Texas Register

Volume 14, Number 63, August 29, 1989 Pages 4345–4429

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Texas Register

The *Texas Register* (ISSN 0362-4781) is published twice each week 100 times a year except March 7, 1989, June 2, 1989, July 7, 1989, November 28, 1989, and December 29, 1989. Issues will be published by the Office of the Secretary of State.

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

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

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

Texas Register Publications

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

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Subscriptions-one year (96 regular issues), $90; six months (48 regular issues and two index issues), $70. Single copies of most issues are available at $4 per copy.

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Emergency Sections

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

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.3

The State Purchasing and General Services Commission adopts on an emergency basis an amendment to §113.3, concerning processing of purchase requisitions. The amendment provides for implementation of Senate Bill 222, Article V, Section 104, 71st Legislature, 1989, by establishing requirements for notification to governing bodies and chief executive officers, when the commission has taken exception to the respective agency's decision to purchase any good, service, or item on a non-competitive basis. Emergency action is necessary to implement the amendment effective September 1, 1989, the effective date of Senate Bill 222.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 601b, Article 3, which provide the State Purchasing and General Services Commission with the authority to institute and maintain an effective and economical system for purchasing supplies, materials, services, and equipment.

§113.3. Requisition Processing.

(a) (No change.)

(b) Review of specifications and/or conditions of purchase.

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

(3) When justification is received which supplies the information required by the Act, §3.09(b) and subsection (b) of this section, the requisition shall be processed as requested. If the commission takes exception to the written justification, after considering all factors, it shall report the reasons for its exceptions as required by the Act. **In accordance with Senate Bill 222, 71st Legislature, Article V, §104, a report of exception will be made by certified mail, return receipt requested, to board members, commission members, agency heads, and elected officials who are agency heads, including institutions of higher education, that the commission has taken exception to the respective agency's decision to purchase any good, service, or item under the provisions of Texas Civil Statutes, Article 601b, §3.09.**

(4)-(5) (No change.)

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907723 John R. Neel
General Counsel
State Purchasing and General Services Commission

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-3446

♦ ♦ ♦

Surplus Property Sales

• 1 TAC §§113.72, 113.73, 113.75

The State Purchasing and General Services Commission adopts on an emergency basis amendments to §113.72 and §113.73, and new §113.75, concerning surplus and salvage property sales. The amendment to §113.72, concerning definitions, defines the terms "assistance organization" and "political subdivision" to conform to new definitions enacted by Senate Bills 508 and 723, 71st Legislature, 1989. The amendment to §113.73, concerning the sale and disposal of surplus or salvage property, provides procedures for transfer of surplus or salvage to assistance organizations and the assistance of the Texas Surplus Property Agency as required by Senate Bill 508. The new §113.75 adopts a memorandum of understanding as required by Senate Bill 508. Emergency action is required for the amendments and new section to be in effect by September 1, 1989, the effective date of the amendments enacted in Senate Bills 723 and 508.

The amendments and new sections are adopted on an emergency basis under Texas Civil Statutes, Article 601b, Article 9, (as amended by Senate Bills 723 and 508, 71st Legislature (1989)), §9.09 which provide the State Purchasing and General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 9.

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

Assistance organization–

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to agencies that feed needy families and individuals; and

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development.

[Food bank–A nonprofit organization that solicits, warehouses, and redistributes edible but unmarketable food to agencies that are feeding needy families and individuals.]

Political subdivision–**Each political subdivision of the state** [A county, municipality, school district, junior college district, rural fire prevention district, volunteer fire department, or community center established or operating under the Texas Mental Health and Mental Retardation Act, Article 3 (Texas Civil Statutes, Article 5547-203)].

§113.73. Sale and Disposition of Surplus and Salvage Property.

(a) (No change.)

(b) Mailing list. The commission will maintain a mailing list, renewable September 1 of each year, of political subdivisions **and assistance organizations** [or food banks] which have asked for information on surplus or salvage material or equipment as the state may have available; and will make a mailing, once a month, of currently available surplus or salvage equipment or material to all state agencies, and to political subdivisions and assistance organizations [or food banks] which have asked for information on surplus or salvage property. **The commission may charge participating political subdivisions and assistance organizations an amount not to exceed the actual costs incurred by the commission in maintaining the mail list, producing and mailing the information on surplus and salvage property. The commission will provide the list of political subdivisions and assistance organizations to the Texas Surplus Property Agency.** [The commission also will maintain a list of companies or individuals who have indicated a desire to bid on surplus or

salvage property and have made application. Names may be deleted from the mailing list for the following reasons:

[(1) failure to bid;

[(2) failure to make payment on items on which they were the successful bidder; or

[(3) failure to renew mailing list application.]

(c) Priority to obtain surplus or salvage property.

(1) State agencies have first priority on surplus or salvage equipment or material. For purposes of this section, the Civil Air Patrol Wing is to be treated as if it were a state agency. If no state agency negotiates an interagency transfer of the equipment or material within 35 [30] days of the notice from the commission and if the commission determines that the equipment or material will not satisfy a state need, the commission may authorize the sale or transfer of surplus or salvage material or equipment to any political subdivision [or food bank] which has expressed a desire to purchase.

(2) The **agency which reports the surplus or salvage equipment or material** [political subdivision or food bank] **shall notify** the commission within **35** [30] **days** from the date of the notice from the commission, [that] **if the surplus or salvage equipment** or material **has been transferred to a state agency or political subdivision** [it desires to negotiate for surplus or salvage equipment or material].

(3) In offering the surplus or salvage equipment or material to a political subdivision [or food bank], the state agency which reports the surplus or salvage equipment or material shall establish a price. The first political subdivision [or food bank] agreeing to the price established by the state agency shall be entitled to the equipment or material. If no political subdivision [or food bank] has expressed a desire to negotiate or if one or more political subdivisions [or food banks or any combination thereof] have expressed a desire to negotiate but are unable to agree on a price for the sale or transfer of equipment or material within 35 [40] days from the date of notice from the commission, **and if the commission determines the property will not satisfy a state need, the commission shall notify the Texas Surplus Property Agency. The Texas Surplus Property Agency shall attempt to arrange a transfer of the property to a state agency, political subdivision, or assistance organization on a first come, first served basis.**

The Texas Surplus Property Agency may:

(A) provide assistance in negotiating the transfer, including negotiation of the fair value of the property;

(B) screen, transport, or recondition the property;

(C) warehouse the property temporarily;

(D) provide other assistance in the transfer; and

(E) charge fees for its services to the entities involved. [the commission may offer the equipment or material to the Texas Partners of the Alliance.] **If the Texas Surplus Property Agency does not arrange a transfer of the property within 25 days after the date it is notified by the commission, the agency which reports the surplus or salvage equipment or material shall inform the commission.** [If then unclaimed, the] The commission shall dispose of the equipment, material or supplies in accordance with subsection (e) of this section.

(d) Certificate of purchase.

(1) Any state agency selling or transferring surplus or salvage equivalent or material to a political subdivision or **assistance organization** [food bank] shall furnish the commission with the description of the equipment or material, the price, and a copy of the certification of purchase within 10 days of the sale.

(2) Any political subdivision or **assistance organization** [food bank] obtaining equipment or material under these procedures must sign a certification of purchase certifying that the equipment or material has been purchased and that the equipment or material is for the exclusive use of the political subdivision or **assistance organization** [food bank] and will remain in its possession until it no longer serves the purpose for which it was originally purchased.

(e) Methods of disposing of surplus or salvage property. If no entity described in subsection (c) of this section desires to receive any property reported as surplus or salvage, the commission may dispose of the property by sealed bids or auction, or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis. **The commission will maintain a mailing list of companies or individuals who have indicated a desire to bid on surplus or salvage property and have made application. Names may be deleted from the mailing list for: failure to bid, failure to make payment on items on which they were the successful bidder, or failure to renew mailing list application.** The commission or the agency shall assess and collect from the purchaser a 2.5% fee over and above the proceeds from the sale of the property to recover the costs associated with the sale of the property.

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

§113.75. Memorandum of Understanding.

(a) The commission adopts by reference a memorandum of understanding concerning the respective duties of the commission and the Texas Surplus Property Agency relating to surplus and salvage property. The memorandum of understanding is entered into by and between the commission and the Texas Surplus Property Agency.

(b) Copies of the memorandum of understanding are available and may be requested, during regular business hours, from the Purchasing Division, State Purchasing and General Services Commission, Room 300, 1711 San Jacinto, Austin.

Issued in Austin, Texas on August 22, 1989.

TRD-8907721 John R. Neel
General Counsel
State Purchasing and General Services Commission

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-3446

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Competitive Cost Review

• 1 TAC §113.91

The State Purchasing and General Services Commission adopts on an emergency basis an amendment to §113.91, concerning competitive cost review. The emergency action is necessary to reflect changes made to Texas Civil Statutes, Article 601b, Article 13 by Senate Bills 417, 457, and 489 which became effective on September 1, 1989.

The emergency amendment is adopted on an emergency basis under Texas Civil Statutes, Article 601b, Article 13, which provide the State Purchasing and General Services Commission with the authority and responsibility to conduct cost comparison reviews of commercial activities performed by certain state agencies.

§113.91. General.

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

(c) The state agencies subject to this program are the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, [and] the Texas Department of Corrections, **the Central Education Agency, the Texas Higher Education Coordinating Board, and the Department of Agriculture.**

(d) Competitive cost reviews of state agency commercial activities will be conducted by [subject state agencies] August 31, **1991** [1988], as follows.

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

(4) Central Education Agency--One commercial activity identified by the Central Education Agency.

(5) Texas Higher Education Coordinating Board–Commercial activities identified by the Texas Higher Education Coordinating Board pursuant to provisions of §113.95(a) of this title (relating to Competitive Cost Review).

(6) Department of Agriculture–Warehouse and mail handling functions.

(e) (No change.)

Issued in Austin, Texas on August 22, 1989.

TRD-8907719 John R. Neel
General Counsel
State Purchasing and General Services Commission

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-3446

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Chapter 117. Centralized Services Division

Messenger Service

• 1 TAC §117.31

The State Purchasing and General Services Commission adopts on an emergency basis an amendment to §117.31, concerning the expansion of messenger service to include delivery of packages between agencies in Travis County. The amendment is adopted on an emergency basis to reflect changes made to Texas Civil Statutes, Article 601b, §11.02, by House Bill 411, which will become effective on September 1, 1989.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary for the administration and enforcement of the Act. House Bill 411 amends Texas Civil Statutes, Article 601b, §11.02, and become effective on September 1, 1989.

§117.31. General.

(a) The State Purchasing and General Services Commission shall provide and operate a messenger service[,] **for handling the delivery of unstamped or non-metered written communications and packages between** state agencies located in**Travis County** [Austin].

(b) No package that exceeds 70 pounds will be delivered by the messenger service.

Issued in Austin, Texas on August 22, 1989.

TRD-8907714 John R. Neel
General Counsel
State Purchasing and General Services Commission

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-3446

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Chapter 121. Telecommunications Services Division

Telecommunications Services

• 1 TAC §121.6

The State Purchasing and General Services Commission adopts on an emergency basis an amendment to §121.6, concerning the mandatory use of the state telecommunications network (TEX-AN) by state agencies and the evaluation of waiver requests for intercity telecommunications facilities or services that cannot be provided at reasonable costs on the TEX-AN network. The amendment is adopted on an emergency basis to reflect changes made by Senate Bill 222, which becomes effective on September 1, 1989.

The amendment is adopted on an emergency basis proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary for the administration and enforcement of the Act and Senate Bill 222, Article V, §48, which becomes effective on September 1, 1989.

§121.6. **TEX-AN Usage Required**; Joining the System and Requests for Additional Service.

(a) All state agencies defined in Texas Civil Statutes, §1.02(2), Article 601b, are required to utilize TEX-AN services to the fullest extent possible.

(b) The commission and the Department of Information Resources must make a determination that intercity telecommunications facilities or services requested by an agency cannot be met by the TEX-AN network at reasonable costs before granting a waiver allowing an agency to contract for alternate facilities or services. The evaluation of waiver requests will be based on the cost effectiveness to state government taken as a whole. An agency requesting a waiver shall not procure intercity telecommunications facilities or services until a waiver has been granted by the commission and the Department of Information Resources under its applicable rules.

(c) Requests for waivers from the commission should be submitted at least 90 days in advance of the need.

(d) Requests for waivers from the commission must include the following information:

(1) type of facility or service for which a waiver is being requested;

(2) reason for requesting a waiver;

(3) copies of existing service contract(s) if service is not currently provided by a regulated utility;

(4) copies of all billing detail, including call detail, for the most recent billing period;

(5) summary of all other costs for ancillary equipment or services, including maintenance services, which the agency pays or will incur through lease, lease-purchase, or purchase that are directly attributable to providing the service requested in the waiver, regardless of the funding sources for paying those costs;

(6) a statement as to whether the ancillary equipment or services will be made available to the commission for use in providing TEX-AN service and a detail of any costs the agency proposes to bill to the commission for such use;

(7) specific address(s) and type(s) of equipment at each location to be served; and

(8) any other information to demonstrate that the facilities or services are cost effective to state government taken as a whole.

(e) If granted, waivers will be for specific periods of time and will automatically expire upon the expiration date unless an extension is approved by the commission and the Department of Information Resources. Agency contracts for services obtained under waiver shall not extend beyond the expiration date of the waiver. Such waivers will be on a form prescribed by the commission.

(f)[(a)] All requests for service on the **TEX-AN** [STS] network will be evaluated on the basis of the service being cost effective for the customer, the network, and the state. The commission will [shall] publish appropriate procedures and guidelines covering administrative actions associated with providing service on **TEX-AN** [the STS]. The commission may prescribe forms for that purpose and such forms may be reproduced locally by state agencies and other governmental bodies.

(g)[(b)] All services provided to **other** [appropriate state agencies and] governmental bodies as defined in Texas Civil Statutes, Article 601b, §10.07, will be covered by contracts between these **bodies** [agencies] and the commission. Contracts for state agencies as defined in Texas Civil Statutes, Article 601b, §1.02(2), will not be required. All requests for service **must** [shall] be [made] in writing and forwarded through agency channels unless specific instructions are issued by the the appropriate state agency authorizing the direct submission of the service request to the commission.

(h)[(c)] Plans, service requests, and other service orders should be submitted to

the commission as far as possible in advance of the date service is desired in order to allow lead time for evaluation and scheduling of work. The standard interval for installation of private line services is 45 [48] days or approximately 6 [10] weeks after the contract provider [telephone industry] has received an order from the commission.

(l)[(d)] Assuring that the network is limited to placing of official calls is the responsibility of each state agency and governmental body being provided [STS] service. In addition to establishment of administrative controls, technical controls may also be accomplished by limiting access to the network only to those individual stations requiring long distance telephone service. Stations "blocked" from making outgoing calls may still receive incoming calls.

(j)[(e)] Any request by a state agency or other governmental body which cannot be satisfied by the commission, will [shall] be returned to the requester [agency] with the reasons for being unable to fill the request set out in writing.

(k)[(f)] The commission will [shall] maintain a file on these unfilled requests, and they will [shall] be satisfied in the order received, whenever the necessary service becomes available, if the requester [using agency or department] still desires the service at that time.

(l)[(g)] The [State Purchasing and General Services] commission will publish a TEX-AN [an STS] directory for the use by the customers [agencies]. The charges for these directories to customers [state agencies] will be based upon the commission's cost. Upon request from the commission, each customer [state agency] will be responsible for providing an up-to-date listing for inclusion in the directory.

Issued in Austin, Texas on August 22, 1989.

TRD-8907712 John R. Neel
General Counsel
State Purchasing and General Services Commission

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-3446

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TITLE 7. BANKING AND SECURITIES

Part V. Office of Consumer Credit Commissioner

Chapter 85. Rules of Operation for Pawnshops

• 7 TAC §85.2

The Office of Consumer Credit Commissioner adopts on an emergency basis new §85.2, concerning the operation of pawnshops subject to licensure under the provisions of the Texas Pawnshop Act pending the adoption of certain rules and regulations to be proposed by the Office of Consumer Credit Commissioner. The new section provides that pending adoption of rules of operation of pawnshops all pawnbrokers and their employees shall continue to be governed in the operation of pawnshops by the provisions of the Texas Pawnshop Act as well as all applicable city ordinances in force and effect as of June 1, 1989.

The new section is adopted on an emergency basis in order for it to be effective concurrently with Senate Bill 607, 71st Legislature, 1989, which grants the commissioner exclusive power to adopt rules relating to hours of operation and location of pawnshops, identification required of pledgors and sellers of property, and all other matters pertaining to the operation of pawnshops. It is necessary to adopt this section on an emergency basis to provide continuity in the operation of pawnshops during the time necessary to formulate and adopt rules of operation.

The new section is adopted on an emergency basis under the Texas Pawnshop Act, Article 5069-51.09(b), and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(d), which provides the Office of Consumer Credit Commissioner with the authority to make regulations necessary for the enforcement of the Texas Pawnshop Act.

§85.2. Identification of Pledgors and Sellers, Siting of Pawnshops, and City Ordinances. Pending the adoption of permanent rules under the authority of the Texas Pawnshop Act, all pawnbrokers and their employees shall continue to be governed in the operation of pawnshops by the provisions of the Texas Pawnshop Act, Texas Civil Statutes, Article 5069 (Chapter 51), as well as all applicable and lawful city ordinances in force and effect on June 1, 1989, except as herein provided. Pawnbrokers and their employees shall obtain and make a record of all information as to the identity of every pledgor and every seller as required by the Texas Pawnshop Act, but shall not be required to obtain additional information or records as to identify of pledgors or sellers. Every person who has a pawnshop license application pending on September 1, 1989, and every person who makes application for a pawnshop license or who makes application to relocate a pawnshop on or after September 1, 1989, shall provide evidence to the commissioner that the zoning classification of the proposed site of the pawnshop authorizes the operation of a pawnshop at that location or that there are no zoning ordinances applicable to the proposed site and if the applicant has been denied appropriate permits for use of the proposed site. If the applicant has been denied appropriate permits for use of the proposed site, and if the applicant has unsuccessfully appealed such denial to a final administrative decision by local officials, the commissioner shall hold a public hearing and receive testimony from any person concerning the proposed site of the pawnshop. The commissioner may also consider any other matters that relate to the applicant's or licensee's qualifications for a license at such hearing. The commissioner shall thereafter determine whether to grant the applicant a license for the proposed site.

Issued in Austin, Texas on August 21, 1989.

TRD-8907666 Al Endsley
Commissioner
Consumer Credit Commissioner

Effective date: September 1, 1989

Expiration date: December 19, 1989

For further information, please call: (512) 479-1280

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 125. Special Care Facilities

• 25 TAC §§125.1-125.7

The Texas Department of Health adopts on an emergency basis new §§125. 1-125.7, concerning special care facilities. The sections cover definitions; application and issuance of licenses; inspections; renewal of license; fees; standards for licensure; and license denial, suspension, or revocation and criminal penalties. The new sections implement the Texas Special Care Facility Licensing Act, Senate Bill 487, 71st Texas Legislature, 1989.

The new sections replace the existing rules on special care facilities which are described in the department's hospital licensing standards, which are adopted by reference in Chapter 133 of this title (relating to Hospital Licensing) and which are also being repealed on an emergency basis at this time.

The department adopts the new sections on an emergency basis in order to meet the requirements of Senate Bill 487. The bill becomes effective on September 1, 1989, and requires that the department adopt rules to implement the law. In order for the department to have rules in place by September 1, 1989, it is necessary for the department to adopt these rules on an emergency basis, effective September 1, 1989.

The department adopts the new sections on an emergency basis under Senate Bill 487, 71st Legislature, 1989, which provide the Texas Board of Health with the authority to adopt rules to implement the Special Care Facility Licensing Act; Texas Civil Statutes, Article 4414b, §1.05, which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the board to adopt rules on an emergency basis.

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

Accident–An event occurring by chance or from unknown causes which may cause loss or injury to a resident, facility personnel, or volunteer.

Act–The Texas Special Care Facility Licensing Act, 71st Texas Legislature, 1989, Chapter 125, §16 (Senate bill 487, §16).

Arrange–To provide for or come to a written agreement about providing needed care or services to a resident.

Assistance with medication or treatment regimen–Any needed ancillary aid provided to a resident in the resident's self-administered medication or treatment regimen, however, such ancillary aid shall not consist of direct application by the assistant of the medication by injection, inhalation, ingestion, or any other means to the body of the resident.

Attendant personnel–All staff persons or representatives who are responsible for a (direct) personal service to a resident and may include but is not limited to, aides, housekeepers, volunteers, cooks, janitors, and managers if they are providing personal services.

Board–The Texas Board of Health.

Controlled substance–A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Civil Statutes, Article 4476-15, §1.02(5), or the Federal Controlled Substance Act of 1970, Public Law 91-513.

Dangerous drugs–Any drug as defined in the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, §2.

Department–The Texas Department of Health.

Dietitian–A person who is currently licensed by the Texas State Board of Examiners of Dietitians.

Director–The director of the Health Facility Licensure and Certification Division of the Texas Department of Health or his or her designee.

Drug–A drug is:

(A) any substance recognized as a drug in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(C) any substance (other than food) intended to affect the structure or any function of the body of humans; or

(D) any substance intended for use as a component of any substance specified in subparagraphs (A)-(C) of this paragraph. It does not include devices or their components, parts, or accessories.

Facility–A special care facility.

Incident–An unusual or abnormal event or occurrence in, at, or affecting the facility or the residents of the facility.

Local health authority–The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as defined in Texas Civil Statutes, Article 4436b, §1.03.

Medical care–Care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

Nursing care–Services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

Nursing personnel–All persons responsible for giving nursing care to residents. Such personnel includes registered nurses, licensed vocational nurses, therapists, nurses aides, and orderlies.

Outside resource–A qualified person, facility, or staff of an organization or entity that will provide needed care and/or treatment services to residents under an arrangement with the facility or residents.

Person–An individual, organization, establishment, or association of any kind.

Pharmacist–A person licensed by the Texas State Board of Pharmacy to practice pharmacy.

Physician–A practitioner licensed by the Texas State Board of Medical Examiners.

Poison–Any substance that federal or state regulations require the manufacturer to label as a poison and that is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally which contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

Presurvey conference–A conference held with department staff and the applicant and/or his or her representative to review licensure standards and survey documents and provide consultation prior to the on-site licensure inspection.

Provide–To directly supply care or treatment services to residents by facility personnel or through arrangements with outside resources or volunteers.

Registered nurse (RN)–An individual currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse in the State of Texas.

