll revenues will be offset by an increase in access revenue? How is each of these estimates calculated?

7. What support mechanisms, if any, should the Commission employ to replace revenues lost by LECs? What will be the effect on the pooling and settlement procedures currently in place?

8. What percentage of all intraLATA toll traffic is currently carried by IXCs? Indicate which serving arrangements you are considering in your answer (special access, 0+, 10XXX dialing, etc.).

9. Should the implementation schedule for intraLATA equal access take into account the number of access lines served by a LEC or the ability of some LECs to compete in the interLATA market?

10. Please provide a schedule (by exchange if possible) of the earliest reasonable implementation of Modified Two-PIC intraLATA equal access. Identify the switch types (hardware and software) capable of supporting Modified Two-PIC intraLATA equal access. (A list of switch types employed by Texas LECs is available from the PUC Telephone Division.) Are there any exchanges with interLATA equal access where provision of Modified Two-PIC intraLATA equal access would require a switch replacement? What are the estimated incremental hardware, software, network reconfiguration and system change costs of providing Modified Two-PIC equal access? Please separately identify administrative, capital, recurring and non-recurring costs.

11. Please provide a schedule (by exchange if possible) of the earliest reasonable implementation of Two-PIC intraLATA equal access. Please identify the switch types (hardware and software) capable of supporting Two-PIC intraLATA equal access. Are there any exchanges with interLATA equal access where provision of Two-PIC intraLATA equal access would require a switch replacement? What are the estimated incremental hardware, software, network reconfiguration and system change costs of providing Two-PIC equal access? Please separately identify administrative, capital, recurring and non-recurring costs.

12. Should more than one method of providing intraLATA equal access be allowed?

13. Should intraLATA equal access extend to pay phones?

14. What tariff filings are required to implement intraLATA equal access? What should such filings contain?

15. Should a "good cause" waiver be incorporated into a rule requiring implementation of intraLATA equal access? What conditions should be required to substantiate a waiver, and what should be its duration?

16. What incentives should be included in a rule to encourage implementation of intraLATA equal access? Should imposition of originating non-premium access rates be required when intraLATA equal access is not available?

17. Could service quality problems such as post dial delay or incompleting calls result from intraLATA presubscription? Please explain the potential problems and suggested remedies.

18. What method of cost recovery should be used to implement intraLATA equal access, and from whom should these costs be recovered? Should the long-run incremental cost methodology adopted in Substantive Rule §23.91 be used to identify relevant costs? Should LECs be required to provide cost studies to substantiate implementation costs? From a procedural standpoint, how should these costs be analyzed and reviewed?

19. Is re-balloting appropriate for implementation of intraLATA equal access? If so, how should it be undertaken and what are the associated costs?

20. What calls are subject to intraLATA equal access? Should 0- intraLATA calls be routed to the presubscribed carrier, as are 00- interLATA calls today? If not, describe and explain how these calls should be routed. Would intraLATA presubscription affect any forms of EAS traffic, such as measured or optional EAS? If yes, please explain.

21. Should LECs be allowed pricing flexibility for intraLATA toll after implementation of intraLATA equal access? Are there other regulatory parity issues between IXCs and LECs that should be addressed?

22. Identify all serving arrangements (e.g., 1+, 0+, 10XXX dialing, special access, etc.) that provide access to intraLATA toll services. Which serving arrangements are available to IXCs? LECs?

23. If the Commission decides to adopt rules requiring intraLATA dialing parity, should the Commission also adopt its own rules regarding PIC changes to apply to the LECs?

24. Please identify other matters the Commission should consider before implementing intraLATA dialing parity.

The Commission staff and the General Counsel will review the responses to these questions and use them in preparing a recommendation to the Commission for further action, including possible amendments to the Commission's Substantive Rules (16 TAC §23.1 et seq).

Responses (13 copies) should be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days and reply comments within 45 days of the date of publication of this notice. Responses and reply comments should refer to Project Number 13219.