Resident–An individual accepted for care in a special care facility.

Responsible party–An individual authorized by the resident to act for him or her as an official delegate or agent. A responsible party is usually a family member, relative, or significant other, but may be a legal guardian.

Services–The provision of medical or nursing care, assistance, or treatment by facility personnel, volunteers, or other qualified individuals, agencies, or staff of any organization or entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

Shall–The word to signify a mandatory provision.

Should–The word to signify a nonmandatory but recommended provision.

Special care facility–An institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

§125.2. Application and Issuance of License for First Time Applicants.

(a) Upon written request, the director shall furnish a person with an application form for a special care facility license. The applicant shall be at least 18 years of age, and shall submit to the director a separate and accurate application form for each license, required documentation, and the license application fee. The applicant shall retain a copy of all documentation that is submitted to the director. The address provided on the application must be the address from which the facility will be operating. The applicant shall submit the following documents at the time of the presurvey conference:

(1) a list which includes the names of all of the owners of the proposed facility;

(2) if an applicant is a corporation, a certificate from the state comptroller's office which states that the corporation that operates the facility is not

delinquent in tax owed to the state under the Tax Code, Texas Codes Annotated, Chapter 171, or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(3) a proposed budget covering the period of time of the license and a notarized affidavit attesting to the following:

(A) that neither the facility nor any of its owners have been adjudged insolvent or bankrupt in a state or federal court;

(B) that neither the facility nor any of its owners are parties in a state or federal court to a bankruptcy or insolvency proceeding with respect to the facility or any of its owners; and

(C) that the facility has the financial resources to meet its proposed budget, and to provide the services required by the Act and this chapter during the term of the license;

(4) an organizational structure, a list of management personnel, and a job description of each administrative and supervisory position. The job description must contain at a minimum the job title, qualifications including education and training, job responsibilities, and a plan to provide annual continuing education and training;

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

(6) a notarized statement attesting that the applicant is capable of meeting the minimum state licensing standards for the provision of services under the Act;

(7) a written policy and procedure document detailing the overall operating policies and procedures. The document shall include information on admission and admission agreements, resident care services, charges or reimbursement for services, expectations of residents, transfers, discharges, complaint procedures, use of volunteers, protection of residents' personal property, and residents' rights;

(8) a written resident care policies document detailing the care provided and related services. These policies shall include provision for an interdisciplinary assessment of resident need and the development of a plan for promoting self-care and independence;

(9) written personnel policies and procedures;

(10) a written agreement with at least one licensed hospital and at least one nursing home permitting the prompt transfer to and the admission by the receiving hospital or nursing home in a medically appropriate manner of any patient when special services are needed but are unavailable at the facility;

(11) if a facility does not employ a person qualified to provide a required or needed service, copies of arrangements with an outside resource that has the necessary qualifications to provide the service directly to residents or to act as a consultant to the facility. Facility policies shall state the methods used to provide required or needed services;

(12) documentation regarding development for staff and/or volunteers and scheduling of periodic training to update their knowledge and skills in providing care to residents. Training must include the facility's policy on confidentiality of patient's medical record;

(13) written guidelines to volunteers concerning areas such as confidentiality, infection control and sanitation, and security;

(14) documentation regarding volunteer orientation to the facility, which will include at a minimum location of fire alarm system; emergency procedures, including emergency phone numbers; evacuation plan; availability of counseling programs, support groups, and advocacy information; the facility's policy on confidentiality of medical records and information pertaining to patients' diagnosis, treatment, and identification; and the general mission statement of the facility; and

(15) written approval by the local fire marshal and a copy of the certificate of occupancy granted by the local building official.

(b) Upon receipt of the application, including the required documentation and the fee, the director shall review the material to determine whether it is complete. All documents submitted with the original application shall be certified copies and/or originals.

(c) Once the application is complete and correct, a presurvey conference may be held at the office designated by the department. All applicants are required to attend a presurvey conference unless the designated survey office waives the requirement. The surveyor shall verify compliance with the applicable provisions of this chapter and may recommend that the facility be issued a license or that the application be denied pursuant to §125.7 of this title (relating to License Denial, Suspension, or Revocation, and Criminal Penalties).

(d) If the facility is in compliance with the provisions of this chapter, a license shall be issued.

(e) If the facility is approved for occupancy by local authorities, a license may be issued if the facility submits a plan of correction acceptable to the director to bring the facility into full compliance with the provisions of this chapter. The plan may reflect dates for compliance occurring after issuance of the license if approved by the director.

(f) If the director determines that compliance with the provisions of this chapter is not substantiated, the director may propose to deny the license and shall notify the applicant of a license denial as provided in §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(g) The director shall mail the license to the licensee. A license shall not be materially altered. Continuing compliance with the minimum standards and the provisions of this chapter is required during the licensing period.

(h) A facility licensed on or before August 31, 1989, under Chapter 12 of the hospital licensing standards (concerning rules governing special care facilities including care and treatment of residents) as adopted by reference in §133.21 of this title (relating to Adoption by Reference) is deemed to be a special care facility under this chapter.

§125.3. Inspections.

(a) An on-site inspection shall determine if the requirements of the Act and this chapter are being met. An authorized representative of the department may enter the premises of a license applicant or license holder after reasonable prior notice and at reasonable times to make an inspection incidental to the issuance of a license, and at other times as it considers necessary to insure compliance with the Act and the provisions of this chapter. A standard-by-standard evaluation is required before the initial license is issued unless waived at the discretion of the department. At the discretion of the department, an on-site inspection may be conducted for renewal of a license.

(b) The department's authorized representative shall hold a conference with the person who is in charge of a facility prior to commencing the on site inspection for the purpose of explaining the nature and scope of the inspection. The department's authorized representative shall hold a conference with the person who is in charge of the facility when the inspection is completed, and the department's representative shall identify any records that may have been duplicated. Any facility records that are removed from a facility by the department's authorized representative shall be removed only with the consent of the facility.

(c) After an inspection is completed, the surveyor shall submit a compliance record to the department which contains the following:

(1) a citation of all standards that were evaluated;

(2) a citation of all standards with which the facility was in noncompliance and specifics of any noncompliance, if applicable;

(3) if the facility is in noncompliance, a plan of correction proposed by the facility and the date(s) by which correction(s) must be made; and

(4) a statement that not all standards were evaluated, if applicable.

(d) The surveyor shall request the owner or person in charge to sign the compliance record as an acknowledgment of receipt of a copy of the record at the completion of the on-site survey. Signing the record does not indicate agreement with any part of the compliance record. If a person declines to sign the record, the surveyor shall note the declination and the name of the person in charge on the compliance record. Any written comments of the owner or person in charge concerning the compliance record shall be attached to and become a permanent part of the record. The surveyor shall leave a copy of the compliance record at the facility, and, if the person in charge is not the owner, shall mail a copy to the owner. If at the time of inspection the person in charge declines to provide a plan of correction, the director will notify the facility by certified mail, return receipt requested, that a plan of correction must be submitted by the facility within 30 days of receipt of the notice.

(e) The surveyor shall prepare a summary report of each inspection and submit it to the director for evaluation and decision. If the director determines the facility is not meeting minimum standards, the director shall notify the facility in writing of the standards that are not met and request that the facility prepare the plan of correction necessary for compliance if a plan has not been submitted at the time of inspection. If the plan of correction is not acceptable, the director will notify the applicant in writing within 20 days of receipt of the plan and request that an acceptable plan of correction be resubmitted within a specified period of time, but no later than 30 days from the date of the director's letter.

(1) If the inspection is conducted in order to determine compliance with this chapter, the facility shall come into compliance no later than the dates designated in the plan of correction. If evidence of compliance is not provided to the department, the license may be suspended or revoked in accordance with §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(2) If evidence of compliance is not provided to the department prior to expiration of a license, a renewal license may be denied to the facility in accordance with §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

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

§125.4. Renewal of License.

(a) A license shall expire one year from the date of issuance of the license.

(b) The department will send notice of expiration to a facility at least 45 days before the expiration date of the facility's license. If the facility has not received notice of expiration from the department 30 days prior to the expiration date, it is the duty of the facility to notify the department and request a renewal application for a license. The facility shall submit to the department an application renewal form and the license renewal fee postmarked no later than 10 days prior to the expiration date of the license. The department shall issue an annual license to a facility which meets the minimum standards for a license.

(c) If a facility fails to timely submit its application and fee in accordance with subsection (b) of this section, the department shall notify the facility that it must cease operation on the expiration date of the license and immediately thereafter return the license, by certified or registered mail, to the department.

§125.5. Licensing Application, Construction Plan Review, and Construction Inspection Fees.

(a) The schedule of fees are as follows.

(1) The license application and renewal fee shall be $25 per facility bed, but in no event shall the total fee be less than $200 or more than $1,000. The department will not consider an application for a license or for the renewal of a license as officially submitted until the applicant pays the fee. The fee must accompany the application form.

(2) Construction plan review fees are based on the estimated construction costs. If an estimated cost cannot be established, the estimated cost shall be based on $.05 per square foot. The fee schedule is:

	Cost of Construction	Fee
(A)	$ Less than 150,000	$ 50
(B)	150,001 - 600,000	150
(C)	600,001 - 2,000,000	350
(D)	2,000,001 - 5,000,000	500
(E)	5,000,001 - 10,000,000	750
(F)	10,000,001 - and over	1,000

(3) The department shall determine the number of required inspections necessary to complete all proposed construction projects. A construction inspection fee of $300 per each inspection shall be submitted to the department. Construction inspection fees shall be paid prior to any inspections conducted by an authorized representative of the department.

(b) Fees paid to the department are not refundable.

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

§125.6. Standards.

(a) Administrative management.

(1) General requirements.

(A) The license will specify the maximum number of residents who can be cared for at any one time.

(B) Copies of this chapter shall be available to the personnel and resi-

dents of the facility upon request.

(C) The facility management upon request shall make available to the department representatives copies of pertinent facility documents or records which in the opinion of the representatives contain evidence of conditions that threaten the health and safety of residents. Such documents and records are residents' medical records including health care notes, pharmacy records, medication records, physicians' orders, and incident/accident reports concerning residents.

(D) Each facility shall conspicuously and prominently post the facility license.

(E) All accidents, whether resulting in injury, and any unusual incidents or abnormal events, including allegations of mistreatment of residents by staff, personnel, or visitors, shall be described in separate administrative records filed in the director's office. Certain procedures regarding accidents, unusual incidents, and abnormal events shall be observed as directed by the department.

(F) Within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility. The facility does not have to inventory the resident's clothing. If requested by the resident or responsible party, the inventory shall be updated. The facility should have a mechanism to protect resident clothing.

(G) Grounds for denial, revocation, or suspension of the license in accordance with §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties) may exist when there is substantiated evidence of the owner, director, or any employee willfully inflicting injury, physical suffering, or mental anguish on any resident in a facility; the failure of management, who is knowledgeable of a substantiated case of physical or mental abuse or neglect, to take corrective action; or the failure of management, who has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person, to report it to the department.

(H) A license may not be transferred or assigned.

(2) Operating policies and procedures.

(A) The facility shall have a written policy and procedure document detailing the overall operating policies and procedures. The document shall include information on admission and admission agreements, resident care services, charges or reimbursement for services, expectations of residents, transfers, discharges, complaint procedures, use of volunteers, protection of residents' personal property, and resident's rights. This document shall be reviewed and updated annually.

(B) The facility shall have a written resident care policies document detailing the care provided and related services. These policies shall include provision for an interdisciplinary assessment of resident need and the development of a plan for promoting self-care and independence. The facility policies shall be reviewed and updated at least annually, with participation of the residents of the facility.

(C) The facility shall have written personnel policies and procedures. These policies and procedures must be explained to employees when first employed and available to them.

(D) In accordance with personnel policies, the facility may hire and retain employees with certain communicable diseases based on their abilities to perform on the job adequately and safely and on their willingness to follow prescribed measures to prevent the transmission of infections. Questions of employee infectious status and ability to perform duties should be resolved by consultation with a physician and/or local health authorities (also see *Morbidity and Mortality Report*, supplement of August 21, 1987 CDC, Atlanta, Georgia). Should any facility staff have a communicable disease, the facility shall report as specified in subparagraph (F) of this paragraph.

(E) The requirements of subparagraph (D) of this paragraph shall apply to staff from outside resources and to volunteers.

(F) When the facility is ready for initial opening and operation, and when any newly acquired reportable communicable disease may become evident in a resident, staff member, outside resource person, or volunteer, the facility shall report in accordance with the Communicable Disease and Prevention Act, Texas Civil Statutes, Article 4419b-1, or as specified in §97.1-97.13 of this title (relating to Control of Communicable Diseases) and §97.131-97.136 of this title (relating to Sexually Transmitted Diseases), (revised February 1988), and Reportable Diseases in Texas, Publication 6-101a (revised September 1987). After notification to the local health authority, appropriate infection control measures shall be implemented as directed by that authority and in accordance with facility policy.

(G) The facility shall ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). Where applicable, a current copy of the person's license or permit shall be in the file.

(H) If the resident or the resident's responsible party entrusts the handling of cash to the facility, simple accounting records of receipts and expenditures of such cash shall be maintained. These funds must be separate from the facility's operating accounts.

(I) The facility shall enter into written agreements with at least one licensed hospital and at least one licensed nursing home permitting the prompt transfer to and the admission by the receiving hospital or nursing home in a medically appropriate manner of any patient when special services are needed but are unavailable at the facility.

(J) The facility is encouraged to provide assistance to the residents in their securing or arranging for transportation to meet the residents' transportation needs.

(K) In the case of an acute episode, a serious change in the resident's condition, or death, the resident's responsible party shall be notified as soon as possible.

(L) If a facility does not employ a person qualified to provide a required or needed service, it shall have arrangements with an outside resource that has the necessary qualifications to provide the service directly to residents or to act as a consultant to the facility. Facility policies shall state the methods used to provide required or needed services. The facility may employ personnel or use appropriate volunteer services or arrange with outside resources to provide services to residents or to act as consultants to the facility. Regardless of the method or combinations of methods used, staff performing services must be appropriately qualified or supervised.

(3) Legal responsibility. There shall be a governing body which assumes full legal responsibility for the overall conduct of the facility. The person(s) carry out or have carried out the provisions of this chapter pertaining to the governing body.

(4) Compliance with laws and standards. The governing body shall be responsible for compliance with all applicable laws and with applicable rules and standards of the department.

(5) Facility director.

(A) The governing body shall appoint a facility director to be accountable for the overall management of the facility. The governing body shall delegate in writing to the director full authority for the internal operation of the facility in accordance with established policy.

(B) The director's responsibilities for procurement and direction of competent personnel shall be clearly defined.

(C) If the facility can be successfully managed with less than the director's full-time management, the director may be less than full-time. In such instances, the director shall assign another responsible individual who can perform management tasks so that there is administrative management essentially for the usual and customary 40-hours-per-week business operations.

(D) There shall be a competent individual authorized to be in charge of the facility when the director is absent.

(E) The director may be a member of the governing body.

(F) The director shall be at least 18 years of age and shall be physically, mentally, and emotionally able to perform the duties of operating the facility. It is desirable for the director to have had training in administrative management.

(6) Medical care. The facility shall provide appropriate care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; or

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(7) Staff development. Staff and/or volunteers shall be oriented to the basic philosophy of the facility and shall be given periodic training to update their knowledge and skills in providing care to residents. Training must include the facility's policy on confidentiality of patient's medical records. Training may be provided by the facility or by another appropriate entity.

(8) Volunteer services.

(A) The facility shall provide written guidelines to volunteers concerning areas such as confidentiality, infection control and sanitation, and security. It is recommended that volunteers sign a confidentiality agreement.

(B) Volunteers may be utilized in the following areas and in any other area in which they have the necessary qualifications for the assignment such as peer counseling, support groups, advocacy, information and referral, assistance with activities of daily living, spiritual support, grief work for both resident and significant others, recreational programs, errands, transportation, and facility housekeeping and maintenance.

(C) All volunteers will receive documented orientation to the facility which will include at a minimum location of fire alarm system; emergency procedures, including emergency phone numbers; evacuation plan; availability of counseling programs, support groups, and advocacy information; the facility's policy on confidentiality of medical records and information pertaining to patients' diagnosis, treatment, and identification; and the general mission statement of the facility.

(D) All volunteers will receive documented training on job specifics of all assigned tasks. A detailed job description will be developed for each category of volunteer and be signed by the volunteer acknowledging that they have read and understand the requirements and limitations of their assigned duties, and the facility's policy regarding the confidentiality of patient identity and information contained in medical records.

(E) All volunteers who are performing duties that require licensure, certification, or registration must currently be licensed, certified, or registered by the appropriate board or agency and a copy of their credentials shall be kept on file in the facility.

(b) Building construction.

(1) Applicability of requirements of construction and life safety.

(A) All buildings or structures, new or existing, used as a licensed facility shall be in accordance with these standards.

(B) For existing buildings and structures which are converted to facility occupancy, the department may modify those requirements, which, if strictly applied, would clearly be impractical in the judgment of the department. Any such modifications will be allowed only to the extent that reasonable accommodations and life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained. Residents are not to be admitted until all standards are met and approval for occupancy is granted by the department.

(2) Planning, construction, procedures, and approvals.

(A) Submission of plans. When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the department, or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the department for review and approval prior to construction or occupancy. The plans shall be drawn to scale; shall include a plot plan; and shall indicate the usages of all spaces, sizes of areas and rooms, and the kind and location of fixed equipment.

(B) The plot plan shall show all structures within 20 feet of the facility. If the local governmental unit has a building official charged with the enforcement of a local code, that authority's review of the drawings and specifications is required.

(C) The facility shall pay the required fee for plan review and inspection of construction at the time the proposed plans are submitted.

(D) No major construction shall be started until the working drawings and specifications are approved by the department.

(E) All construction shall be done in accordance with the approved plans. Any deviations therefrom must have prior approval of the department.

(F) Before licensing, the facility shall be approved by the local fire marshal having jurisdiction for compliance with local ordinances or requirements. These approvals shall be provided to the department at the time of final inspection of construction for licensure purposes.

(G) On prior approval of the department, alternative building arrangements may be made, commensurate with the resident's needs or desires.

(3) Requirements of construction.

(A) New construction shall be subject to local codes covering construction and electrical/mechanical systems for this occupancy (the description of the occupancy may vary with the local codes). In the absence of, or absence of enforcement of such local codes, the department will

require general conformance to the fundamentals of the following codes:

(i) nationally recognized codes, such as the *Standard Building Code* and the *Standard Plumbing Code*, both of the Southern Building Code Congress, International, Inc. Such nationally recognized codes, when used, shall all be publications of the same group or organization so as to assure the intended continuity;

(ii) the current *Heating, Ventilating, and Air Conditioning Guide* of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE);

(iii) the *National Electrical Code* of the National Fire Protection Association (NFPA 70); and

(iv) for handicap provisions, Standard A117.1-1980 of the American National Standards Institute (ANSI) and the requirements of the State Purchasing and General Services Commission, if applicable.

(B) An existing building converted to this occupancy shall meet all local requirements pertaining to that occupancy. The department may require the facility owner or licensee to submit evidence that local requirements are satisfied.

(C) An existing building converted to this occupancy shall have all electrical and mechanical systems safe and in working order. The department may require the facility owner or licensee to submit evidence to this effect, consisting of a report of the fire marshal or city/county building official having jurisdiction, or a report of a registered professional engineer.

(D) The facility shall conform to all applicable state laws and local codes and ordinances. When such laws, codes, and ordinances are more stringent than the provisions of this chapter, the more stringent requirements shall govern. Should state laws or local codes or ordinances be in conflict with the requirements of these standards, the department shall be informed so that these conflicts may be legally resolved.

(4) Separation from other occupancies. A common wall between a facility and another occupancy shall be not less than a two-hour noncombustible fire rated partition, unless approved otherwise by the department (definition of such a partition shall be in accordance with the National Fire Protection Association standards). A licensed hospital, nursing home, custodial care home, or personal care home is not considered another occupancy for this purpose.

(5) Facility location.

(A) The facility shall be located so as to promote at all times the health, comfort, safety, and well-being of the residents.

(B) The facility shall be serviced by a paid or volunteer fire-fighting unit as approved by the department. Water supply for fire-fighting purposes shall be as required or approved in writing by the fire-fighting unit serving the area.

(C) Any site conditions that can be considered a fire hazard, health hazard, or physical hazard shall be corrected by the facility as determined by the department.

(c) Personal safety and comfort.

(1) Fire alarm and smoke detection system. A manual alarm initiating system with manual pulls at exit doors shall be provided and be supplemented by an automatic smoke detection and alarm initiation system. Smoke detectors shall be installed in habitable areas, such as resident bedrooms, corridors, hallways, public areas, and staff areas. Service areas such as kitchens, utility rooms, and attached garages used for car parking shall have heat detectors. The primary power source for the complete fire alarm system must be commercial electric. Emergency power source shall be from storage batteries or on-site engine-driven generator set. The manual operation of any alarm initiating device will sound an alarm(s) at the site that is audible and visual. The fire alarm panel shall be located in direct view of staff. The facility shall have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the fire alarm system semi-annually.

(2) Portable fire extinguishers. Portable fire extinguishers shall be provided as required by the local fire marshal having jurisdiction. Water pressure types should be provided at resident bedroom areas.

(3) General fire safety.

(A) General fire safety shall be observed at all times.

(B) Storage items shall be neatly arranged and placed to minimize fire hazard. Gasoline, volatile materials, paint, and similar products shall not be stored in the building housing the residents. Accumulations of extraneous material and refuse shall not be permitted.

(C) The building shall be kept in good repair and electrical, heating, and cooling systems shall be maintained in a safe manner. Use of electrical appliances, devices, and lamps shall be such as not to overload circuits and not to require extension cords.

(D) All fires shall be reported to the department within 72 hours; however, any fire causing injury or death to a resident shall be reported immediately. A telephone report shall be followed by a written report on a form which will be supplied by the department.

(E) All personnel shall be familiar with the locations of fire-fighting equipment. There shall be a fire drill of personnel as required by NFPA 101, including the turning in of alarms, simulated evacuation of residents and other occupants, and the use of equipment.

(4) Waste and storage containers.

(A) Metal wastebaskets of substantial gauge or Underwriters Laboratories, Inc. (U.L.) approved plastic trash containers shall be provided for bedrooms, offices, staff areas, lounges, and similar locations.

(B) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, general storage, and similar places must be made of steel, have a close fitting steel cover, and have at least a 1/2 inch air space between the floor and the bottom of container. Disposable plastic liners may be used in these containers for sanitation. Certain plastic containers meeting U.L. standards may be used in place of metal.

(C) Plastic containers with lids are acceptable for storage of staple foods in the pantry. Dishwashing chemicals used in the kitchen may be stored in plastic containers provided they are the original containers in which the manufacturer packaged the chemicals.

(D) All infectious waste and waste disposal procedures must comply with the department's rules and regulations concerning definition, treatment, and disposal of special waste from health-care related facilities, under Chapter 1 of this title (relating to Texas Board of Health) which became effective April 4, 1989.

(5) Other requirements of safety and comfort.

(A) All new carpet installed after the initial inspection of the department shall have a maximum flame spread rate of 75 based on the ASTM "tunnel test" method or equivalent under the "radiant panel test." Proper documentation must be provided on the letterhead of the testing company.

(B) Open flame heating devices are prohibited. All fuel burning heating devices shall be vented. Working fireplaces are acceptable if they are of safe design and construction and if enclosed

with a glass enclosure that will withstand 650 degrees Fahrenheit temperature.

(C) Smoking regulations and designated smoking areas shall be established. Ashtrays of noncombustible material and safe design shall be provided.

(D) The facility shall develop and conspicuously post throughout the facility an emergency evacuation plan approved by the local fire marshal having jurisdiction and the department.

(E) There shall be at least one non-coin operated telephone in the facility available to both staff and residents use in case of emergency. Emergency telephone numbers shall be posted conspicuously at or near the telephone in a place that can be read while using the telephone.

(F) An annual pressure test of facility gas lines from the meter shall be provided by a licensed plumber. Any unsatisfactory conditions shall be corrected promptly.

(G) Storage of hazardous items such as janitor supplies and equipment shall be provided in closets or spaces separate from resident-use areas. Closets or spaces shall be maintained in a safe and sanitary condition and ventilated in a manner commensurate with the use of the closet or space.

(H) All exterior site conditions shall be designed, constructed, and maintained in the interest of resident safety. Newly constructed ramps shall not exceed 1:12 slope. Ramps, walks, and steps shall be of slip-resistive texture and be smooth and uniform, without irregularities. At least one ramp shall be provided for handicap use. Guard rails, fences, and hand rails shall be provided where needed. Grounds, grass, shrubbery, trees, and other site features shall be maintained in a neat and attractive manner in the interest of health and safety.

(I) Tubs and showers shall have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(J) All lavatories and bathing units shall be supplied with hot water in quantities to meet the needs of the residents. Hot water shall be controlled not to exceed 125 degrees Fahrenheit.

(K) Cooling and heating shall be provided for resident comfort. Conditioning systems shall be capable of maintaining the comfort ranges of heating and cooling.

(L) The facility shall be well ventilated through the use of windows, mechanical ventilation, or a combination of both.

(M) Illumination, either natural or artificial, shall be provided to supply the needs of the residents and staff without eye strain or glare.

(N) A passenger elevator shall be provided in the facility for resident bedroom and use areas which are on the third floor or higher, the street floor being considered the first floor. Applicable codes shall be observed in the design and construction of elevators.

(O) It is desirable that finish materials, colors, decorations, and furnishings contribute to physical and emotional comfort. Furniture shall be substantial and stable and of design commensurate with its function and use. Loose rugs creating a hazard shall not be permitted. Building features, furnishings, and furniture shall be provided and maintained free of hazardous conditions and in the interest of continuing resident benefit.

(P) There shall be no occupancies or activities undesirable to the health and safety of the residents in the buildings or on the premises of the facility.

(d) Sanitary environment.

(1) Waste water and sewage shall be discharged into a state-approved municipal sewerage system; any exception shall be as approved by the department.

(2) Water supply shall be as approved by the department. Quantity and pressure shall be as necessary to serve the needs of the facility.

(3) Waste, trash, and garbage shall be disposed from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. Outside containers shall have tight fitting lids left in closed position. Containers shall be cleaned regularly.

(4) The building and grounds shall be kept neat and free of refuse, litter, extraneous materials, and unsightly or injurious accumulations.

(5) The facility will make every effort possible to guard against insects, rodents, rainwater, and other conditions adversely affecting a sanitary environment or the well-being of the residents.

(6) Operable windows shall be insect screened.

(7) An effective, safe, and continuing pest control program shall be provided. Pesticides, if used, shall be applied in accordance with all applicable laws and regulations, and shall be utilized and stored in a manner that is not hazardous to residents.

(8) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations shall be ventilated for odor control by means of operable windows or powered exhaust approved by the department.

(9) In kitchens and laundries, there shall be adequate equipment and procedures to avoid cross contamination.

(10) The facility shall be kept free of offensive odors, accumulations of dirt, rubbish, dust, and hazards. Floors shall be maintained in good condition and cleaned regularly; walls and ceilings shall be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas, attics, and cellars shall be free of refuse and extraneous materials.

(11) The quantity of available linen shall meet the sanitary and cleanliness needs of the residents. Clean linens shall be stored in clean linen storage areas.

(e) Accommodations.

(1) Resident bedrooms.

(A) Bedrooms shall be arranged and equipped for adequate delivery of services and for comfort and privacy.

(B) Useable bedroom floor space shall be not less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple-bed room. Larger rooms are recommended for those residents needing nursing care. A bedroom shall be not less than eight feet in the smallest dimension, unless specifically approved otherwise by the department.

(C) No more than four beds shall be in any bedroom unless approved otherwise by the department.

(D) In the bedrooms and for each resident there shall be a bed, comfortable chair, table or dresser, and closet space or wardrobe providing security and privacy for clothing and personal belongings.

(E) Each resident room shall have at least one operable outside window which can be readily opened from the inside without the use of tools. The height of the window sill shall not exceed 44 inches from the floor. Operable window sections may be restricted for security or safety reasons, but the required one operable section shall not be restricted to less than six inches. Each window shall be provided with a flame-retardant shade, curtain, or blind.

(F) All resident rooms shall open upon an exit or service corridor, living area, or public area and shall be arranged

for convenient and sheltered resident access to dining and recreation areas.

(2) Resident toilet and bathing facilities.

(A) All bedrooms shall be served by separate private, connecting, or general toilet rooms for each sex (if the facility houses both sexes). The general toilet room or bathing room shall be accessible from a corridor or public space. A lavatory shall be readily accessible to each water closet. The facility shall provide at least one full bath on each resident sleeping floor.

(B) One water closet and one lavatory shall be provided for each four occupants or fraction thereof. Where the needs of residents require, the facility may supplement this number by using bedside commodes, although water closets are preferable. One tub or one shower shall be provided for each six occupants or fraction thereof.

(C) Privacy partitions and shields shall be provided at water closets and bathing units in rooms for multi-resident use.

(D) Sanitary handwashing and drying provisions for residents shall be maintained.

(3) Recreation, living, and day room.

(A) Recreation, living, and day room space and furniture shall be provided to allow seating of all residents at one time. Each facility shall have at least one space of not less than 144 square feet. The first eight residents shall be provided with at least 144 square feet; for each additional resident 10 square feet shall be additionally provided.

(B) At least one of the recreation, living, and day room areas shall have exterior windows providing a view to the outside.

(4) Miscellaneous. The facility is encouraged to provide or arrange for nearby functional parking space for private vehicles of residents who drive, and to provide nearby parking arrangements for visitors.

(f) Care and services.

(1) Admission.

(A) The facility shall have admission policies consonant with the mission of the facility in the care of persons. The facility may have restrictions on admission and retention of persons who use illegal drugs, who abuse alcohol, or whose actions are a threat to the health or safety of others.

(B) Each resident on admission shall have a current medical history, including medications, and a physical examination performed by a physician. The history and physical examination shall have been performed within 14 days prior to admission or shall be performed within seven days after admission. The history and physical examination shall be of sufficient detail for the attending physician to evaluate the resident's immediate and long-term needs, and shall include all diagnoses and any other information that may be needed for the care of the resident.

(C) Upon admission, the resident, responsible party, or facility responsible for the placement of the resident shall see that arrangements are made for the medical care of the resident by a designated attending physician or alternate physician.

(D) The facility shall secure at the time of admission appropriate identifying information, including full name; sex; date of birth; usual occupation; social security number; family/friend name, address, and telephone number; and physician names and telephone numbers including emergency numbers.

(E) There shall be in easily understood wording a written admission agreement between a facility and a resident. The agreement shall specify such details as services to be provided and how services will be reimbursed, and shall be based on the operational policies.

(F) The facility shall maintain a chronological register of all residents admitted to and discharged from the facility. The register shall contain at least the name of the resident, date of birth, date of admission, date of discharge/death, and disposition (where resident went including address).

(2) Care plans and provision of services.

(A) The facility shall develop for each resident a care plan that identifies the functional capabilities and needs of the resident, the services that will be provided or arranged for by the facility in or toward meeting those needs, and the services or assistance the resident will self-perform or self-arrange. The initial care plan shall be written at the time of admission or as soon thereafter as possible, but not to exceed 14 days after admission. The care plan shall be reviewed and updated as the condition of the resident changes, but not to exceed quarterly in any case.

(B) Care plans shall be developed in concert with the attending physician's orders of care and treatments. Assessment of needs shall be determined and care plans shall be developed by qualified persons representing nursing, dietary, and social service disciplines, and other disciplines as may be appropriate or indicated.

(C) The facility shall provide, arrange for, or assist as the case may be in the provision of services that are called for by the care plans to be the responsibilities of the facility. All such services shall meet applicable professional standards of quality, be in accordance with all governing laws and regulations, and as specified in this chapter.

(3) Staffing.

(A) The facility shall be staffed with personnel or shall arrange through outside resources or volunteers for personnel in the quantity and of the disciplines, professions, or types necessary for the facility to provide the care and services required under the care plans of the individual residents and as called for in these standards. The personnel shall be commensurate with the intent of the types and kinds of services stated in the policies of the facility.

(B) For a resident requiring only personal care, including assistance in self-administration of medications, direct care personnel may be facility, outside resource, or volunteer attendant personnel.

(C) For residents requiring nursing care, including administration of medications, direct care facility personnel shall be qualified nursing personnel or may be outside resource personnel or volunteers with the required qualifications.

(D) There shall be personnel as needed to maintain cleanliness, sanitation, and safety; to prepare and serve meals; to keep a supply of clean linen; and to assure that each resident receives the kind and amount of supervision and care required to meet his or her basic needs. These personnel may be employees, be arranged for, be volunteers, or, where appropriate, be residents themselves, depending on the policies of the facility. In some facilities, these personnel may perform these functions on a periodic, as compared to an ongoing, basis.

(E) At least one or more appropriate staff person(s) as needed shall be on duty at all times. Each shift or tour of duty shall have an appropriate staff person designated in charge. This person shall be qualified to recognize and respond to obvious sudden changes in a resident's condition and obtain necessary consultation or direct assistance by others.

(F) The facility shall provide or arrange for a registered nurse or other qualified person, such as a physician or physician assistant, to check each resident on a periodic basis frequent enough to note any unrecognized or subtle change in the resident's condition.

(G) All staff shall be physically, mentally, and emotionally able to perform the duties to which they are responsible or have been assigned.

(4) Physician services.

(A) Each resident admitted shall have a current medical history and physical examination as described in paragraph (1)(B) of this subsection.

(B) Each resident shall have a designated attending physician who is in charge of the medical care of the resident.

(C) The facility shall provide a medical records service which facilitates attending physicians' entering of orders and progress notes.

(D) In the event of an acute illness, condition, or accident requiring medical and/or nursing care beyond the capabilities of the facility, the resident shall be transferred to a hospital or other health care facility as appropriate where needed services and facilities are available; provided, however, until said transfer is made the facility personnel shall have authority to carry out emergency procedures as prescribed by a licensed physician. In case of an illness which does not necessitate transfer of a resident from the facility, appropriate nursing personnel shall keep a necessary record of medications and vital signs in order to keep the attending physician fully informed relative to the health status of the individual resident. Administration of medications shall be done in accordance with applicable laws and regulations.

(E) Every facility shall have an arrangement with one or more physicians to provide emergency medical care as needed.

(5) Nursing services.

(A) Nursing services shall be provided as necessary for those residents needing nursing care. The nursing services shall be provided to meet the needs of the residents and in accordance with standard recognized practices of nursing care.

(B) Licensed nurses shall function consistent with the nursing practices recognized and authorized by their licensing boards in Texas.

(C) A licensed nurse shall be designated to be responsible for the nursing service. This person shall be on duty or on call as needed.

(D) When nursing services are needed, nursing personnel shall assure that residents requiring nursing care receive treatments, medications, and diets as prescribed; receive preventive care to discourage decubiti; are kept comfortable, clean, and well-groomed; are protected from accident and injury by adoption of indicated safety measures; and are treated with kindness and respect. Duties of nursing personnel consist of direct resident care and services.

(E) Nursing or attendant personnel on duty shall be responsible to obtain emergency medical care when a resident's condition so requires and shall notify the applicable attending physician.

(6) Infection control. The facility shall have written policies and procedures for the control of communicable diseases and infections in personnel, residents, volunteers, or visitors, and for a safe and sanitary environment. These policies and procedures shall include the *Recommendations for Prevention of HIV Transmission in Health-Care Settings* as published by the United States Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia, and as revised; and "Infection Control for the Nursing Home," Texas Preventable Disease News, Volumne 46 Number 33, August 16, 1986, Texas Department of Health. The Immunization Section of this newsletter will have to be carefully applied on an individual basis as determined by the patient's physician.

(7) Medical records.

(A) The facility shall maintain for each resident admitted, a separate medical record with all entries kept current, dated, and signed by the recorder. The record shall include:

(i) identification data as identified in of paragraph (1)(D) of this subsection;

(ii) medical history and physical exam reports;

(iii) any physician orders and progress notes;

(iv) any documentation of the resident's change in health condition requiring emergency procedures and/or health services provided by facility personnel;

(v) if appropriate, documentation of assistance with medications as stated in pharmacy services;

(vi) other documents or reports related to the care of the resident as required by facility policy;

(vii) if appropriate, documentation of nursing services provided and nursing staff observation as required by facility policy; and

(viii) a separation or discharge report completed at the time of the resident's discharge. The report shall include date of departure, destination, reason for leaving, resident's health status, referral information, if any, and how to be contacted, if appropriate.

(B) The director shall be responsible for the organization and management of the medical records.

(C) The facility will protect medical records against loss, damage, destruction, and unauthorized use by:

(i) safeguarding the confidentiality of medical record information and allowing access and/or release only under court order; by written authorization of the resident unless the physician has documented in the record to do so would be harmful to the physical, mental, or emotional health of the resident; as allowed by law and rules for licensure inspection purposes and reporting of communicable disease information; or as specifically allowed by federal and state laws relating to facilities caring for residents with AIDS or related disorders;

(ii) maintaining records in an organized manner, storing them in a protective device (manila folder, ring binder, envelope, etc.), and filing them using an organized system;

(iii) recording entries in ink, computer, or typewritten format and keeping original reports and records; and

(iv) storing records in a lockable area during non-use and after resident's discharge.

(D) Medical records must be retained as follows.

(i) A facility may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the facility.

(ii) If a patient was less than 18 years of age at the time he was last treated, the facility may authorize the disposal of medical records relating to the patient on or after the date of his 20th birthday or on or after the 10th anniversary of the date on which he was last treated, whichever date is later.

(iii) The facility may not destroy medical records that relate to any matter that is involved in litigation if the

facility knows the litigation has not been finally resolved.

(iv) The facility shall comply with the provisions of the Natural Death Act, Texas Civil Statutes, Article 4590h, for those residents who have legally requested the withholding of life sustaining procedures or treatments.

(v) In the event of change of ownership, the new management shall maintain proof of the medical information required for the continuity of services of residents.

(8) Pharmacy services.

(A) Pharmacy services shall be provided as required for those residents on a physician-ordered medication therapy regimen.

(B) Upon admission, and as part of the care plan, the admitting physician shall determine whether a resident can self-administer his or her medications or will require administration by qualified nursing personnel.

(C) Each resident's health status shall be reviewed at least quarterly, or more often if indicated, to determine if any changes are necessary in the medication administration procedures.

(i) The appropriateness for a resident to self-administer medications shall be reviewed by the facility director, attending physician, and a licensed nurse.

(ii) The appropriateness for a resident to have qualified nursing personnel administer medications shall be reviewed by the facility director, attending physician, registered nurse, and a pharmacist.

(iii) A resident's drug regimen review shall be incorporated into the individual's plan of care.

(D) Residents self-administering their medications may:

(i) keep them in their possession;

(ii) use lockable cabinets for medication storage provided by the facility for each resident in the resident's room. Only the resident and authorized facility staff shall have access to the lockable cabinet; or

(iii) allow the facility to keep residents' medications in a central medication storage area under control of facility staff.

(E) The central medication storage shall be lockable and shall be kept locked when facility staff are not actually in or at the storage area.

(F) Residents may be permitted entrance or access to the storage area for the purpose of self-administering their medications or treatments or receiving assistance with their medication or treatment regimen. A facility staff member shall remain in or at the storage area the entire time any resident is in the storage area.

(G) Lockable, individual resident-storage cabinets, securely fastened or attached to a wall or permanent fixture shall be available at a central location.

(H) Each resident is responsible for keeping any record for taking his or her medications.

(I) If administration of medications to residents is performed by qualified nursing personnel, the following shall apply.

(i) There shall be a specific room area designated as a medication room that is:

(I)sufficient in size and/or space for the storage of all medications that are being administered to residents and for the preparation of medications for administration to residents;

(II) lockable and shall be maintained locked at all times when not occupied;

(III) accessible only to persons authorized to administer medications to residents;

(IV) equipped with a sink having hot and cold water available at all times; and

(V) adequately ventilated and temperature controlled.

(ii) A medication storage cart may be used in addition to the medication room for the storage of residents' medications.

(I) The medication cart shall conform to the department guidelines for implementation and use of a medication storage cart.

(II) When not in use, the medication storage cart must be kept locked in the locked medication room or in the designated locked storage room that shall be used only for the storage of the cart.

(iii) All medications administered to residents shall be upon written orders or verbal orders subsequently verified in writing by the treating physician.

(iv) Medications shall be administered only by personnel licensed or permitted to administer medications and shall be done in conformance with all laws, regulations, and recognized professional standards of practice.

(v) The facility shall have readily available items necessary for the proper administration of all medications.

(vi) The person administering medications shall properly record in the appropriate medical record the medications administered.

(vii) A pharmacist arranged for by the facility shall review each resident's medication regimen at least monthly for all residents being administered their medications.

(I) The pharmacist shall furnish to the facility's nurse-in-charge and director a separate written report on each resident indicating the date of the review, and any irregularities.

(II) The pharmacist shall sign each drug regimen review.

(J) Pharmaceutical service policies and procedures shall be developed and maintained current.

(K) Policies and procedures are to be developed by the facility's pharmacist, nurse-in-charge, director, and a physician.

(L) Appropriate documentation shall assure that policies and procedures are reviewed at least annually.

(M) Medication requiring refrigeration shall be stored in the medication room, and used only for medicine storage, supplemental feedings, and substances specifically ordered by the resident's physician that require refrigeration.

(N) Medication under storage control of the facility shall be returned to the resident upon dismissal from the facility.

(O) Medications no longer in use remaining in the facility after 90 days shall be destroyed in accordance with regulation governing the destruction of dangerous or controlled drugs by the Texas State Board of Pharmacy.

(P) Controlled drugs under storage control of the facility shall be kept separately locked in a permanently affixed

compartment within the medicine room or medication storage cart.

(i) A separate record must be maintained for each controlled drug.

(ii) The record shall include, but not be limited to, prescription number, name and strength of drug, date received by the facility, date and time each dose is administered, signature of person administering dose, name of resident, and the original amount received with the balance verifiable by drug inventory at least daily.

(Q) Appropriate facility staff shall be responsible for ordering and reordering medications from the pharmacy for those residents having their medications administered to them by facility staff.

(R) All residents' medications shall be properly dispensed and/or labeled in accordance with applicable laws and regulations.

(9) Dietary services.

(A) A dining room, rooms, or space with appropriate furnishings shall be provided. Dining facilities shall not double as required living and day room areas. Ideally, the dining space and furnishings should allow the residents who can come to the dining room to dine at one sitting. Where alternate or second meal services are employed, those services must be equal in quantity, quality, and sanitation to the first serving.

(B) The facility shall have a kitchen or dietary area to meet the food service needs of the residents. It shall include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal.

(C) Meal service shall be provided or arranged to be commensurate with the needs of the residents. Meals shall be palatable and meet the nutritional needs of the residents.

(D) Procedures to prevent cross contamination shall be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(E) All dishes and utensils shall be washed in an automatic dishwasher.

(F) Sanitary handwashing and drying provisions shall be provided in the kitchen area.

(G) If the attending physician specifies a therapeutic diet that cannot customarily be provided in a home or family setting, the facility shall make arrangement for the service of a dietitian in order to provide the resident with the appropriate diet.

(10) Social services/pastoral care.

(A) The care plan of each resident shall identify that resident's social, spiritual, and emotional needs.

(B) Services to meet identified social, spiritual, and emotional needs shall be offered to the resident, the resident's family or responsible party, the resident's friend, and significant other persons. Acceptance of these services will be at the option of the resident. Services may include, but are not limited to:

(i) issues of death or dying;

(ii) individual and group counseling;

(iii) grief work, including follow-up care to survivors of patients;

(iv) unresolved issues of sexual identity and responsible sexual activity;

(v) issues related to employment, and acceptance by the community at large;

(vi) use of health resources and options;

(vii) substance or alcohol abuse; and

(viii) appropriate and inappropriate behavior.

(C) Social services staff should be available to assist with discharges and in locating alternative arrangements should the need exist.

(11) Personal care services.

(A) The facility shall provide personal care services required of residents to assist them in their day-to-day living.

(B) All residents will need the following basic personal care services:

(i) a safe, comfortable, and sanitary environment;

(ii) a food service which provides wholesome and satisfying meals meeting general nutritional needs; and

(iii) humane treatment, including responsible communication.

(C) Some residents may need personal care services such as:

(i) assistance with the self-administration of their medication regimen;

(ii) assistance with hygiene;

(iii) assistance with grooming, including clothing;

(iv) assistance with ambulation; and

(v) emotional support.

(D) Some residents may be able to be cared for through personal care services without reliance on nursing services.

(12) Humane treatment and resident rights.

(A) As home-like an atmosphere as possible shall be provided. Restrictive rules shall be kept to a minimum. While some rules are necessary in group living to maintain a balance between individual wishes and group welfare, they shall not infringe upon a resident's rights of self-determination, privacy of person or thought, and personal dignity. General rules affecting all residents should be based on the premise that residents have the capacity to function as adult individuals.