Issued in Austin, Texas, on November 22, 1994.

TRD-9451251 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 22, 1994



1995 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1995 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 3	Wednesday, December 28	Thursday, December 29
2 Friday, January 6	Monday, January 2	Tuesday, January 3
3 Tuesday, January 10	Wednesday, January 4	Thursday, January 5
4 Friday, January 13	Monday, January 9	Tuesday, January 10
5 Tuesday, January 17	Wednesday, January 11	Thursday, January 12
Friday, January 20	1993 ANNUAL INDEX	
6 Tuesday, January 24	Wednesday, January 18	Thursday, January 19
7 Friday, January 27	Monday, January 23	Tuesday, January 24
8 Tuesday, January 31	Wednesday, January 25	Thursday, January 26
9 Friday, February 3	Monday, January 30	Tuesday, January 31
10 Tuesday, February 7	Wednesday, February 1	Thursday, February 2
11 Friday, February 10	Monday, February 6	Tuesday, February 7
12 Tuesday, February 14	Wednesday, February 8	Thursday, February 9
13 Friday, February 17	Monday, February 13	Tuesday, February 14
14 Tuesday, February 21	Wednesday, February 15	Thursday, February 16
15 Friday, February 24	*Friday, February 17	Tuesday, February 21
16 Tuesday, February 28	Wednesday, February 22	Thursday, February 23
17 Friday, March 3	Monday, February 27	Tuesday, February 28
18 Tuesday, March 7	Wednesday, March 1	Thursday, March 2
19 Friday, March 10	Monday, March 6	Tuesday, March 7
20 Tuesday, March 14	Wednesday, March 8	Thursday, March 9
21 Friday, March 17	Monday, March 13	Tuesday, March 14
22 Tuesday, March 21	Wednesday, March 15	Thursday, March 16
23 Friday, March 24	Monday, March 20	Tuesday, March 21
24 Tuesday, March 28	Wednesday, March 22	Thursday, March 23
25 Friday, March 31	Monday, March 27	Tuesday, March 28
26 Tuesday, April 4	Wednesday, March 29	Thursday, March 30
27 Friday, April 7	Monday, April 3	Tuesday, April 4
28 Tuesday, April 11	Wednesday, April 5	Thursday, April 6
Friday, April 14	FIRST QUARTERLY INDEX	
29 Tuesday, April 18	Wednesday, April 12	Thursday, April 13
30 Friday, April 21	Monday, April 17	Tuesday, April 18
31 Tuesday, April 25	Wednesday, April 19	Thursday, April 20