(B) Through action and attitudes the facility staff shall help the residents develop and maintain self-respect, confidence, self-fulfillment, and meaningful relationships with other residents and staff.

(C) All facility staff, including management staff and volunteers, shall, in the course of their tasks, provide emotional support.

(i) Staff shall provide observation and precautionary measures to promote safety and protection from falling, wandering, and harm.

(ii) Staff shall treat residents humanely and with dignity and respect.

(iii) Staff shall be alert to major changes in the conditions of the residents and outward signs of side effects of medications.

(iv) Staff shall refrain from performing tasks for residents that they can do themselves.

(D) Abuse or punishment of residents in the facility is prohibited.

(E) Each resident shall have unlimited freedom to move from the facility. A written release from the resident or the resident's responsible party is recommended.

(F) No resident shall be discharged from the facility other than for reasons specified in the admission policies and without due notification.

(G) To the extent practical, each resident shall have the right to keep and maintain his or her personal belongings in his or her possession.

(H) Each resident shall have the right to keep and maintain his or her own finances.

(I) Each resident shall have the right to participate in, or abstain from, religious observances.

(J) Each resident shall have freedom to receive and send mail unopened and without undue delay.

(K) Residents shall have the opportunity to receive visitors at reasonable hours but within reasonable limitations, as may be required by the facility in its operation policies.

(L) Residents shall have as much freedom as possible in choice of clothing when provisions are available for laundry and dry cleaning at the individual resident's expense. Beautician and barber services shall be available for use by those desiring such outside service at the individual resident's expense.

(M) The facility shall provide opportunities for meaningful activities and social relationships.

(N) Use of volunteers from the community to participate and assist in meaningful resident activities is encouraged.

(O) Rights of the elderly specified in the Human Resources Code, Title 6, Chapter 102 shall apply to residents 55 years of age or older.

(g) Waivers, modifications, and variations to provisions of this section.

(1) On the request of the facility, the department may grant a waiver or modification for certain provisions of the physical plant and environment which, in the opinion of the department, would be impractical for the facility to meet. In granting the waiver or approving the modification, the department shall determine that there will be no adverse effect on resident health or safety, and the requirement, if not waived or modified, would impose an unreasonable hardship on the facility in providing adequate care for the residents. The department may require offsetting or equivalent provisions in granting such a waiver or approving such a modification.

(2) On the request of the facility, the department may grant a waiver or approve a variation for certain provisions of facility operation which, in the opinion of the department, would be impractical or inappropriate for the facility to meet. In granting the waiver or approving the variation, the department shall determine that there will be no adverse effect on resident health or safety, and the requirement, if not waived or varied, would impose an unreasonable hardship on the facility in providing adequate care to residents. The department may require offsetting or equivalent provisions in granting such a waiver or approving such a variation.

§125.7. License Denial, Suspension, or Revocation and Criminal Penalties.

(a) The department may deny, suspend, suspend on an emergency basis, or revoke a license if the applicant or facility fails to comply with any provision of the Act or this chapter.

(b) The department may take action under subsection (a) of this section for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the provisions of this chapter.

(c) The department may suspend or revoke an existing valid license, or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In addition to the factors that may be considered under paragraph (1) of this subsection, the department in determining the present fitness of a person who has been convicted of a crime, shall consider the provisions of Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

(d) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

(e) If the director proposes to deny, suspend, or revoke a license, the director shall notify the applicant or the facility by certified mail, return receipt requested, of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 30 days of receipt of the notice. The request must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If the applicant or facility does not request a hearing, in writing, within 30 days of receipt of the notice, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(f) The department may suspend or revoke a license to be effective immediately when the department has reasonable cause to believe the health and safety of persons are threatened. The department shall notify the facility of the emergency action by certified mail, return receipt requested, or personal delivery of the notice. If requested by the license holder, the department shall conduct a hearing, which shall be not earlier than 10 days from the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(g) If a person violates a requirement of the Act or this chapter, the department may petition the district court to restrain the person from continuing the violation.

(h) A license holder or person who violates the Act or any rule adopted by the board under the Act is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation.

(i) A person who knowingly establishes or operates a special care facility without a license issued under this Act commits an offense. An offense under this section is a Class B misdemeanor. Each day of a continuing violation constitutes a sepa-

rate offense.

Issued in Austin, Texas, on August 22, 1989.

TRD-8907671 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: September 1, 1989.

Expiration date: December 30, 1989.

For further information, please call: (512) 458-7538

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Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

The Texas Department of Health adopts on an emergency basis an amendment to §133.21, concerning the department's hospital licensing standards which the section adopts by reference. The amendment repeals the existing sections on special care facilities described in Chapter 12 of the standards. The existing sections will be replaced and updated by new Chapter 125 of this title (relating to Special Care Facilities). This amendment is also being proposed for permanent adoption in this issue of the *Texas Register*.

The department adopts the amendment on an emergency basis to implement the requirements of the Texas Special Care Facility Licensing Act, Senate Bill 487, 71st Texas Legislature, 1989, which becomes effective on September 1, 1989. In order to begin implementing Senate Bill 487 on this date, the department has to adopt emergency rules on special care facilities including the repeal of Chapter 12 of the hospital licensing standards, to become effective on September 1, 1989.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4437f, §5, which provide authorization for the Texas Board of Health to adopt minimum standards governing the transfer of patients, staffing by physicians and nurses, hospital services relating to patient care and safety, fire prevention, and sanitary provisions of hospitals in Texas; Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Article 6252- 13a, §5(d), which provides for the adoption of rules on an emergency basis

§133.21. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the department publication effective September 1, 1985, entitled, "Hospital Licensing Standards," as amended through September [August] 1989.

(b) (No change.)

Issued in Austin, Texas, on August 22, 1989.

TRD-8907674 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: September 1, 1989.

Expiration date: December 12, 1989.

For further information, please call: (512) 458-7538

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter K. Hotel Occupancy Tax

• 34 TAC §3.163

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.163, concerning exemptions. The amendment reflects recent legislative changes to the exemption provisions of the State Hotel Occupancy Tax Act.

The amendment is adopted on an emergency basis to provide information to interested persons before the effective date of the changes.

The amendment is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.163. Exemptions.

(a) **This section deals with exemptions from the state hotel occupancy tax. For information on city and county hotel taxes, contact the affected city or county.**

(b)[(a)] The YMCA, YWCA, and private clubs are exempt from the collection of tax for room rental to members.

(c)(b) Religious, charitable, and educational organizations as defined in §3.161 of this title (relating to Definitions) **and their employees, including college and university personnel, traveling on official business of the organization** are exempt from payment of hotel occupancy tax.

(d)[(c)] Agencies, institutions, boards, and commissions of the State of Texas, and their employees traveling on official business [Hotel occupancy receipts derived from payments made by employees on official business representing religious, charitable, and educational organizations, and government entities] are exempt from the hotel occupancy tax.

(e)[(d)] The United States Government and its employees traveling on official business representing the United States are exempt from the hotel occupancy tax [Any foreign government which contracts and pays for room accommodations will not be subject to the hotel occupancy tax].

(f) Diplomatic personnel of a foreign government who present an appropriate tax exemption card issued by the United States Department of State are exempt from the tax.

(g) Where an exemption applies, the organization claiming it must only present an exemption certificate to the hotel. The method of payment or method of billing does not determine exempt status.

Issued in Austin, Texas on August 23, 1989.

TRD-8907737 Bob Bullock
Comptroller of Public Accounts

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-4004

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• 34 TAC §3.164

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.164, concerning exemption certificates. The amendment reflects recent legislative changes to the exemption provisions of the State Hotel Occupancy Tax Act.

The amendment is adopted on an emergency basis to provide information to interested persons before the effective date of the changes.

The amendment is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.164. Exemption Certificate.

(a)-(d) (No change.)

HOTEL OCCUPANCY TAX EXEMPTION CERTIFICATE

NOTE: This certificate is for business only, not to be used for private purposes, under penalty of law. The hotel operator may request a government ID, business card or other identification to verify exemption claimed. Certificate should be furnished to the hotel or motel. DO NOT send the completed certificate to the Comptroller of Public Accounts. The certificate does not require a number to be valid.

Check exemption claimed:

___ Federal or Texas government agency or agency employee or diplomatic personnel (state, city and county tax exemption)

___ Religious, charitable or educational organization or employee (state tax exemption only)

Name of exempt organization

Organization exempt status (Religious, charitable, educational, governmental)

Address of exempt organization (Street and number, city, state, ZIP code)

GUEST CERTIFICATION: I declare that I am an occupant of this hotel/motel on official business sanctioned by the exempt organization named above and that all information shown on this document is true and correct.

Guest Date

SIGN HERE:

FOR HOTEL/MOTEL USE ONLY (OPTIONAL)

Name of hotel/motel

Address of hotel/motel (Street and number, city, state, ZIP code)

Method of payment (Cash, personal check or credit card, organization check or credit card, direct billing, other)

Room rate Local tax Exempt state tax Amount paid by guest

[HOTEL OCCUPANCY TAX EXEMPTION CERTIFICATE

_____

Name of exempt organization

_____

Address (Street and number, city, state, zip code)

_____

_____

An exemption is claimed from payment of taxes under Texas Tax Code ch. 156 for the rental of a room or rooms from _____ to _____.

_____

Hotel/Motel name

_____

Hotel/Motel address (Street and number, city, state, zip code)

_____

The reason that the Occupant is claiming this exemption is: _____

_____

_____

_____

I declare that the information contained in this document and any attachments thereto is true and correct to the best of my knowledge and belief.

_____

Executed the _____ day of _____, 19____

_____

SIGN HERE

Authorized signature

NOTE: This certificate should be furnished to the hotel or motel. DO NOT send the completed certificate to the Comptroller of Public Accounts. This certificate does not require a number to be valid.]

Issued in Austin, Texas on August 23, 1989.

TRD-8907735 Bob Bullock
Comptroller of Public Accounts

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-4004

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Subchapter Y. Controlled Substances Tax

• 34 TAC §3.681

The Comptroller of Public Accounts adopts on an emergency basis new §3. 681, concerning imposition and rate of tax. This section is adopted on an emergency basis to provide notice to interested persons before the effective date of this tax.

The new section is adopted on an emergency basis under the Tax Code, §111. 002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.681. Imposition and Rate of Tax.

(a) A tax is imposed on the purchase, acquisition, importation, manufacture, or production by a dealer of a taxable substance on which tax previously has not been paid under the Tax Code, Chapter 159.

(b) A taxable substance is a substance consisting of or containing any of the following:

(1) a controlled substance, a counterfeit substance, or marihuana, as those terms are defined by Texas Civil Statutes, Article 4476-15;

(2) a simulated controlled substance as defined by Texas Civil Statutes, Article 4476-15b; or

(3) a mixture that contains any of these substances.

(c) A dealer is a person who, in violation of the laws of this state, imports into this state or manufactures, produces, acquires, or possesses in this state:

(1) seven grams or more of a taxable substance other than marihuana; or

(2) four ounces or more of a taxable substance consisting of or containing marihuana.

(d) The tax becomes due at the time a dealer imports a taxable substance into this state or manufactures, produces, acquires, or possesses a taxable substance in this state.

(e) The rate of the tax is:

(1) for taxable substances other than marihuana, and for taxable substances containing both marihuana and another taxable substance, $200 per gram or part of a gram; and

(2) for marihuana, $3.50 per gram or part of a gram.

(f) Dealers must obtain tax payment certificates from the comptroller before the tax becomes due, and must securely affix the certificate to the substance as proof that the tax has been paid. For information on tax payment certificates, see §3.682 of this title (relating to Tax Payment Certificates).

(g) Possession of a taxable substance without the possession of the requisite number or amount of tax payment certificates is prima facie evidence that tax has not been paid on that substance as required by the Tax Code, Chapter 159.

Issued in Austin, Texas on August 23, 1989.

TRD-8907731 Bob Bullock
Comptroller of Public Accounts

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-4004

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• 34 TAC §3.682

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.682, concerning tax payment certificates. This section is adopted on an emergency basis to provide information to interested parties before the effective date of this tax.

The amendment is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.682. Tax Payment Certificate.

(a) Tax payment certificates may be obtained in all denominations from the Comptroller's Austin office, 111 East 17th Street, Austin, Texas 78701. Mail orders for tax payment certificates will be accepted. No person shall be required to appear at the comptroller's Austin office personally in order to purchase the certificates.

(b) Tax payment certificates must be paid for by money order, certified check, or similar source of funds guaranteed by a financial institution which is a member of the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation.

(c) Tax payment certificates shall be serially numbered and shall be designed so as to not be removable or reusable. Tax payment certificates shall be designated so as to adhere permanently and securely to a container with a smooth, durable surface. It shall be the sole responsibility of the dealer to determine an appropriate method for affixing the certificate to the taxable substance and to utilize it, if the taxable substance is not stored in a container with a smooth, durable surface. A tax payment certificate shall be affixed to a taxable substance or the container holding the taxable substance in such a manner to ensure that it is prominently displayed and in plain view at all times.

(d) A tax payment certificate shall be affixed to a taxable substance or the container holding the taxable substance immediately upon the dealer's purchase, acquisition, importation, manufacture, or production of the substance.

(e) Refunds of the face value of the tax payment certificate will be available solely through the comptroller's Austin office upon the return and surrender of unused certificates. Only certificates that, upon inspection, are determined by the comptroller to be unused will qualify for a refund. Refunds are subject to the provisions of the Tax Code, §111.104. Refunds requests are also subject to the confidentiality provisions of the Tax Code, Chapter 159.

(f) Tax payment certificates for marihuana will be available in the following categories:

Quantity	Value
1 gram	$ 3.50
1 ounce	101.50
1 pound	1,589.00
1 kilogram	3,500.00

(g) Tax payment certificates for taxable substances other thanmarihuana, and for taxable substances containing both marihuana and another taxable substance, will be available in the following categories:

Quantity	Value
1 gram	$ 200.00
7 grams	1,400.00
15 grams	3,000.00
29 grams	5,800.00
500 grams	100,000.00

Issued in Austin, Texas on August 23, 1989.

TRD-8907733 Bob Bullock
Comptroller of Public Accounts

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-4004

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• 34 TAC §3.683

The Comptroller of Public Accounts adopts on an emergency basis new §3. 683, concerning jeopardy determinations. This section is adopted on an emergency basis to provide information to interested parties before the effective date of this tax.

The new section is adopted on an emergency basis under the Tax Code, §111. 002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.683. Jeopardy Determinations.

(a) A prosecuting attorney who wishes to prosecute an offense under the Tax Code, Chapter 159, may file an official report with the comptroller. Such official report shall state that to the best of the prosecuting attorney's information and belief the tax required to be paid to the state under that chapter has not been paid by a dealer. Upon receipt of such official report from a prosecuting attorney and after determination that the collection of the tax is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the collection is in jeopardy. The amount determined is due and payable immediately.

(b) A determination made under this section becomes final on the expiration of 20 days after the day on which the notice of the determination was served by personal service or by mail unless a petition for a redetermination is filed before the determination becomes final. Mail notice of the determination may be served on the dealer at the address provided in his arrest report or at the place of his incarceration.

(c) The term "prosecuting attorney" used in this section shall be defined as any licensed attorney prosecuting criminal cases in this state on behalf of the state, or on behalf of any county or municipality located in this state.

(d) The term "official report" used in this section shall be defined as a written report of a violation of the Tax Code, Chapter 159, made by a prosecuting attorney on a form prescribed and published by the comptroller for this purpose. A prosecuting attorney may make such official report only with regard to persons arrested or taxable substances seized within his jurisdiction for violation of Texas Civil Statutes, the Controlled Substances Act, Article 4476-15 or Article 4476-15b.

Issued in Austin, Texas on August 23, 1989.

TRD-8907732 Bob Bullock
Comptroller of Public Accounts

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-4004

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• 34 TAC §3.684

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.684, concerning records required, confidentiality. This section is adopted on an emergency basis to provide information to interested parties before the effective date of this tax.

The amendment is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.684. Records Required, Confidentiality.

(a) No person shall be required to reveal his name, address, social security number, or any other personal identification information in order to purchase tax payment certificates under the Tax Code, Chapter 159.

(b) If a person purchasing certificates under this chapter wishes to receive a refund in the future for unused certificates, at the time of purchase, he may voluntarily reveal such information as will enable the comptroller to identify him as the person who purchased the certificates. Information provided pursuant to this subsection shall be utilized solely to comply with the requirements of the Tax Code, §111.104, involving refunds.

(c) Information provided pursuant to subsection (b) of this section shall not be used for the purposes of prosecution of any civil or criminal offenses except in a prosecution directly related to a tax imposed by

the Tax Code, Chapter 159.

(d) Information provided by a person in a report or return made for purposes of paying a tax imposed by Chapter 159 is confidential. The confidentiality provisions of the Tax Code, §159.005, shall be strictly followed in all respects.

Issued in Austin, Texas on August 23, 1989.

TRD-8907733 Bob Bullock
Comptroller of Public Accounts

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 463-4004

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Name: Will Allison
Grade: 9
School: Carter Jr. High, Arlington

Proposed Sections

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

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.3

(Editor's Note: The State Purchasing and General Services Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Purchasing and General Services Commission proposes an amendment to §113.3, concerning processing of purchase requisitions. The proposed amendment provides for implementation of Senate Bill 222, Article V, §104, 71st Legislature, 1989, by establishing requirements for notification to governing bodies and chief executive officers, when the commission has taken exception to the respective agency's decision to purchase any good, service, or item on a noncompetitive basis.

Ron Arnett, director of purchasing, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Arnett also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased visibility to executive management of purchases made on the basis of no competition which otherwise could have been competitive with the probability of achieving a lower price. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 610b, Article 3, which provide the State Purchasing and General Services Commission with the authority to institute and maintain an effective and economical system for purchasing supplies, materials, services, and equipment.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907724 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-3446

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Surplus Property Sales

• 1 TAC §§113.72, 113.73, 113.75

(Editor's Note: The State Purchasing and General Services Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The State Purchasing and General Services Commission proposes amendments to §113.72 and §113.73, and new §113.75, concerning surplus and salvage property sales.

The amendment to §113.72, concerning definitions, defines the terms "assistance organization" and "political subdivision" to conform to new definitions enacted by Senate Bills 506 and 723, 71st Legislature, (1989).

The amendment to §113.73, concerning the sale and disposal of surplus or salvage property, provides procedures for transfer of surplus or salvage to assistance organizations and the assistance of the Texas Surplus Property Agency as required by Senate Bill 506. The new §113.75 adopts a memorandum of understanding as required by Senate Bill 506.

Ron Arnett, director of purchasing, has determined that there will be fiscal implications as a result of enforcing or administering the sections. Effect of state government for the first five-year period the sections will be in effect will be an estimated additional cost of $5,400 in fiscal years 1990-1994. Effect on local government for the first five-year period the section will be in effect will be an estimated reduction in cost of $62,500 in fiscal years 1990-1994. There will be no effect on small business.

Mr. Arnett 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 state surplus and salvage will be available to more political subdivisions and assistance organizations which will allow them to make use of state surplus and salvage to a greater extent. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment and new section are proposed under Texas Civil Statutes, Article 601b, Article 9, §9.09 which provide the State Purchasing and General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 9.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907722 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-3446

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Competitive Cost Review

• 1 TAC §113.91

(Editor's Note: The State Purchasing and General Services Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Purchasing and General Services Commission proposes an amendment to §113.91, concerning competitive cost review. Under this amendment the following agencies would be subject to the competitive cost review requirements of Texas Civil Statutes, Article 601b, Article 13: the Central Education Agency, the Texas Higher Education Coordinating Board, and the Department of Agriculture.

Ron Arnett, director of purchasing, has determined that there will be fiscal implications as a result of enforcing or administering the sec-

tion. Effect of state government for the first five-year period the section will be in effect will be an estimated additional cost of $157,152 in fiscal years 1990-1994. There will be no fiscal implications for local government or small business as a result of enforcing or administering the section.

Mr. Arnett also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to assist in assuring that the state is obtaining certain of its required services at the most economical cost. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, Article 13, which provide the State Purchasing and General Services Commission with the authority and responsibility to conduct cost comparison reviews of commercial activities performed by certain state agencies.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907720 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-3446

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Chapter 117. Centralized Services Division

Centrex System

• 1 TAC §117.1-117.5

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

The State Purchasing and General Services Commission proposes the repeal of §§117.1-117.5, concerning the Centrex telephone system in the capitol complex area of Austin. The Centrex telephone system is no longer operational and sections pertaining to its replacement, the centralized capitol complex telephone system, have previously been adopted in §121.19(a)-(h).

Aubrey Johnson, director, Centralized Services 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. Johnson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased operating efficiency of the agency. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 610b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary for the administration and enforcement of the Act.

§117.1. Telephone Service.

§117.2. Monthly Payment.

§117.3. Directory.

§117.4. Issuance of Directories.

§117.5. Arrangements For Equipment.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907718 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-3446

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Messenger Service

• 1 TAC §117.31

(Editor's Note: The State Purchasing and General Services Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The State Purchasing and General Services Commission proposes an amendment to §117.31, concerning the expansion of messenger service to include delivery of packages between agencies in Travis County. The amendment is proposed to establish agency responsibilities and procedures conforming to the requirements of the law.

Aubrey Johnson, director, Centralized Services Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Johnson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be possible reduction of state expenditures through agencies' utilization of messenger service, rather than alternate delivery methods, for delivery of packages in Travis County. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary for the administration and enforcement of the Act.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907717 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-3446

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Chapter 121. Telecommunications Services Division

Telecommunications Services

• 1 TAC §121.6

(Editor's Note: The State Purchasing and General Services Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Purchasing and General Services Commission proposes an amendment to §121.6, concerning the mandatory use of the state telecommunications network (TEX-AN) by state agencies and the evaluation of waiver requests for intercity telecommunications facilities or services that cannot be provided at reasonable costs on the TEX-AN network. The amendment is proposed to establish agency responsibilities and procedures conforming to the requirements of the law.

Carl Stringfellow, director, Telecommunications Services Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Stringfellow also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be possible reduction of state expenditures through agencies' increased utilization of the TEX-AN network for telecommunications services. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary for the administration and enforcement of the Act and Senate Bill 222, Article V, §48.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907713 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-3446

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TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 178. Texas Community Development Program

Subchapter A. Allocation of Program Funds

- **10 TAC §178.10, §178.13**

The Texas Department of Commerce (Commerce) proposes amendments to §178. 10 and §176.13, concerning the allocation of community development block grant (CDBG) nonentitlement area funds under the Texas Community Development Program (TCDP). The proposed sections establish the standards and procedures by which Commerce will allocate Texas capital funds to be eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1989 funds. The proposed sections include application requirements, and selection procedures and criteria.

Bruce W. Anderson, general counsel, 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.

Ruth Cedillo, TCDP director, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the equitable distribution of funds to eligible units of general local government. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

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

The amendments are proposed under Texas Civil Statutes, Article 4413, §12. 002, which provide Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

§178.10. General Provisions.

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

(g) Appeals. An applicant for funding under the Texas Community Development Program may appeal the disposition of its application in accordance with this subsection.

(1) (No change.)

(2) The appeal must be submitted in writing to the Texas Community Development Program of the department no later than 30 days after the date the announcement of contract awards is published in the *Texas Register*. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the State Review Committee will be heard at the subsequent meeting of the State Review Committee. The department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the State Review Committee at its next regularly scheduled meeting. The State Review Committee will make a final recommendation to the executive director of the department. The decision of the executive director of the department is final. **If the appeal concerns a Texas capital fund application, the department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the executive director. The executive director will then consider the appeal within 30 days and make the final decision.**

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application will be approved and funded. If the appeal is rejected, the department will notify the applicant of its decision, including the basis for rejection after the meeting of the State Review Committee at which the appeal was considered. **If the appeal concerns a Texas capital fund application, the applicant will be notified of the decision made by the executive director within 10 days after the final determination by the executive director.**

(h)-(m) (No change.)

§178.13. Texas Capital Fund.

(a) General provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. All jobs being created or retained must primarily benefit low and moderate income persons. **A minimum of 51% of all of the jobs ultimately created or retained must have been for people who at the time of their employment were living in households whose total income was below the low and moderate income limit for the county where the development occurred.** A firm financial commitment from the private sector is required upon submission of the application. **The all other funds (private funds) Texas capital funds (public funds) ratio must not be less than 1:1. A minimum of 5.0% cash equity injection of the total project costs by the principals is required. In order for an applicant to be eligible for Texas capital funding, the cost per job calculation must not exceed $25,000.**

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

(b) (No change.)

(c) Selection Procedures. Scoring and recommended rankings of projects is done by department staff. The Texas Capital Advisory Committee, selected by the director of the Texas Community Development Program, assists the Texas Capital Fund staff in reviewing the design of the projects. The application and selection procedures consist of the following steps.

(1) Prior to submitting an application, each potential applicant must meet with a member of the department's staff. The developer, mayor, or his designee; judge or his designee; and the consultant must be present at the meeting. Documentation requirements necessary to prepare a fundable application and firm, private commitments and project feasibility must be discussed. In addition, a complete physical and financial description of each project component must be provided the meeting and the necessity for the project and Texas capital funding must be discussed [proven]. Copies of the application(s) must [should] be provided to both the Regional Review Committee and the department. An unsuccessful application that contains dated material over 60 days old at the time of submission of the new application will only be considered for funding if it is submitted as a new application with updated attachments and financial information.

(2) (No change.)

(3) Each Regional Review Committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the department provided such comments are received by the department within 15 [10] days after the application is submitted.

(4) The department staff generates scores on selection criteria related to leverage ratio, project feasibility, minority hiring, and cost per job. Scores on factors in these categories are derived from information provided by the applicant. An applicant must receive at least 60 points out of a possible 100 points to be considered for funding. An applicant that receives at least 60 points on such criteria may be [is] invited to send a representative to make a presentation to staff.

(5) (No change.)

(6) [Based on a final technical review of the highest ranked applications, the] The department staff makes recommendations for project selection to the executive director of the department.

(7)-(8) (No change.)

(d) Selection criteria. The following is an outline of the selection criteria used for selection of projects under the Texas capital fund. One hundred points are available. The terms and criteria used in this subsection are further defined in the application package for this fund.

(1) (No change.)

(2) Minority hiring (total–20 points).

[A] Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (20) [10] points). **In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five permanent employees, the applicant will be assigned the average score on this factor for all applicants for the previous program year or the score calculated on the actual figures, whichever is higher.**

[B [The business to be assisted agrees to employ a percentage of minority employees equal to the percentage employed by the applicant –(10 points).]

(3) Leverage ratio (total–30 points). Points are awarded by dividing the total other [private] funds committed by the amount of Texas capital funds requested less administration, in accordance with the following scale:

1.0:1	(100%).....	5 points
1.5:1	(150%).....	10 points
2.0:1	(200%).....	15 points
2.5:1	(250%).....	20 points
3.0:1	(300%).....	25 points
3.5:1	(350%) or more	30 points

(4) (No change.)

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

Issued in Austin, Texas on August 23, 1989.

TRD-8907745 William D. Taylor
Interim Executive Director
Texas Department of Commerce

Earliest possible date of adoption: September 29, 1989.

For further information, please call: (512) 320-9666

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Board of Health

Public Health Promotion

• **25 TAC §1.104**

The Texas Department of Health proposes new §1.104, concerning signs on the prohibition of the sale or provision of tobacco products to a minor under 18 years of age. The signs say that the sale or provision of tobacco products to a minor under 18 years of age is prohibited by law, and that upon conviction a maximum fine of up to $200 may be imposed. One sign is designed to be placed on vending machines and the other one is designed to be placed close to a cash register or check out stand.

The proposed new section will comply with the requirements of Senate Bill 115, §2(a), 71st Legislature, 1989, which requires the department to determine by rule the design and size of signs on the prohibition of the sale or provision of tobacco products to a minor under 18 years of age, and on request to provide the sign without charge to any person who sells cigarette products.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing or administering the section. The cost to the department will be approximately $8,000 annually. There will be no cost to local government. There may be a very minimal cost to a small business which is a distributor or retailer if it decides to make its' own signs.

Mr. Seale also has determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the general public will be aware of the prohibition in Senate Bill 115, 71st Legislature, 1989, on the sale or provision of tobacco products to a minor under 18 years of age and of the criminal penalty for violation of the law. There also will be no probable fiscal implications to individuals and no impact on local employment.

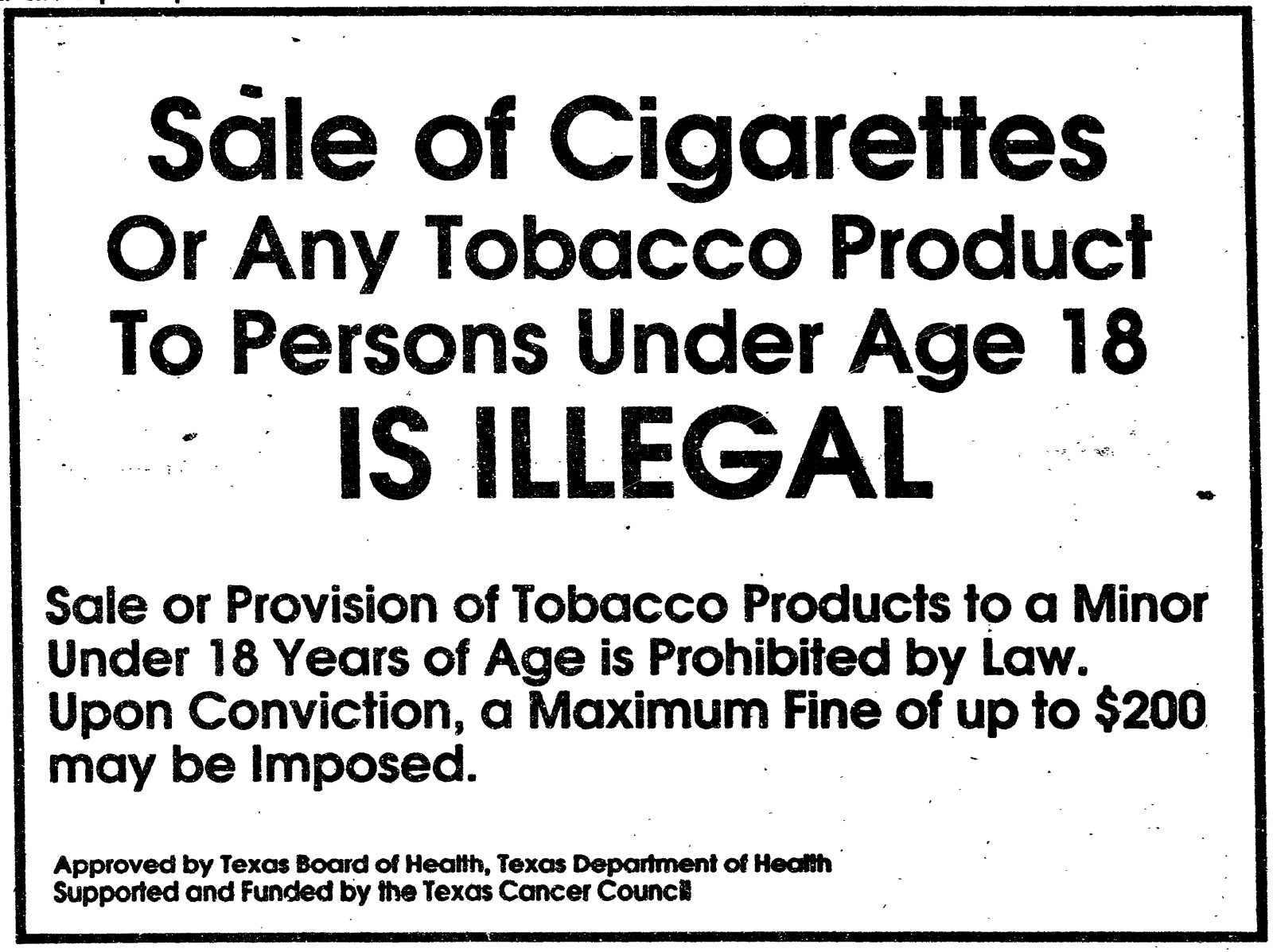
Written comments on the proposal may be submitted to the Texas Department of Health, Office of Smoking and Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after the proposal is published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 4476-16, as amended by Senate Bill 115, 71st Legislature, 1989, which provide the Texas Board of Health with authority to adopt rules concerning the design and size of signs on the prohibition of the sale or provision of tobacco products to a minow under 18 years of age.

§1.104. Signs Covering the Prohibition of the Sale or Provision of Tobacco Products to a Minor Under 18 Years of Age.

(a) Texas Civil Statutes, Article 4476-16, require that each person who sells tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and cus-

(1) The minimum size of the sign to be posted close to cash register or check-out stand shall be 6 inches by 8 inches. The design of the sign, including wording and minimum print size, shall be as shown in the replica published as follows.

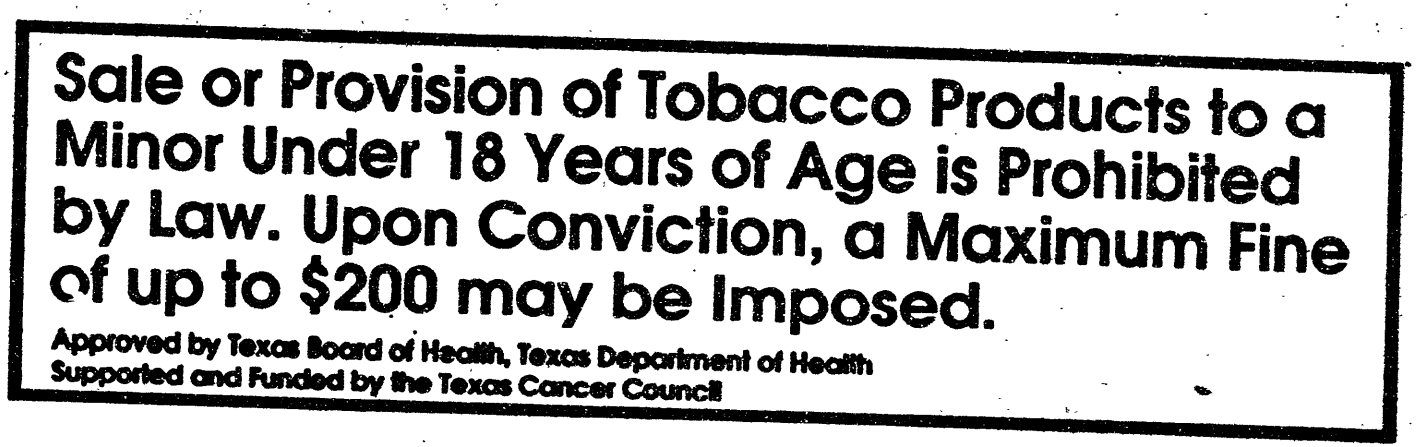


placed on vending machines and a sign to be placed close to a cash register or check-out stand. The design and minimum size of each sign are as follows:

Health to determine the design and size of the sign. To implement this provision, the Board of Health has approved a sign to be

tomers and that is close to the place at which the tobacco products may be purchased. The Act also requires the Board of

(2) The minimum size of the sign to be posted on the vending machine shall be 2 inches by 7 inches. The design of the sign, including wording and minimum print size, shall be as shown in the replica published as follows.



(b) The department on request shall provide the sign without charge to any person who sells tobacco products. The department will provide the sign without charge to distributors or wholesale dealers of tobacco products in this state for distribution to persons who sell tobacco products.

(c) Requests for signs shall be made to the Texas Department of Health, Literature and Forms Division, 1100 West 49th Street, Austin, Texas 78756. A request shall indicate the warehouse stock number, (#4-171 for vending machine signs, and #4-172 for cash register or check-out area signs), the number of signs desired, and the person and address to whom the signs are to be mailed.

(d) Retailers and wholesalers may develop their own signs provided they meet the minimum size specifications and the designs (including wording and minimum print size) for the signs as described in subsection (a) of this section. A wholesaler or retailer may submit a sample of its proposed sign for review to the department's Office of Smoking and Health, 1100 West 49th Street, Austin, TX 78756.

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

Issued in Austin, Texas on August 23, 1989.

TRD-8907742

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

Proposed date of adoption: November 5, 1989

For further information, please call: (512) 458-6512.

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Name: David Hill
Grade: 9
School: Carter Jr. High, Arlington

Chapter 125. Special Care Facilities

• 25 TAC §§125.1-125.7

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

The Texas Department of Health proposes new §§125.1-125.7, concerning special care facilities. The sections cover definitions; application and issuance of licenses; inspections; renewal of license; fees; standards for licensure; and license denial, suspension, or revocation and criminal penalties.

The new sections implement the requirements of the Texas Special Care Facility Licensing Act, Senate Bill 487, 71st Texas Legislature, 1989. Special care facilities provide nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The implementation of these sections will allow the department to identify and license special care facilities which are currently operating. The new sections will replace the existing rules on special care facilities which are described in the department's hospital licensing standards, which are adopted by reference in Chapter 133 (concerning hospital licensing) and which are being proposed for repeal at this time.

Senate Bill 487 requires that the rules become effective on September 1, 1989, therefore the department is also adopting the sections on an emergency basis in this issue of the *Texas Register.*

Stephen Seale, chief accountant III, has determined that for the first five-year period that the sections as proposed are in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the sections. The estimated cost to be incurred by state government in licensing special care facilities will be recovered through the collection of license, renewal, plan review, and construction fees authorized by the Act, and are estimated to be $6,600 the first year, and $8,800 in succeeding years. The cost to small businesses will be the fees contained in the body of the sections. The department does not anticipate receiving applications from large businesses. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be appropriate standards for licensure of special care facilities. There is no anticipated economic cost to individuals who may be required to comply with the sections as proposed, because the license is issued to a business rather than an individual.

Comments may be submitted to Maurice B. Shaw, Chief, Bureau of Licensing and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register.*

The new sections are proposed under the authority of Senate Bill 487, 71st Legislature, 1989, which provides the Texas Board of Health with the authority to adopt rules to implement the Special Care Facility Licensing Act; and Texas Civil Statutes, Article 4414b, §1.05, which provide the the Texas Board of Health with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907672 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: November 5, 1989.

For further information, please call: (512) 458-7538

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Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

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

The Texas Department of Health proposes an amendment to §133.21, concerning the the department's hospital licensing standards which the section adopts by reference. The amendment will repeal Chapter 12 of the standards. The existing sections will be replaced and updated by new Chapter 125 of this title (relating to Special Care Facilities). This amendment is also being adopted on an emergency basis in this issue of the *Texas Register.*

Stephen Seale, chief accountant III, has determined that for the first five-year period that the section is in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section.

Mr. Seale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to update the special care facility rules and to implement recent legislation concerning the facilities. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments may be submitted to Maurice Shaw, Chief, Bureau of Licensing and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of this proposal in the Texas Register.

The amendment is proposed under Texas Civil Statutes, Article 4437f, §5, which provide authorization for the Texas Board of Health to adopt minimum standards governing the transfer of patients, staffing by physicians and nurses, hospital services relating to patient care and safety, fire prevention, and sanitary provisions of hospitals in Texas; and Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907673 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: November 5, 1989.

For further information, please call: (512) 458-7536

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 313. Edwards Aquifer

Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, and Hays Counties

• **31 TAC §§313.1-313.11**

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

The Texas Water Commission proposes the repeal of §§313.1-313.11, 313. 21-313.30, and 313.61-313.66 and proposes new §§313.1-313.15 and 313.21-313.26, concerning the protection of the Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson counties, with the addition of Travis County. Protection of the quality of water in the Edwards Aquifer is necessary because of the importance of the Edwards Aquifer as a drinking-water source. The highly permeable nature of the Edwards Aquifer and its potential for rapid recharge justify regulation of activities conducted on the Recharge Zone to protect and maintain existing water quality.

These revisions to Chapter 313, are proposed in response to a rulemaking petition dated May 28, 1987, and submitted to the Texas Water Commission (the commission) pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon 1988). The petition requests the commission to promulgate rules for the protection of the Edwards Aquifer in Travis and northern Hays counties through adoption of provisions similar to those currently provided under Chapter 313 for the protection of the southern and northern portions of the Aquifer. Petitioners include: State Senator Gonzalo Barrientos; State Representatives Terral Smith, Lena Guerrero, and Anne Cooper; the City of Austin; the Save Bear and Onion Creeks Coalition; the Lone Star Chapter of the Sierra Club; and the National Audubon Society. The revisions are also in response to comments and recommendations made by the City of San Antonio and citizens in Williamson, Bexar, Medina, and Comal counties.

In drafting the proposed rules, consideration was given to petitioner's proposed rules, public comments offered at the annual Edwards Aquifer hearing held in New Braunfels on March 15, 1988, comments and recommendations by the City of San Antonio contained in *The Edwards Aquifer: Perspectives for Local and Regional Action* (City of San Antonio City Council, October 1987), and discussions with City of Austin Department of Environmental Protection staff concerning the city's environmental protection programs and recent changes in federal and state law relating to the regulations applicable to underground storage tank (UST) systems.

Generally, the proposed rules replace, and are in large part, the same as current Chapter 313. The rules and revisions have been made uniformly applicable to all portions of the Aquifer by consolidating them under one proposed subchapter.

Current Chapter 313 does not address protection of the Edwards Aquifer within Travis County, and provides differing requirements under existing Subchapter A for Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties as compared with those in existing Subchapter B for Williamson County. In these proposed rules, the commission incorporates changes necessary to eliminate conflicts and inconsistencies between existing Subchapter A and Subchapter B, fill in gaps, clarify certain provisions, and standardize submittal procedures, in addition to addressing the concerns of the petitioners and other persons who have commented on the existing rules in annual public hearings.

The proposed rules define terms applicable to central Texas groundwater resources and the provisions of these proposed rules, and set standards for regulated developments and related activities on the recharge zone and on the transition zone. Specifically, the sections of these proposed rules: require approval of the executive director prior to commencing construction of a regulated development on the recharge zone and transition zone; require the submittal of a water pollution abatement plan and specify the contents; require the approval of the executive director of the design of an organized sewage collection system; and set standards for collection system design; establish requirements for treatment and disposal systems; provide for licensing and regulation of private sewage facilities; require plugging of abandoned wells; prohibit certain activities; require executive director approval of the design and construction of facilities for underground storage of static hydrocarbons and hazardous substances; require executive director approval of the design and construction of facilities for above-ground storage of static hydrocarbons and hazardous substances; provide for consideration of exceptions to these rules; provide for appeal of decisions of the executive director; provide for enforcement of the provisions of these rules; provide for cooperation between the commission and underground water conservation districts; require the submittal of an application; establish the contents of the application; and establish fees for the review of applications.

The Edwards Aquifer is composed of permeable geologic units generally known as the Edwards and Associated Limestones and specifically including the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Comanche Peak and Walnut formations, and underlie the less-permeable Del Rio Clay regionally. The recharge zone and transition zone of the Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties are delineated on official maps maintained in the office of the executive director of the Texas Water Commission. Delineation of the recharge zone and transition zone was based on a review of relevant geologic mapping and published hydrogeologic information. The recharge zone, as mapped, includes the outcrop area of the Edwards and Associated Limestones and some additional areas where known faulting may provide potential avenues of recharge through other geologic units exposed at the surface. Basic changes of the mapped recharge zone and the mapped transition zone, as proposed in these rules, include: delineation of the recharge zone and the transition zone in Travis County; delineation of the transition zone in part of Williamson County; northeastward extension of the transition zone in Hays County from Kyle to the Travis County line; remapping of the recharge zone in northern Hays County to conform with mapping of recharge zone by the U.S. Geological Survey; and corrections of minor omissions in existing maps of the recharge zone, specifically the Medina Lake and Helotes 7 1/2 minute quadrangles.

Illustrative maps showing proposed changes to the official maps for Hays and Williamson counties and the new recharge zone and transition zone in Travis County are shown in Appendix A. Proposed official maps are available for public inspection during the comment period on these proposed rules in the office of the executive director. Generalized index maps illustrating the recharge zone and the transition zone at county and regional-scale will be available at an unspecified time after the effective date of rule adoption of these rules.

The following is a section-by-section description of these proposed rules and substantive changes, where applicable. No substantive change indicates that the section contains no changes that alter the meaning, sense, or effect of the provision of the existing rules.

Generally, Subchapter A contains definitions and describes requirements for compliance with technical standards related to water pollution abatement plans; organized sewage collection systems; wastewater treatment and disposal systems; private sewage facilities; plugging of abandoned wells; and underground and above-ground storage of static hydrocarbons and hazardous substances.

Proposed §313.1, states the purpose of the rules. No substantive changes are proposed for this section.

Proposed §313.2 (new), defines and limits the applicability of the rules.