32 Friday, April 28	Monday, April 24	Tuesday, April 25
33 Tuesday, May 2	Wednesday, April 26	Thursday, April 27
34 Friday, May 5	Monday, May 1	Tuesday, May 2
35 Tuesday, May 9	Wednesday, May 3	Thursday, May 4
36 Friday, May 12	Monday, May 8	Tuesday, May 9
37 Tuesday, May 16	Wednesday, May 10	Thursday, May 11
38 Friday, May 19	Monday, May 15	Tuesday, May 16
39 Tuesday, May 23	Wednesday, May 17	Thursday, May 18
40 Friday, May 26	Monday, May 22	Tuesday, May 23
41 Tuesday, May 30	Wednesday, May 24	Thursday, May 25
42 Friday, June 2	*Friday, May 26	Tuesday, May 30
43 Tuesday, June 6	Wednesday, May 31	Thursday, June 1
44 Friday, June 9	Monday, June 5	Tuesday, June 6
45 Tuesday, June 13	Wednesday, June 7	Thursday, June 8
46 Friday, June 16	Monday, June 12	Tuesday, June 13
47 Tuesday, June 20	Wednesday, June 14	Thursday, June 15
48 Friday, June 23	Monday, June 19	Tuesday, June 20
49 Tuesday, June 27	Wednesday, June 21	Thursday, June 22
50 Friday, June 30	Monday, June 26	Tuesday, June 27
51 Tuesday, July 4	Wednesday, June 28	Thursday, June 29
Friday, July 7	NO ISSUE PUBLISHED	
52 Tuesday, July 11	Wednesday, July 5	Thursday, July 6
Friday, July 14	Second Quarterly Index	
53 Tuesday, July 18	Wednesday, July 12	Thursday, July 13
54 Friday, July 21	Monday, July 17	Tuesday, July 18
55 Tuesday, July 25	Wednesday, July 19	Thursday, July 20
56 Friday, July 28	Monday, July 24	Tuesday, July 25
57 Tuesday, August 1	Wednesday, July 26	Thursday, July 27
58 Friday, August 4	Monday, July 31	Tuesday, August 1
59 Tuesday, August 8	Wednesday, August 2	Thursday, August 3
60 Friday, August 11	Monday, August 7	Tuesday, August 8
61 Tuesday, August 15	Wednesday, August 9	Thursday, August 10
62 Friday, August 18	Monday, August 14	Tuesday, August 15
63 Tuesday, August 22	Wednesday, August 16	Thursday, August 17
64 Friday, August 25	Monday, August 21	Tuesday, August 22
65 Tuesday, August 29	Wednesday, August 23	Thursday, August 24
66 Friday, September 1	Monday, August 28	Tuesday, August 29
67 Tuesday, September 5	Wednesday, August 30	Thursday, August 31
68 Friday, September 8	*Friday, September 1	Tuesday, September 5
69 Tuesday, September 12	Wednesday, September 6	Thursday, September 7
70 Friday, September 15	Monday, September 11	Tuesday, September 12

71 Tuesday, September 19	Wednesday, September 13	Thursday, September 14
72 Friday, September 22	Monday, September 18	Tuesday, September 19
73 Tuesday, September 26	Wednesday, September 20	Thursday, September 21
74 Friday, September 29	Monday, September 25	Tuesday, September 26
75 Tuesday, October 3	Wednesday, September 27	Thursday, September 28
76 Friday, October 6	Monday, October 2	Tuesday, October 3
Tuesday, October 10	THIRD QUARTERLY INDEX	
77 Friday, October 13	Monday, October 9	Tuesday, October 10
78 Tuesday, October 17	Wednesday, October 11	Thursday, October 12
79 Friday, October 20	Monday, October 16	Tuesday, October 17
80 Tuesday, October 24	Wednesday, October 18	Thursday, October 19
81 Friday, October 27	Monday, October 23	Tuesday, October 24
82 Tuesday, October 31	Wednesday, October 25	Thursday, October 28
83 Friday, November 3	Monday, October 30	Tuesday, October 31
84 Tuesday, November 7	Wednesday, November 1	Thursday, November 2
Friday, November 10	No Issue Published	
85 Tuesday, November 14	Wednesday, November 8	Thursday, November 9
86 Friday, November 17	Monday, November 13	Tuesday, November 14
87 Tuesday, November 21	Wednesday, November 15	Thursday, November 16
88 Friday, November 24	Monday, November 20	Tuesday, November 21
Tuesday, November 28	NO ISSUE PUBLISHED	
89 Friday, December 1	Monday, November 27	Tuesday, November 28
90 Tuesday, December 5	Wednesday, November 29	Thursday, November 30
91 Friday, December 8	Monday, December 4	Tuesday, December 5
92 Tuesday, December 12	Wednesday, December 6	Thursday, December 7
93 Friday, December 15	Monday, December 11	Tuesday, December 12
94 Tuesday, December 19	Wednesday, December 13	Thursday, December 14
95 Friday, December 22	Monday, December 18	Tuesday, December 19
96 Tuesday, December 26	Wednesday, December 20	Thursday, December 21
Friday, December 29	NO ISSUE PUBLISHED	