Proposed §313.3 combines, revises, deletes, and adds to the contents of existing §§313.2 and §313.22; contains definitions of terms used in the sections; and incorporates certain definitions found in the Texas Water Code. Proposed new terms include: above-ground storage tank system; appropriate district office; commencement of construction; industrial discharge; land application systems; organized sewage collection system; private service lateral; qualified geologist; regulated activity; significant recharge feature; underground storage tank system; and well. The

proposed definition for regulated activity includes as examples, any activity associated with road-building, highway, and/or railroad construction. Definitions in the existing sections that have been revised for the proposed rules include those for: Edwards Aquifer; hazardous substance; recharge zone; regulated development; and transition zone. The revised definition for regulated development is proposed to include roads, highways, and railroads, and includes all regulated development within the jurisdiction of an incorporated city. Definitions that have been deleted from the existing rules include those for: construction; District 8 Office; Edwards Underground Water District; license; no discharge systems; San Antonio Office; and significant recharge areas.

Proposed §313.4, combines existing §313.3 and §313.23, and requires approval of water pollution abatement plans by the executive director of the commission for all proposed regulated developments on the recharge zone. Persons proposing a regulated development of the recharge zone must provide certain specified information to the executive director, along with a plan outlining procedures to abate or avoid pollution of the Edwards Aquifer. Proposed §313.4 specifically describes requirements related to: contents of a water pollution abatement plan, including an assessment of area geology and a technical report; dee recordation; notifications; requesting approvals for modifications of previously approved water pollution abatement plans; compliance with this section; and terms and extensions of approvals.

Proposed §313.4, has been expanded to include more-specific and/or more-detailed site descriptions and geologic assessments. Specifically, for the site descriptions, additional submittal requirements include: legible road maps; site plans–at a minimum scale of one inch to 400 feet–showing 100-year floodplain boundaries (as applicable); and existing or preconstruction topographic contours. Specifically, for geologic assessments, additional information requirements include: submittal of a geologic assessment for all residential regulated developments with 25 or more living units and for all commercial regulated developments; stratigraphic column details; surface geology descriptions; soil descriptions; temporary/permanent sedimentation and erosion control; and protection of significant recharge features.

New general requirements/criteria for proposed §313.4, include: notification of the appropriate district office upon discovering a recharge/solution feature during construction; responsibility of the holder of the approved water pollution abatement plan to comply with all conditions of approval (new to existing §313.23, only), and granting of unlimited extensions, for which a fee is required for each request.

Proposed §313.5, combines existing §313.4 and §313.24 and requires approval of sewage collection plans and specifications by the executive director of the commission for all installations of organized sewage collection lines on the recharge zone. The proposed rules require that sewage collection systems located on the recharge zone meet more-stringent design and construction standards than are ordinarily required throughout the state, and establish a schedule for testing of new and existing sewer lines. Proposed §313.5 specifically contains provisions for: approval of design of sewage collection systems by the executive director; general design of sewage collection systems; contents of a sewage collection system plan; notifications required by the commission; modification of previously approved sewage collection system plans; compliance with this chapter; and term of approval. Significant revisions include: more-stringent minimum design specifications for gravity and pressurized piping systems; prohibition of bricks as an acceptable material for manhole construction; new general lift station design criteria; repairing and testing of existing sewage collection lines; sealing of stub-outs; requirements for testing new gravity sewage collection lines, manholes, and wet wells; and implementation of temporary erosion and sedimentation controls.

Proposed §313.6 combines existing §313.5 and §313.25 and requires that no new or increased wastewater effluent discharges occur on the recharge zone. Existing permitted municipal dischargers who apply for renewal and who are not intending to change the quality of effluent discharge or increase the quantity of effluent discharge are not required to comply with the new proposed effluent standards. Land application methods of disposal, such as evaporation or irrigation, may be allowed and will be reviewed for approval on a case-by-case basis. Proposed new provisions for municipal wastewater treatment plants require that: within five miles upstream of the recharge zone the plant must, at a minimum, attain 30-day average maximum concentrations of five milligrams/liter (mg/1) biochemical oxygen demand, five mg/1 total suspended solids, 2 mg/1 ammonia nitrogen, and one mg/1 phosphorus; between five and 10 miles upstream of the recharge zone the plant must, at a minimum, attain maximum concentrations of Effluent Set 2N, as defined in 31 TAC, Chapter 309 (relating to Effluent Standards); and discharges greater than five miles upstream from the recharge zone and entering stream segments 1427 or 1428 of the Colorado river Basin must conform to §311.43 (relating to Effluent Requirements for All Tributaries of Segment 1428 of the Colorado River and Segment 1427, Onion Creek, and its Tributaries, of the Colorado River Basin). Also, proposed §313.6, contains provisions for general design of wastewater treatment plants. Existing permitted industrial dischargers zero to 10 miles upstream of the recharge zone must at all times discharge effluent in accordance with their permitted limits, and applications for new industrial discharge permits for within zero to 10 miles upstream of the recharge zone will be approved on a case-by-case basis.

Proposed §313.7 combines existing §313.6 and §313.26 and designates the commissioners Courts of Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties as the licensing authorities for the area of their respective counties regulated in this chapter, exclusive of those areas within the corporate limits of Hollywood Park, Shavano Park, and Hill Country Village, for which those municipalities are respectively designated as the licensing authorities for private sewage facilities on the recharge zone. The proposed rules define prohibited systems and establish standards for: new-facility permit and license requirements; conditions for a permit to construct; conditions for a license to operate; terms for licenses; revocation or suspension of licenses; existing private sewage facilities; exceptions for certain lots; connection to an organized sewage collection system; and notice to subdividers. This section is scheduled to expire at midnight, August 31, 1989, at which point regulation of private sewage facilities will be transferred to the Texas Department of Health, unless otherwise authorized by law.

Proposed §313.8 (new), contains requirements for plugging abandoned wells. 31 TAC, Chapter 287 (relating to Water Well Drillers) is referenced as containing specific technical requirements for plugging wells.

Proposed §313.9 combines parts of existing §313.7 and §313.27 and prohibits specific activities on the recharge zone and transition zone. Newly prohibited activities on the transition zone include: for Williamson County, waste-disposal wells regulated under Chapter 331 (relating to Underground Injection Control); and for all counties under the jurisdiction of these proposed rules, land-disposal of Class I wastes; as defined in §335.1 (relating to Definitions).

Proposed §313.10 combines parts of existing §313.8 and §313.28 and contains requirements for design of new UST systems and upgrading of existing UST systems used to store static hydrocarbons and hazardous substances, and reference to other applicable commission rules. New UST regulatory programs have been established by recent federal and state legislation. New applicable federal regulations to be phased in on a state-wide basis over a ten-year period are proposed to be phased in over a three-year period for the recharge zone and the transition zone. Chapter 334 (relating to Underground Storage Tanks) and Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) are referenced as containing applicable technical criteria. New, revised, and more-detailed requirements regarding applicability, technical criteria, record-keeping, closure, and reporting are included in these proposed rules. Specifically, for new UST systems these rules include: a more-detailed discussion of hardware, in which tanks, piping, flexible connectors, and all associated fittings are required to be of double-wall construction; primary-monitoring requirements, in which automatic monitoring of the space between the primary and secondary walls of the UST and piping systems shall be done at a frequency of at least once per day, and shall be capable of alerting on-site personnel to possible leaks or releases from any part of the system; pressurized-piping monitoring requirements, in which piping that conveys hydrocarbons or hazardous substances under pressure shall be equipped with an automatic line leak detector calibrated to detect within one hour a leak rate of three gallons per hour at 10 pounds per square inch line pressure, and capable of alerting on-site personnel of possible leaks while restricting or shutting off the flow of substances in the pressurized piping; external backfill monitoring requirements, in which monitoring of the backfill environment outside the secondary walls shall be done either manually or automatically at a frequency of at least once per week; monitoring well requirements, in which at least two monitoring wells–with mini-

mum diameter of four inches, each - shall be located at diagonally opposite corners of the tank excavation; spill and overfill prevention requirements, in which all new and replacement Underground storage tank systems shall be fitted with an overfill-prevention device, a spill-containment device, and a tight-fill device; corrosion protection requirements; flexible connector requirements, in which a flexible conector shall be installed at each end of the product or delivery piping, and the use of threaded steel swing joints or similar threaded devices for the purpose of providing flexibility in the product piping or delivery piping is specifically prohibited.

Specifically, for existing underground storage tanks systems these rules include requirements addressing: installation of automatic release detection systems on all existing double-wall and single-wall systems and piping, the capability of the monitoring system to immediately alert on-site personnel of possible leaks or releases, in-situ monitoring of backfill material of soil surrounding the primary wall(s) of existing single-wall systems, or the interstitial space between the walls of existing double-wall systems, at a frequency of at least once per day, and capable of immediately alerting on-site personnel; retrofitting of existing systems with spill and overfill prevention devices no later than December 22, 1990; and retrofitting of existing systems with corrosion protection systems no later than December 22, 1991.

Scheduling of required upgrades is proposed as follows. Underground Storage Tank systems installed prior to December 22, 1969, and those of unknown age, shall be fitted with a release detection system no later than December 22, 1989. Underground Storage Tank systems installed between December 22, 1969 and December 21, 1979, inclusive, shall be fitted with a release detection system no later than December 22, 1990. All other existing UST systems shall be fitted with a release detection system no later than December 22, 1991. During the period prior to installation of any release detection systems, a combination of tank-system tightness testing and inventory control of tank contents shall be used to monitor existing UST systems for their integrity. Tightness testing shall be conducted on each tank and associated piping at least once per year beginning no later than December 22, 1989. Inventory level measurements shall be recorded at least once per day, and inventory reconciliation shall be conducted at least once per week beginning no later than the effective date of these rules. All methods and procedures used for testing tank tightness, piping tightness, and inventory control shall be in accordance with the applicable requirements in Chapter 334 (relating to Underground Storage Tanks).

New general requirements include those related to: completion of upgrades and related submittals; tank registration; removal of UST systems from service and site; in-place abandonment of UST systems; closure; site assessment; contents of an application for approval of new or replacement UST systems; site inspections by the appropriate district office; assessment of excavations by a qualified geologist; modification of previously approved UST system plans; compliance; one-year term of approval and subsequent extensions; and excepting sewage holding tanks from the UST provisions. Official maps have been amended by adding new areas to the transition zone in Hays, Travis, and Williamson counties.

Proposed §313.11, combines parts of existing §313.8 and §313.28 and contains requirements for design of new above-ground storage tanks and their containment/drainage areas on the recharge zone and transition zone, and reference to other applicable commission rules. Proposed changes stipulate more-detailed above-ground storage tank design plans–including a more-detailed geologic assessment; a release contingency plan; and a general closure plan - and establish a two-year term of approval for the plan. More stringent requirements for notification and inspection by the appropriate district office are proposed. Subsequently, official maps have been amended by adding new areas to the transition zone in Hays, Travis, and Williamson counties.

Proposed §313.12, combines existing §313.9 and §313.29 and provides for consideration of exceptions to these rules and outlines procedures for requesting an exception. No substantive changes are proposed for this section.

Proposed §313.13, replaces existing §313.10 and §313.30 and provides for reviews of decisions of the executive director, based on justiciable interest, and outlines procedure for requesting a review.

Proposed §313.14 (new), stipulates that any person who is found to be in noncompliance with this chapter or other relevant regulation, orders, and or laws shall be liable for penalties and may be the subject of enforcement proceedings initiated by the executive director under Chapter 26 of the Texas Water Code.

Proposed §313.15, replaces existing §313.11 and recognizes the authority of underground water conservation districts to conserve, prevent waste of, and protect the quality of underground water; and provides for cooperation between the commission and underground water districts. The Edwards Underground Water District is not mentioned specifically because the provisions have been changed to address cooperation with underground water districts, in general.

Proposed Subchapter B generally describes requirements for application submittals, requests for approvals, and review-related fees contained in Subchapter D, §§313.61-313.66.

Proposed §313.21, describes the application requirements in requests for approval of water pollution abatement plans, sewage collection system plans and specifications, and underground and above-ground storage tank system construction/renovation plans. No substantive changes are proposed for this section.

Proposed §313.22, defines the person or entity required to submit an application and request for approval of water pollution abatement plans, sewage collection system plans and specifications, and underground and above-ground storage tank system construction/renovation plans. No substantive changes are proposed for this section.

Proposed §313.23, defines who is authorized to be a signatory to an application. No substantive changes are proposed for this section.

Proposed §313.24, outlines the required contents of an and request for approval of water pollution abatement application plans, sewage collection system plans and specifications, and underground and above-ground storage tank system construction/renovation plans. No substantive changes are proposed for this section.

Proposed §313.25, provides for the collection of fees to be required at the time of a request for review of submitted plans. No substantive changes are proposed for this section.

Proposed §313.26, outlines the schedule of fees related to requests for extensions of terms of approval included in approved water pollution abatement plans, sewage collection system plans and specifications, and underground and above-ground storage tank system construction/renovation plans. No substantive changes are proposed for this section.

Proposed §313.27, outlines the schedule of fees required for the review of submitted plans. No substantive changes are proposed for this section.

Appendix A contains generalized maps illustrating the proposed changes and additions to the recharge zone and transition zone to the east of the recharge zone in Travis, Williamson, and Hays counties. Appendix A should not be considered definitive. Appendix A is illustrative only, and any person interested in reviewing the precise area proposed to be regulated should consult the official maps located in the offices of the commission and showing the recharge zone and transition zone.

Roger G. Bourdeau, chief fiscal officer, has determined that there will be fiscal implications as a result of enforcing and administering the sections and in complying with these provisions. Generally, the costs of complying with activities not previously subject to the provisions of the existing Chapter 313 and the adoption of additional requirements which are more stringent or detailed than current regulations.

The requirement to submit a geologic assessment for certain regulated developments will be one cost attributable to this proposed action. Also, there will be costs to regulated developments subject to fees charged to cover the costs of commission review and approval of submissions. These rules as proposed will not significantly increase the total costs to owners or operators of petroleum storage tanks in complying with these sections. The time period over which these costs will be realized; however, will be reduced. The schedule for implementation of underground storage tank technical requirements under these rules will be reduced to three years from the ten year period allowed under current state-wide regulations. As a practical matter, however, most facilities with underground petroleum storage tanks must satisfy the technical requirements of tank installation, operation and monitoring in order to qualify for required financial assurance provisions under current state and federal regulations. The shorter three-year time frame for complying with storage tank requirements may be the more realistic regardless of whether these proposed rules are adopted.

The effect on state government for the first five-year period the sections will be in effect

is an average annual cost of $12,500. The estimated reduction in cost will be zero. The estimated annual increase in revenue will be $4,500.

The effect on local government for the first five-year period the sections will be in effect is an average annual cost of $13,000. The estimated reduction in cost will be zero. The estimated loss or increase in revenue will be zero. The effect on small businesses is estimated to be $52,000 annually for the first five years the sections will be in effect. The cost per applicant will vary considerably, but is expected to average approximately $2,300 on a one-time basis.

Mr. Bourdeau has also determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections is improved protection of the Edwards Aquifer, a major source of drinking water, from pollution. There are no anticipated additional costs to individuals who are required to comply with these sections which have not been previously identified under the costs to small businesses.

A public hearing will be held Thursday, September 28, 1989, 7 p.m. on the campus of the University of Texas at San Antonio, in the Humanities and Business Building, room 2.0124 to receive comments on the proposed rules. Oral or written testimony may be presented at the hearing.

Comments on the proposed rules may be submitted to Mark Jordan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

These repeals are proposed under the Texas Water Code, §§5.103, 5.105, 26. 011, 26.046, and 28.011, which provides the Texas Water commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§313.1. Purpose.

§313.2. Definitions.

§313.3. Water Pollution Abatement for regulated Developments.

§313.4. Sewage Collection Systems.

§313.5. Wastewater Treatment and Disposal Systems.

§313.6. Private Sewage Facilities.

§313.7. Prohibited Activities.

§313.8. Static Hydrocarbon and Hazardous Substance Storage Facilities.

§313.9. Exceptions.

§313.10. Review of Decisions of Executive Director.

§313.11. Edwards Underground Water District.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907728 Jim Haley
Director, Legal Division
Texas Water commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-8087

• 31 TAC §§313.1-313.15

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011, which provides the Texas Water Commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§313.1. Purpose. The purpose of this subchapter is to regulate activities having the potential for causing pollution of the Edwards Aquifer. The activities addressed are those that pose direct threats to water quality. Nothing in this subchapter is intended to restrict the powers of the commission or any other governmental entity to prevent, correct, or curtail activities that result or might result in pollution of the Edwards Aquifer.

§313.2. Applicability. These rules specifically apply to the Edwards Aquifer and are not intended to be applied to any other aquifers in the State of Texas.

§313.3. Definitions. The definitions for the words and terms in the Texas Water Code, §§26.001, 26.263, and 26.342, are applicable to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Above-ground storage tank system–Any one or combination of tanks and any connecting pipes used to contain an accumulation of static hydrocarbons or hazardous substances which does not meet the definition of an underground storage tank system as defined in this section.

Agricultural discharge–Waterborne liquid, gaseous, or solid substances that emanate from confined animal operations and which cause a potential for contamination of waters in the state.

Appropriate district office–For regulated developments or other activities covered by this chapter and located in Travis and Williamson counties, the appropriate district office is the Texas Water Commission District 14 office located in Austin. For regulated developments or other activities covered by this chapter and located in Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties, the appropriate district office is the Texas Water Commission District 8 office located in San Antonio.

Commencement of construction–The initiation of any regulated activity.

Confined animal operation–A commercial concentrated, confined livestock or poultry facility operated for meat, milk, or egg production, or a facility for the growing, stabling, or housing of livestock or poultry in pens, corrals, berns, houses, or other such facilities.

Edwards aquifer–That portion of an arcuate belt of porous, waterbearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

Hazardous substance–Any substance designated as such by the Administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; regulated pursuant to the Federal Water Pollution Control Act, §311; or any Class I or Class II solid waste, as defined in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), or other substance that is designated to be hazardous by the commission, pursuant to the Texas Water Code, §26.263.

Industrial discharge–Any category of wastewater except:

(A) those that are primarily domestic in composition; or

(B) those emanating from confined animal operations.

Land application system–A wastewater disposal system designed not to discharge wastewater directly into a surface drainageway.

Organized sewage collection system–Any public or private sewerage system for the collection of sewage that flows into a treatment and disposal system that is regulated pursuant to rules of the commission and provisions of the Texas Water Code, Chapter 26.

Pollution–The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health,

safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

Private sewage facilities–On-site sewerage facilities including septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks and all other such facilities, systems, and methods used for the disposal of sewage other than disposal systems that are required to operate under a waste discharge permit issued by the commission or its predecessors.

Private service lateral–Facilities extending from the building drain to the public sewer or other place of disposal and provided to serve only an individual household or establishment whose operation and maintenance is the sole responsibility of the householder or owner of the establishment's facilities.

Qualified geologist–A person who has received a baccalau reate, masters, doctorate, or equivalent degree in geological studies from an accredited college or university, and who is experienced in assessing the hydrologic significance of surface geologic features with a potential for recharging a carbonate aquifer.

Recharge zone–Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas Water Commission.

Regulated activity–Any construction-related activity, such as: construction of buildings, utility stations, roads, highways, or railroads; clearing, excavation or other activities which alter or disturb the topographic, geologic, or existing recharge characteristics of a site; or any activities which may pose a potential for contaminating the Edwards Aquifer. Regulated activity does not include:

(A) the clearing of vegetation necessary and for the sole purpose of surveying;

(B) agricultural activities such as clearing and cultivating fields, fence building, terracing, or stock pond construction;

(C) the installation of natural gas, telephone or electric lines, water lines, or other such utility lines which are not designed to carry pollutants, stormwater runoff, or sewage effluent; or

(D) activities associated with the exploration, development, and protection of oil or gas or geothermal resources as defined in 31 Texas Administrative Code, §333.1.

Regulated development–Any publicly or privately owned site on the recharge zone, on which industrial, agricultural, commercial, utility, residential, or road construction is planned. Regulated development does not include residential subdivisions in which every lot is larger than five acres and no more than one single-family residence is located on each lot.

Sewage holding tank–A tank or other containment structure used to receive and store sewage until its ultimate disposal to an approved treatment facility.

Significant recharge feature–Permeable geologic features located on the recharge zone or on the transition zone, such as sinkholes, caves, faults, fractures, bedding plane surfaces, interconnected vugs, or other geologic features through which rapid infiltration to the subsurface may occur and in which a potential for hydraulic interconnectedness between surface water and th Edwards Aquifer is present.

Static hydrocarbons–Fluid hydrocarbons which are liquid at standard conditions of temperature and pressure, being 60 degrees fahrenheit and 14.7 pounds per square inch, respectively.

Stub out–A wye, tee, or other manufactured appurtenance placed in a sewage collection system providing a location for a future extension of the collection system.

Substantial modification of a private sewage facility–A 25% or more increase or decrease in the volume of wastewater being treated by a private sewage facility, or a change in the nature of the wastewater being treated by a private sewage facility.

Transition zone–Generally, that area where geologic formations crop out in proximity to and south and southeast of the recharge zone and where faults, fractures, and other geologic features present a possible avenue for recharge of surface water to the Edwards Aquifer, and including portions of the Del Rio Clay, Buda Limestone, Eagle Ford Group, Austin Chalk, Pecan Gap Chalk, and Anacacho Limestone. The transition zone is identified as that area designated as such on official maps in the offices of the Texas Water Commission.

Underground storage tank system–Any one or combination of underground tanks and any connecting pipes used to contain an accumulation of static hydrocarbon or hazardous substances, the volume of which, including the volume of the connecting under-ground pipes, is 10% or more beneath the surface of the ground. A flow-through process tank shall be considered an underground storage tank under this chapter; however, a sewage holding tank (as defined in this section) shall not be considered an under-ground storage tank.

Water pollution abatement plan holder–The person or persons who are responsible for compliance with an approved water pollution abatement plan.

Well–A bored, drilled or driven shaft, or an artificial opening in the ground made by digging, jetting or some other method, where the depth of the well is greater than its largest surface dimension, but not including any surface pit, surface excavation, or natural depression.

§313.4. Water Pollution Abatement Plan for Regulated Development.

(a) Approval by the executive director. No person shall commence any regulated activity within any regulated development until a water pollution abatement plan for such activity has been filed with and approved by the executive director. As a condition of approval, the executive director may impose additional provisions deemed necessary to protect the Edwards Aquifer from pollution. An application for approval of a water pollution abatement plan for a regulated activity on the recharge zone must be submitted in quadruplicate to the appropriate district office. Only those persons owning, having an option to purchase, having the right to possession and control of the property which is the subject of the water pollution abatement plan, or an agent authorized to act for the applicant in the process of obtaining approval of a water pollution abatement plan may submit a water pollution abatement plan for review.

(b) Contents of a water pollution abatement plan. A water pollution abatement plan must contain, at a minimum, the following data.

(1) Required information. The information required under §313.24 of this chapter (relating to Contents of Application), shall include a completed application containing names, addresses, and telephone numbers of the applicant(s) and any agents, such as consulting engineers, authorized to act for the applicant in the process of obtaining approval of a water pollution abatement plan, and any additional information requested by the executive director.

(2) Site location. The location data and maps shall include:

(A) a legible road map with directions–including mileage–which is sufficient to enable the executive director or his agents or employees to locate, travel to, and inspect the site;

(B) a general location map, showing:

(i) the site location on a copy (or spliced composite of copies, or parts of them, if necessary) of an official Recharge Zone Map(s)–with quadrangle name(s), recharge zone, transition zone, and their boundaries clearly labeled; and

(ii) a drainage plan, shown on the Recharge Zones Map, indicating the path of drainage from the regulated development to the boundary of the recharge zone; and

(C) a site plan, at a minimum scale of one inch to 400 feet, showing:

(i) the 100-year floodplain boundaries (if applicable);

(ii) the layout of the development, and existing and finished contours at appropriate, but not greater than five foot, contour intervals;

(iii) the location of all wells (the term "wells" refers to all wells; including water wells, oil wells, unplugged and abandoned wells, etc.); and

(iv) any significant recharge features located within the proposed development.

(3) Assessment of area geology. For regulated developments consisting of 25 or more family living units, and the adjacent area located within the 100-year floodplain, for a distance of at least one mile downstream of the regulated development, or to the boundary of the recharge zone, the applicant must submit a report prepared by a qualified geologist describing area and site-specific geology. Where the 100-year floodplain has not been delineated, the applicant shall delineate the 100-year flood plain, showing all applicable data and calculations used to make such a delineation. The geologic assessment must include:

(A) a geologic map at site-plan scale showing the outcrop of surface geologic units, faults, fracture zones, and significant recharge features, specifically identifying caves, sinkholes, and other features;

(B) a stratigraphic column showing at a minimum, formations, thicknesses, and members;

(C) a narrative description of surface geologic units, including a discussion of lithologic, stratigraphic, and structural features such as faults, fractures, and fracture densities;

(D) a narrative description of soil units and soil profile including thickness and hydrologic characteristics; and

(E) a narrative description of all significant recharge features including:

(i) location(s) of the recharge feature(s), with cross reference to site-plan map;

(ii) type of recharge feature(s), such as sinkholes, caves, faults, or potentially permeable fractures and solution zones; and

(iii) size and character of the area draining to the recharge feature(s).

(4) Technical report. For regulated developments a technical report shall be included to address the following issues.

(A) An assessment of:

(i) the nature of the development (whether residential, commercial, industrial, utility, etc.), including the size of the development in acres, the projected population, the amount of impervious cover expected after construction is complete, the type of cover, such as paved surface or roofing, the amount of surface expected to be occupied by parking lots and other factors as appropriate;

(ii) the volume and character of wastewater expected to be produced (Wastewater generated from a development should be characterized as either domestic or industrial, or if commingled, by approximate percentages of each type.); and

(iii) the volume and character of stormwater runoff expected to occur (estimates of stormwater runoff quality and quantity should be based on area and type of impermeable cover, as described in clause (i) of this subparagraph.);

(B) a description of the measures that will be taken to prevent pollution of stormwaters originating onsite or upgradient from the site and potentially flowing across the site:

(i) during construction; and

(ii) after completion of construction;

(C) a description of the measures that will be taken to prevent downgrade pollution by contaminated stormwater runoff from the site:

(i) during construction; and

(ii) after completion of construction;

(D) a description of the measures that will be taken to prevent pollutants from entering recharge features while maintaining or enhancing the quantity of water entering the recharge features:

(i) identified in the assessment of area geology; and

(ii) identified during excavation, blasting, or construction; and

(E) method of disposal of wastewater from the development:

(i) if wastewater is to be disposed of by conveyance to a sewage treatment plant for treatment and disposal, the existing or proposed treatment facility must be identified; or

(ii) if wastewater is to be disposed of in private sewage facilities, then the application must be accompanied by a written statement from the appropriate licensing authority, stating that the land in the development is suitable for the use of private sewage facilities or identifying those areas that are not suitable. (See §313.7 of this title (relating to Private Sewage Facilities)).

(c) Deed recordation. The applicant, upon receiving written approval of the water pollution abatement plan for that development, must record in the county deed records that the property is subject to a water pollution abatement plan and must also, upon transfer-ring title to that property, place a restriction in the deed that states that the property is subject to that water pollution abatement plan. Within 30 days of receiving written notice of approval of the water pollution abatement plan from the executive director, the applicant must submit to the executive director proof of application for recordation of notice in the county deed records. Prior to commencing construction, the applicant must submit to the appropriate district office proof of application for recordation of notice in the county deed records.

(d) Notification.

(1) Prior to commencing a regulated activity. Prior to commencing any regulated activity on a regulated development, the applicant must notify the appropriate district office of when the regulated activity will commence, and under which approved water pollution abatement plan the regulated activity will proceed.

(2) During construction. If any solution openings or sinkholes are discovered during construction, all regulated activities must be immediately suspended and may not proceed until the executive director has reviewed and approved the methods proposed to protect the aquifer from any potential adverse impacts. The holder of an approved water pollution abatement plan must immediately notify the district office of any significant recharge features encountered during construction before continuing construction.

(e) Modification of previously approved water pollution abatement plans. The holder of any approved water pollution abatement plan, such as an approved master plan, must notify the appropriate district office in writing and obtain approval from the executive director prior to any of the following.

(1) any physical modification to or any modification in procedures for operation of any water pollution abatement structure, such as ponds, dams, berms, sewage treatment plants, and diversionary structures;

(2) any change in the nature or character of the development from that which was originally approved and which would significantly impact the viability of the water pollution abatement plan;

(3) any development of land identified as undeveloped in the original water pollution abatement plan.

(f) Compliance. The application for approval of a water pollution abatement plan may be conditionally approved by the executive director. The holder of the approved water pollution abatement plan shall be responsible for compliance with this section and any special conditions of an approved plan through all construction phases of the regulated development. Failure to comply with all conditions of the executive director's approval is a violation of this rule.

(g) Term of approval. The executive director's approval of a water pollution abatement plan will expire two years after the date of initial issuance, unless prior to the expiration date, commencement of construction related to the approved water pollution abatement plan has occurred. A written request for the executive director's approval of an extension must be received no earlier than 60 days and no later than 30 days prior to the expiration date of an approved water pollution abatement plan or an approved extension, so that the executive director may approve the request for an extension. Requests for extensions are subject to fees outlined in Subchapter B of this chapter. The executive director's approved extension will expire six months after the expiration date of the approved water pollution abatement plan or an approved extension. Any requests for extensions received by the commission after the expiration date of an approved water pollution abatement plan or an approved extension will be considered as a new application and will be subject to appropriate fees. An extension may not be granted if the proposed development concept or plan and/or requirements of these rules have changed. If a complete written request for an extension is filed timely under the provisions of this subsection, the water pollution abatement plan shall continue in effect until the executive director makes a determination on the request for the extension.

§313.5. Organized Sewage Collection Systems.

(a) Approval of the design of organized sewage collection systems by the executive director. Commencement of rehabilitation or construction related to existing or new organized sewage collection systems on the recharge zone may not occur until design plans and specifications have been filed with and approved by the executive director. An application for approval of plans and specifications for organized sewage collection systems on the recharge zone as provided by subsection (d) of this section must be submitted in quadruplicate to the appropriate district office.

(b) General design of sewage collection systems. Design of sewage collection systems on the recharge zone must be in accordance with Chapter 317 of this title (relating to Design Criteria for Sewerage Systems), adopted by the Texas Water Commission. Approval of the design of sewage collection systems must be obtained from the Texas Water Commission, as specified in §317.1 of this title (relating to General Provisions), prior to the commencement of construction.

(c) Special requirements for sewage collection systems. In addition to the requirements in subsection (b) of this section, sewage collection systems on the recharge zone must meet the following special requirements.

(1) Manhole construction and rehabilitation. All manholes constructed or rehabilitated after the effective date of these rules must be watertight, with watertight rings and covers. Wherever they are within the 100 year flood plain, the manhole covers shall have gaskets and be bolted. Where gasketed manhole covers are required for more than three manholes in sequence, alternate means of venting shall be provided. Bricks are not an acceptable construction material for any portion of the manhole. All manholes must be tested to meet or exceed the requirements of paragraph (10) of this subsection.

(2) Piping for gravity and pressurized collection systems. Unless local regulations dictate more-stringent standards:

(i) for gravity collection systems, all PVC pipe must have a standard dimension ratio (SDR) of 35 or less; and

(ii) for all pressurized sewer systems, all PVC pipe must have a SDR of 26 or less. All sewer pipes must have compression or mechanical joints, with the exception of private service laterals, in which case solvent weld joints may be used if the pipe diameter is less than six inches.

(3) Lift station design. Lift stations must be designed to assure that bypassing of any lift station does not occur. All lift stations constructed on the recharge zone must have auto-dial telemetry capabilities. The auto-dial telemetry system shall automatically notify, by telephone, several responsible parties of a malfunction at the lift station. All lift stations must also have either a back-up power source or adequate storage in the wet well and collection system, as approved by the executive director, to allow for response and repair time.

(4) Certification of new sewage collection lines by a professional engineer. All new gravity sewer system lines having a diameter greater than or equal to six inches, all new force mains, and all new private service laterals, must be tested for leakage following construction. Such lines must be certified by a Texas Registered Professional Engineer to meet or exceed the requirements of paragraph (10) of this subsection. The certification must be submitted to the appropriate district office prior to use of the new collection system. New sewer lines and manholes must be tested every five years thereafter in accordance with paragraph (5) of this subsection.

(5) Testing of existing sewer lines. All existing sewer lines having a diameter greater than or equal to six inches, including private service laterals, manholes, and connections, must be tested to determine types and locations of structural damage and defects such as offset or open joints, or cracked or crushed lines that would allow exfiltration to occur. Such testing shall commence within one year of the effective date of this chapter, or within one year of the effective date of any former chapter of this title (relating to Edwards Aquifer) (now repealed), and shall be completed within five years of commencement. Every five years thereafter, existing sewer collection systems must be tested to determine types and locations of structural damage and defects such as offset or open joints, or cracked or crushed lines that would allow exfiltration to occur. These test results shall be certified by a Texas registered professional engineer. Within one year of detecting defects, measures to initiate repair to the sewer collection system must be carried out by the system's owner. Any necessary repairs must be certified by a Texas registered professional engineer as having been correctly performed. Necessary repairs must be tested within 45 days of completion of the repairs, and the results of such testing must be certified by a Texas registered professional engineer. Both certifications must be submitted to the appropriate district office within 30 days of testing the completed repairs.

(6) Blasting for sewer line excavation. Blasting for sewer line excavation must be done in accordance with appropriate criteria established by the National Fire Protection Association. Should such blasting result in damage to an already in-place sewer or its appurtenances, the sewer system and appurtenances must be repaired and retested immediately.

(7) Sewer line stub outs. New collection lines must be constructed with stub outs for the connection of anticipated extensions. The location of such stub outs must be marked on the ground such that the location of such stub outs can be easily determined at the time of connection of the extensions. Such stub outs must be manufactured wyes or tees that are compatible in size and material with both the sewer line and the extension. At the time of original construction, new stub-outs must be constructed sufficiently to extend beyond the edge(s) of any street pavement under which

they must pass to the property line. All stub-outs must be sealed with a manufactured cap to prevent leakage. Extensions that were not anticipated at the time of original construction or that are to be connected to an existing sewer line not furnished with stub outs must be connected using a manufactured saddle and in accordance with accepted plumbing techniques.

(8) Locating sewer lines within a five year floodplain. Sewer lines shall not be located within the five year floodplain of a drainageway. In an area where the executive director determines that such location is unavoidable, and the area is subject to inundation and stream velocities which could cause erosion and scouring of backfill, the trench must be capped with concrete to prevent scouring of backfill, or the sewer lines must be concrete encased. All concrete shall have a minimum thickness of six inches.

(9) Inspection of private service lateral connections. After installation of, prior to covering, and prior to connecting a private service lateral to an organized sewage collection system, the owner of the private service lateral line shall provide that a Texas registered professional engineer, Texas registered sanitarian, or appropriate city inspector must visually inspect the private service lateral and the connection to the collection system, and certify it to have been constructed in conformity with the applicable provisions of this section. The owner of the collection system must maintain such certifications for three years and forward copies to the appropriate district office upon request. Connections may only be made to an approved sewage collection system subsequent to receipt by the executive director of the certification of new construction or repairs, and subsequent testing as required by paragraph (4) or (5) of this subsection.

(10) Testing new gravity sewer lines. For all new gravity sewer pipe having a diameter greater than or equal to six inches on the recharge zone, the following requirements shall apply.

(A) In-place deflection tests must be performed on all flexible and semi-rigid pipes. The test must consist of pulling a rigid ball or a mandrel sized at 95% of the inside diameter of the pipe from manhole to manhole. The test must be conducted after the final backfill has been in place at least 30 days. No pipe may exceed a deflection of 5.0%. The test must be performed without mechanical pulling devices.

(B) An infiltration and/or exfiltration and/or low-pressure air test must be performed, and the type of test must be specified in the design plans. Copies of all test results must be made available to the executive director upon request. Tests shall conform to the following requirements.

(i) The total infiltration or exfiltration, as determined by water test, must be at a rate not greater than 50 gallons per inch of pipe diameter per mile of pipe per 24 hours at a minimum test head of two feet. If the quantity of infiltration or exfiltration exceeds the maximum quantity specified, remedial action must be undertaken in order to reduce the infiltration or exfiltration to an amount within the limits specified.

(ii) Low-pressure air tests must conform to the procedure described in ASTM C-924 or other equivalent procedures. For safety reasons, it is recommended that air testing of sections of pipe be limited to lines less than 36-inch average inside diameter. Lines that are 36-inch average inside diameter and larger may be air tested at each joint. The minimum time allowable for the pressure to drop from 3.5 pounds per square inch to 2.5 pounds per square inch gauge during a joint test, regardless of pipe size, shall be 20 seconds. For sections of pipe less than 36-inch average inside diameter, the minimum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge must be computed by the following equation:

$T = 0.0850(D)(K)/(Q)$, where:

T = time for pressure to drop 1.0 pounds per square inch gauge in seconds;

K = 0.00049(D)(L), but not less than 1.0;

D = average inside diameter in inches;

L = length of line of same pipe size in feet; and

Q = rate of loss, assume 0.003 cubic feet per minute per square foot (ft^3/min/ft sq) of internal surface area.

(C) Manholes and wet wells must be tested separately and independently of the collection lines. All manholes must be hydrostatically tested with a maximum-loss allowance of .025 gallon per foot diameter per foot of head per hour. Other testing methods, such as vacuum testing, may be approved on a case-by-case basis by the executive director.

(D) Embedment materials must meet or exceed the specification for bedding class A or B as described in ASTM C 12, or class I or II as described in ASTM D 2321, and specifications as contained in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems.)

(11). Sewer lines bridging caverns or other solution features. Sewer lines that bridge caverns or solution features, must be constructed in a manner that will maintain the structural integrity of the line. When such geologic features are encountered, the location and extent must be reported to the appropriate district office.

(12) Erosion and sedimentation control. A temporary erosion and sedimentation control plan must be included with all construction plans. All temporary erosion and sedimentation controls must be installed prior to construction, must be maintained during construction, and shall be removed when vegetation is established and the construction area is stabilized.

(13) Alternate systems. Where fully supported by relevant information provided by the applicant, the executive director may allow the substitution of an alternate procedure which provides equivalent environmental protection.

(14) Required corrective action. Notwithstanding compliance with the requirements of paragraphs (1)-(13) of this subsection, sewage collection systems must operate in a manner so as not to cause pollution to the Edwards Aquifer, and any failure, for any cause whatsoever, must be corrected in a manner satisfactory to the executive director.

(d) Contents of organized sewage collection system plan.

(1) Required information. For regulated developments, the information required under §313.24 of this Chapter (relating to Contents of Application), shall include a completed application containing names, addresses, and telephone numbers of the applicant(s) and any agents, such as consulting engineers, authorized to act for the applicant in the process of obtaining approval of plans and specifications related to an organized sewage collection system, and any additional information requested by the executive director.

(2) Narrative description of proposed organized sewage collection system. If a technical report was submitted under §313.4 of this title (relating to Water Pollution Abatement Plan), it may be submitted in lieu of the narrative report, provided it addresses the same issues which are required in this subsection in regard to sewage collection systems.

(3) Plans and specifications. Plans and specifications addressing all the requirements in subsection (b) of this section concerning general design of sewage collection systems and in subsection (c) of this section concerning to special requirements for sewage collection systems, must include at a minimum:

(A) a map showing location of the sewage collection system lay-out in relation to recharge zone boundaries;

(B) a map showing the location of the sewage collection system lay-out, overlaid by topographic contour lines, using a contour interval of not greater than five feet, and showing the area within the five-year floodplain of any drainageway; and

(C) construction documents prepared under the supervision of, and sealed by, a Texas registered professional engineer, including at a minimum:

(i) plan and profile of collection system;

(ii) construction details of collection system components; and

(iii) specifications for all collection system components.

(e) Notification.

(1) Prior to commencement of rehabilitation or construction. Prior to commencing any rehabilitation or construction related to existing or new organized sewage collection systems on the recharge zone, the applicant must notify the appropriate district office of when related activity will commence, and under which approved organized sewage collection system plan the related activity will proceed.

(2) During construction. If any solution openings or sinkholes are discovered during construction activities, all related activities must be immediately suspended and may not proceed until the appropriate district office has been notified by the on-site personnel, and the commission has reviewed and approved the methods proposed to protect the aquifer from any potential adverse impacts. The holder of an approved organized sewage collection system plan must immediately notify the district office of any significant recharge features encountered during construction activities before continuing construction.

(f) Modification of previously approved organized sewage collection system plans. The holder of any approved organized sewage collection system plan must notify the appropriate district office in writing and obtain approval from the executive director prior to making any physical modification of the approved organized sewage collection system.

(g) Compliance. The executive director may impose special conditions of the approval of an organized sewage collection system plan. The holder of the approved organized collection system plan shall be responsible for compliance with this section and any special conditions of an approved plan through all construction phases of the organized sewage collection system. Failure to comply with all conditions of the executive director's approval is a violation of this rule.

(h) Term of approval. The executive director's approval of a new or rehabilitative organized sewage collection system under the provision of this section shall expire two years after the date of initial approval, unless prior to the expiration of the initial two-year period, commencement of construction in accordance with the approved organized sewage collection system has occurred, or an extension has been requested. A written application for an extension must be received no earlier than 60 days and no later than 30 days prior to the expiration date of an approved plan or an approved extension, so that the executive director may approve the request for an extension. Requests for extensions are subject to fees outlined in Subchapter B of this chapter relating to (Hazardous Waste Management General Provisions). The executive director's approved extension will expire six months after the expiration of the approved plan or any approved extensions. Any requests for extensions received by the commission after the expiration date of an approved plan or an approved extension will be considered as a new application and will be subject to appropriate fees. An extension may not be granted if the proposed plan or requirements of these rules have changed.

§313.6. Wastewater Treatment and Disposal Systems.

(a) General. New discharges of or increases in discharge that would create additional loading of treated wastewater are prohibited on the recharge zone. Existing permits may be renewed unless the facility becomes substantially non-compliant, as defined in Chapter 337 of this title (relating to Enforcement). New land application wastewater treatment plants located on the recharge zone must be designed, constructed, and operated such that there is no bypass of the treatment facilities or any discharge of untreated or partially treated wastewater.

(b) Land application systems. Land application systems that rely primarily on percolation for wastewater disposal, except for licensed private sewage facilities, are prohibited on the recharge zone. Wastewa-

ter disposal systems utilizing land application methods, such as evaporation or irrigation, for disposal of wastewater on the recharge zone will be considered on a case-by-case basis. At a minimum, those systems must attain secondary treatment as defined in Chapter 309 of this title (relating to Effluent Standards).

(c) Discharge upstream from the recharge zone.

(1) New or increased discharges zero to five miles. All new or increased discharges of treated wastewater, other than industrial wastewater discharges, within five miles upstream from the recharge zone shall, at a minimum, achieve the following level of effluent treatment:

(A) five milligrams per liter of biochemical oxygen demand, based on a 30-day average;

(B) five milligrams per liter of total suspended solids, based on a 30-day average;

(C) two milligrams per liter of ammonia nitrogen, based on a 30-day average; and

(D) one milligram per liter of phosphorus, based on a 30-day average.

(2) Discharges five to 10 Miles. All discharges, other than industrial wastewater discharges, more than five miles but within 10 miles upstream from the recharge zone and any other discharges that the commission deter mines may affect the Edwards Aquifer must, at a minimum, attain effluent set 2N as defined in Chapter 309 of this title (relating to Effluent Standards). More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(3) Discharges greater than five miles and entering segments 1428 or 1427. All discharges, other than industrial wastewater discharges, more than five miles upstream from the recharge zone which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek must also conform to §311.43 of this title (relating to Effluent Requirements for All Tributaries of Segment 1428 of the Colorado River and Segment 1427, Onion Creek, and Its Tributaries, of the Colorado River Basin), and to §311.44 of this title (relating to Disinfection). More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(4) Industrial discharges zero to 10 miles. Any existing permitted industrial discharger within zero to 10 miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial discharge permits for facilities 0 to 10 miles upstream of the recharge zone will be approved on a case-by-case basis, in accordance with appropriate discharge limits applicable to that industrial activity, and with consideration of proximity to the recharge zone.

(d) General design of wastewater treatment plants. Design of wastewater treatment plants must be in accordance with Chapter 317 of this title (relating to Design Criteria for Sewerage Systems).

§313.7. Private Sewage Facilities. This section shall expire at midnight, August 31, 1989, unless otherwise authorized by law.

(1) Licensing authorities. The Commissioners Courts of Williamson, Travis, Medina, Bexar, Comal, Uvalde, Kinney, and Hays counties are designated as the licensing authorities for the area of their respective counties regulated in this chapter, exclusive of those areas within the corporate limits of Hollywood Park, Shavano Park, and Hill Country Village in which those municipalities are respectively designated as licensing authorities. Upon receiving written certification from the executive director that the order and rules adopted by a Commissioners Court of one of these counties pursuant to the Texas Water Code, §26.032, are as stringent as this chapter, the Commissioners Court of that county may regulate private sewage facilities on the recharge zone in that county according to those rules rather than this subchapter. The county Commissioners Court may designate any county department or local government to act for the county Commissioners Court in administering its rules.

(A) Perform or direct performance of inspections and tests. The licensing authority must perform or direct the performance of such inspections and tests as may be necessary in the design and construction of a private sewage facility.

(B) Administrative requirements. The licensing authority must develop the necessary procedures, including development of application forms, establishment of reasonable fees, and recordkeeping to carry out the functions of this chapter.

(C) Inspection requirements. The licensing authority must inspect licensed private sewage facilities at reasonable times for the purpose of determining compliance with the conditions of the license and this subchapter.

(D) Repair requirements. The licensing authority shall require that a malfunctioning system be repaired in a satisfactory manner and may pursue such legal action, as is necessary, to achieve such repairs.

(2) Prohibited systems.

(A) Nontreatment. Pit privies, cesspools, and injection wells used to dispose of sewage, and any other system utilizing naturally or artificially produced holes, cavities, or drilled wells for the disposal of sewage are prohibited.

(B) Sewage holding tanks. Private sewage holding tanks may not be utilized without the approval of the licensing authority.

(C) Proximity to Nueces, Dry Frio, Frio, or Sabinal Rivers. No private sewage facility may be installed within 200 feet of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.

(3) Permit and license requirements for new private sewage facilities.

(A) Permit to construct. A permit to construct must be obtained from the licensing authority prior to commencing the construction or installation of, or a substantial modification to, a private sewage facility on the recharge zone.

(B) License to operate. A license to operate must be obtained from the licensing authority prior to operating a new private sewage facility on the recharge zone and shall be issued after satisfactory completion and approval of construction.

(4) Conditions for obtaining a permit to construct. In order to obtain a permit to construct, the following conditions must be met.

(A) Texas Department of Health requirements. The design of private sewage facilities must, at a minimum and when not in conflict with this chapter, meet the requirements of the latest edition of *Construction Standards for On-Site Sewerace Facilities* as published by the Texas Department of Health.

(B) Minimum lot sizes. Lots or tracts of land on the recharge zone on which private sewage facilities are to be located must have an area of at least one acre, unless an exception is granted in accordance with §313.12 of this title (relating to Exceptions) or unless exempted under paragraph (9) of this section.

(C) Conditions. The lot or tract in question must be large enough, considering the soil and drainage conditions and volume of sewage to be disposed, to

permit the use of a private sewage facility without causing pollution, nuisance conditions, or danger to public health.

(D) Alternate site or disposal method. Whenever the natural percolation rate is faster than one inch per minute, or slower than one inch per 60 minutes, an alternate site or a disposal method other than soil absorption disposal, such as an evapotranspiration system, must be considered. All relevant factors must be taken into account in the review of plans and specifications for alternate sites or disposal methods.

(E) Construction on excessive slopes. A permit to construct may not be granted for private sewage facilities on lots on which the private sewage facility would be placed at an excessive slope, unless proper construction techniques to overcome the effects of the slope are utilized.

(F) Disposal by soil absorption. When disposal by soil absorption is proposed, a minimum of four percolation tests spaced uniformly over the proposed absorption field site must be performed to verify that soil conditions are satisfactory. Percolation tests must be performed in accordance with the latest edition of *Construction Standards for On-Site Sewerage Facilities* as published by the Texas Department of Health.

(5) Conditions for a license to operate.

(A) Requirements of applicable permits. The construction, installation, or substantial modification of a private sewage facility must be made in accordance with the approved design and requirements of the applicable permit to construct.

(B) Inspection and licensing. No components of a private sewage facility may be covered until an inspection has been made and a license issued by the licensing authority. Absorption trenches or beds, or evapotranspiration beds may be partially backfilled, provided all ends and other critical areas are not covered until the licensing authority has determined, as evidenced by the issuance of a license, that the installation, construction, or substantial modification complies with this chapter and the special conditions in the permit to construct.

(6) Terms for licenses.

(A) Period. Licenses shall be issued for a period of time determined by the licensing authority.

(B) Transferal of licenses. Upon prior written notice to the licensing authority, licenses may be transferred to succeeding owners, if the private sewage facility has not been substantially modified, when ownership of the private sewage facility is transferred.

(C) Renewal of licenses. Licenses may be renewed only upon a finding by the licensing authority that the system is functioning properly.

(7) Revocation or suspension of licenses. The licensing authority may revoke or suspend a license for any of the causes listed in subparagraphs (A)-(F) of this paragraph. Neither revocation of license nor any other provision of this chapter shall preclude the executive director or any governmental entity from acting to prevent or curtail pollution of the Edwards Aquifer, to abate a nuisance, or to protect the public health.

(A) Wastewater volume increases or quality changes. An increase in the volume of or change in the nature of the wastewater being treated by the private sewage facility, or a reduction of the capacity of the facility.

(B) Maintenance. Failure of the holder of the license to properly maintain or operate the private sewage facility.

(C) Malfunction. Malfunction of the private sewage facility.

(D) Pollution. Evidence that the private sewage facility is causing or will cause pollution of the Edwards Aquifer.

(E) Noncompliance. Failure to comply with the terms and conditions of the license or this chapter.

(F) Other offenses. Any other reason which the licensing authority determines to be sufficient to revoke or suspend the license.

(8) Existing private sewage facilities. Private sewage facilities licensed by or registered with the appropriate licensing authority at the time of adoption of this chapter shall remain licensed or registered under the terms and conditions of the current license or registration. Any relicensing shall be under the terms and conditions of this subchapter. A private sewage facility installed on the recharge zone prior to April 11, 1977, in either Uvalde or Kinney counties is not required to be licensed, provided the facility is not causing pollution, a threat to the public health, or nuisance conditions, and has not been substantially modified.

(9) Exceptions for certain lots.

(A) Kinney, Uvalde, Medina, Bexar, and Comal Counties. Any private sewage facility to be located on the recharge zone in Kinney, Uvalde, Medina, Bexar, and Comal counties on a lot less than one acre and not required to connect to an organized collection system under paragraph (10) of this section and that was platted and recorded in the office of the county clerk prior to March 26, 1974, is exempted from the one acre minimum lot size requirement.

(B) Hays County.

(i) Any private sewage facility to be located on the recharge zone in that portion of Hays County regulated under former §331.65 of this title (related to Licensing Requirements for Private Sewage Facilities) (now repealed) on a lot less than one acre and not required to connect to an organized collection system under paragraph (10) of this section and that was platted and recorded in the office of the county clerk prior to March 26, 1974, is exempted from the one acre minimum lot size requirement.

(ii) Any private sewage facility to be located on the recharge zone in that portion of Hays County not regulated under former §331.65 of this title (relating to Licensing Requirements for Private Sewage Facility) (now repealed) on a lot less than one acre and not required to connect to an organized collection system under paragraph (10) of this section and that was platted and recorded in the office of the county clerk prior to June 21, 1984, is exempted from the one acre minimum lot size requirements.

(iii) Official copies of the map depicting that area of Hays County regulated under former §331.65 of this title (relating to Licensing Requirements for Private Sewage Facilities) are available in the office of the executive director to assist in determining whether a private sewage facility is entitled to an exception under this subsection. However, the applicant bears the burden of establishing that he is entitled to an exception in all cases.

(C) Travis County. Any private sewage facility to be located on the recharge zone in Travis County on a lot less than one acre and not required to connect to an organized collection system under paragraph (10) of this section and that was platted and recorded in the office of the county clerk prior to the effective date of these rules is exempted from the one acre minimum lot size requirement.

(D) Williamson County. Any private sewage facility to be located on the recharge zone in Williamson County on a lot less than one acre and not required to connect to an organized collection system under paragraph (10) of this section and that was platted and recorded in the office of the county clerk prior to May 21, 1985,

is exempted from the one acre minimum lot size requirement.

(10) Connection to an organized sewage collection system. The commission encourages the development of organized sewage collection systems to serve developments on the recharge zone and with respect to the following conditions makes the following requirements.

(A) Proximity to existing sewage collection system. No person may cause or allow the installation of a private sewage facility when any part of the facility is to be within 300 feet in horizontal distance (measured on the closest practicable access route) of any part of an existing organized disposal system, unless one of the following requirements has been met.

(i) The person has received a written denial of service from the owner or governing body of the organized sewage collection/treatment system.

(ii) The person has received a written determination from the licensing authority that it is not feasible for the person to connect to the organized sewage collection system.

(B) Proximity to new sewage collection system. Whenever an organized disposal system is developed within 300 feet in horizontal distance (measured on the closest practicable access route) from any part of a private sewage facility, that facility must be connected to the organized disposal system within 120 days after receiving notice from the owner or governing body of the organized disposal system that the person can connect, unless the condition in subparagraph (A)(i) of this paragraph has been met.

(11) Notice by subdividers. Any person, or his agents or assignees, desiring to construct a residential development with two or more lots in which private sewage facilities will be utilized, in whole or in part, on the recharge zone, and desiring to sell, lease, or rent the lots therein, must inform, in writing, each prospective purchaser, lessee, or renter of the following.

(A) Conditions of this chapter. Each lot within the regulated development is subject to the terms and conditions of this chapter.

(B) Required construction permit. A permit to construct shall be required before a private sewage facility can be constructed in the subdivision.

(C) Required license to operate. A license to operate shall be required for the operation of such a private sewage facility.

(D) Status of applicable water pollution abatement plan application or approval. Whether or not an application for a water pollution abatement plan has been made, and whether or not it has been approved, including any restrictions or conditions placed on that approval.

§313.8. Plugging of Abandoned Wells.

(a) Well-plugging requirements. All identified abandoned water wells, including those located near public water-supply wells under the jurisdiction of the Texas Department of Health, and other abandoned wells, including injection, dewatering, and monitoring wells, subject to the jurisdiction of Chapter 287 of this title (relating to Water Well Drillers) must be plugged pursuant to the requirements of Chapter 287 of this title (relating to Water Well Drillers).

(b) Wells subject to regulation by the Texas Railroad Commission. Wells not subject to Chapter 287 of this title (relating to Water Well Drillers) may be subject to regulation by the Texas Railroad Commission.

§313.9. Prohibited Activities.

(a) Recharge zone. The following activities are prohibited on the recharge zone:

(1) waste disposal wells regulated under Chapter 331 of this title (relating to Underground Injection Control);

(2) new confined animal operations;

(3) land disposal of Class I wastes, as defined in §335.1 of this title (relating to Definitions); and

(4) the use of sewage holding tanks as parts of organized collection systems.

(b) Transition zone. The following activities are prohibited on the transition zone:

(1) waste disposal wells regulated under Chapter 331 of this title (relating to Underground Injection Control); and

(2) land disposal of Class I wastes, as defined in §335.1 of this title (relating to Definitions).

§313.10. Underground Storage of Static Hydrocarbons and Hazardous Substances.

(a) Approval by the executive director. Approval of underground storage tank systems to be located on the recharge zone and on the transition zone for the containment of static hydrocarbons or hazardous substances shall be obtained from the executive director prior to initiation of an underground storage tank system installation or replacement activity. Such systems must be installed in accordance with the plans approved by the executive director. An application for approval, as provided under subsection (f) of this section, shall be submitted in quadruplicate to the appropriate district office.

(b) Other applicable commission rules. Persons who own, install, operate, or maintain an underground storage tank system shall comply with the applicable rules of the commission specified in Chapter 334 of this title (relating to Underground Storage Tanks), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and other applicable federal and state laws.

(c) Additional requirements for new and replacement systems. New and replacement underground storage tank systems, for which an application for approval was submitted under this chapter on or after the effective date of this subsection, and which are located on the recharge zone and/or on the transition zone must incorporate equipment or procedures that will provide the following.

(1) Double-wall construction. Tanks and associated piping used for the underground storage or containment of static hydrocarbons or hazardous substances shall be of double-wall construction and shall be of materials compatible with the stored substance. This requirement shall be applicable to all components of the underground storage tank system which store or contain static hydrocarbons or hazardous substances, including the tanks, piping, flexible connectors, and all associated fittings.

(2) Release/leak detection.

(A) Primary monitoring. Methods for detecting releases or leaks from the underground storage tank system shall be included in the system's design. The leak detection method shall provide for automatic monitoring of the space between the primary and secondary walls of the underground storage tank and piping system at a frequency of at least once per day and shall be capable of immediately alerting on-site personnel to possible leaks or releases from any part of the system.

(B) Pressurized-piping monitoring. In addition to the primary release monitoring requirements of Subparagraph (A) of this paragraph, underground piping associated with an underground storage tank system which conveys hydrocarbons or hazardous substances under pressure shall be equipped with an automatic line leak detector. The line leak detector shall be capable of alerting on-site personnel to the presence of a leak in the pressurized piping by restricting or shutting off the flow of substances through the piping. The line leak detector shall be designed and calibrated to detect within one hour a leak rate of three gallons per hour at 10 pounds per square inch line pressure.

(C) External backfill monitoring. Methods for detecting releases outside the secondary walls of the tank and piping system shall be included in the system design. The leak detection method shall provide for either manual or automatic monitoring of the backfill material surrounding the double-wall underground storage tank system at a frequency of at least once per week and shall be capable of alerting the on-site personnel to possible leaks or releases from any part of the underground storage tank system.

(D) Monitoring wells. At least two monitoring wells (with a minimum diameter of four inches) shall be installed in each separate tank excavation either as a component of, or as an addition to, the external monitoring equipment requirements of Subparagraph (C) of this paragraph. Two of the monitoring wells shall be located at diagonally opposite corners of the tank excavation. The design and construction of such wells shall be in general conformance with the applicable monitoring well requirements in Chapter 334 of this title (relating to Underground Storage Tanks), Chapter 287 of this title (relating to Water Well Drillers), and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), or rules applicable to the underground water district of jurisdiction.

(3) Spill and overfill prevention. All new and replacement underground storage tank systems shall be fitted with an overfill-prevention device, spill-containment device, and tight-fill device, in accordance with the applicable requirements of Chapter 334 of this title (relating to Underground Storage Tanks)

(4) Corrosion protection. New underground tanks and associated piping shall be protected from corrosion in accordance with the applicable requirements of Chapter 334 of this title (relating to Underground Storage Tanks).

(5) Flexible connectors. A flexible connector shall be installed at each end of the product or delivery piping to provide flexibility in the piping system. Such flexible connectors shall meet the applicable standards of, and shall be listed by Underwriters Laboratories Inc. The use of threaded steel swing joints or similar threaded devices for the purpose of providing flexibility in the product or delivery piping is specifically prohibited.

(d) Additional requirements for existing systems. Existing underground storage tanks and piping on the recharge zone and on the transition zone shall incorporate equipment and procedures to provide the following.

(1) Release detection. Automatic release detection systems shall be installed on all existing underground storage tank systems–whether of double-wall or single-wall construction–according to the schedule specified in Subparagraphs (A) and (B) of this paragraph. These release detection systems shall be designed to detect a release from any part of the underground storage tank system, shall be located outside of the primary walls of the underground storage tank system, shall automatically monitor the backfill material or the in-situ soil surrounding the primary wall(s) of existing single-wall systems or the interstitial space between the walls of existing double-wall systems, as applicable and at a frequency of at least once per day, and shall be capable of immediately alerting on-site personnel to possible leaks or releases. Underground piping associated with an existing underground storage tank system which conveys hydrocarbons or hazardous substances under pressure shall also be equipped with an automatic line leak detector meeting the requirements of §313. 10(c)(2)(B) of this subchapter according to the schedule specified in Subparagraphs (A) and (B) of this paragraph.

(A) Required upgrade schedule. Underground storage tank systems installed prior to December 22, 1969, and those of unknown age, shall be fitted with a release detection system meeting the requirements of this paragraph no later than December 22, 1989. Underground storage tank systems installed between December 22, 1969, and December 21, 1979, inclusive, shall be fitted with a release-detection system meeting the requirements of this paragraph no later than December 22, 1990. All other existing underground storage tank systems shall be fitted with a release detection system meeting the requirements of this paragraph no later than December 22, 1991.

(B) Requirements for time prior to scheduled upgrades. During the period prior to installation of any release detection systems required by this paragraph, a combination of tank-system tightness testing and inventory control of tank contents shall be used to monitor existing underground storage tank systems for their integrity.

(i) Tightness testing. Tightness testing shall be conducted on each tank and associated piping at least once per year beginning no later than December 22, 1989.

(ii) Inventory reconciliation. Inventory level measurements shall be recorded at least once per day, and inventory reconciliation shall be conducted at least once per week beginning no later than the effective date of these rules. The methods and procedures used for tank-tightness tests, piping tightness, and inventory control shall be in accordance with the applicable requirements in Chapter 334 of this title (relating to Underground Storage Tanks).

(2) Spill and overfill prevention. All existing underground storage tank systems shall be retrofitted with spill and overfill prevention devices as described in subsection (c)(3) of this section not later than December 22, 1990.

(3) Corrosion protection. All existing underground storage tank systems which have components of metallic construction shall be equipped with a corrosion protection system meeting the applicable requirements of Chapter 334 of this title (relating to Underground Storage Tanks) not later than December 22, 1991.

(4) Post-upgrade requirements. Within 30 days of upgrading an existing underground storage tank system, by means of installing release detection, spill and overfill protection, and/or corrosion protection equipment, the facility owner or operator shall:

(A) submit certification to the executive director that the equipment meets the applicable requirements of paragraphs (1), (2), and (3) of this subsection;

(B) provide to the executive director a detailed description of the equipment, including the type of system and the manufacturers' specifications; and

(C) submit to the executive director any additional detailed construction and/or planning materials, if such materials are considered necessary to reasonably assure that the construction activity meets the applicable requirements of this section.

(5) Required registration. All facilities storing static hydrocarbons and hazardous substances shall be registered with the appropriate district office, except for those facilities that are registered with the commission in accordance with registration requirements of Chapter 334 of this title (relating to Underground Storage Tanks) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(e) General provisions.

(1) Proposed and existing underground storage tank systems. All proposed and existing underground storage tank systems on the recharge zone and on the transition zone which contain a regulated substance, as defined in Chapter 334 of this title (relating to Underground Storage Tanks) shall meet the requirements for construction notification, registration, recordkeeping, release reporting, corrective action, maintenance, temporary and permanent removal from service, financial assurance, and all other applicable provisions specified in Chapter 334 of this title (relating to Underground Storage Tanks). Underground storage tank systems containing

municipal hazardous and/or industrial solid waste must comply with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(2) Removal of underground storage tank systems from service.

(A) Removal of underground storage tank system from site. Except as provided in subparagraph (B) of this paragraph, underground storage tank systems on the recharge zone and on the transition zone which are permanently removed from service shall not be abandoned in place, but shall be removed from the site. The facility excavation or opening, backfill, and surrounding soil shall be investigated for the presence of the substance(s) which have been contained in the tank(s). In the event that contamination is detected, the executive director shall be notified, and the facility owner shall comply with all requirements of Chapter 334 of this title (relating to Underground Storage Tanks) or Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(B) In-place abandonment of underground storage tank systems. When permanently removed from service, underground storage tank systems which are located in the load bearing area beneath the foundations of existing buildings or structures may be abandoned in place in accordance with Chapter 334 of this title (relating to Underground Storage Tanks), but only if removal of the system will jeopardize the structural integrity of the facility. At least 60 days prior to initiation of planned abandonment activities, the owner or operator shall submit a written request to the executive director which will include, at a minimum, a certification by a Texas regis- tered professional engineer that removal of the underground storage tank system would jeopardize the structural integrity of the facility, and a closure plan which substantially meets the requirements specified in subsection (f)(6) of this section. Written approval must be obtained from the executive director prior to initiation of in-place abandonment activities.

(C) Closure of underground storage tank systems. The removal from service of any underground storage tank on the recharge zone or the transition zone shall be conducted in compliance with the applicable requirements for permanent removal from service in Chapter 334 of this title (relating to Underground Storage Tanks) and for tank closures in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(D) Required site assessment. For underground storage tank systems located on the recharge zone or the transition zone which were abandoned in-place prior to December 22, 1988 (or which are otherwise permanently out of service and left in the ground), and where a site assessment or other acceptable release determination was not conducted at the time of abandonment, the owners shall conduct an acceptable site assessment in accordance with the applicable site assessment requirements in Chapter 334 of this title (relating to Underground Storage Tanks). Such site assessment shall be completed, and documentation of such assessment shall be filed with the executive director no later than December 22, 1990.

(f) Contents of application for approval of new or replacement underground storage tank systems.

(1) Completed and signed application. Signed application with complete information in accordance with the requirements set forth in subsection (a) of this section and the applicable provisions of Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions).

(2) Detailed description of facility. Narrative report containing a detailed description of the facility, the underground storage tank system, and the project plans.

(3) Geologic assessment. Geologic assessment prepared by a qualified geologist shall include, at a minimum, the following descriptions:

(A) area and site-specific geology and stratigraphy:

(B) faults and fractures, and their locations relative to the underground storage tank system;

(C) soils, surficial deposits, their hydrologic characteristics, and their locations relative to the underground storage tank system;

(D) significant recharge features and their locations relative to the underground storage tank system; and

(E) potential impact on the Edwards Aquifer and nearby water wells from the installation and operation of the underground storage tank system as designed and proposed.

(4) General location map. A general location map, showing:

(A) the site location on a copy of an official Recharge Zone Map(s) –with quadrangle name(s), recharge zone, transition zone, and their boundaries clearly labeled shall be submitted. (When necessary, a spliced composite map composed of copied parts of the official recharge zone Maps, with quadrangle names clearly indicated, may be submitted); and

(B) a drainage plan shown on the recharge zone Map, indicating the path of drainage from the underground storage tank facility to the boundary of the recharge zone.

(5) Underground storage tank system. Design plans for the underground storage tank system shall address the requirements of subsections (b) and (c) of this section, and include:

(A) a detailed site plan, drawn to scale and showing all system components;

(B) construction drawings, drawn to scale and illustrating in detail all tank system components; and

(C) general equipment specifications for each component of the underground storage tank system.

(6) General closure plan. Closure plan, generally describing the plans for eventual tank and piping removal, and testing of backfill and soils for releases or contamination.

(7) Release contingency plan. Release contingency plan, generally describing the plans and procedures for release reporting and remediation.

(g) Site inspection by appropriate district office. Installation of tanks or piping shall not commence until written approval of the executive director is obtained, and until an inspection of the facility site by a representative of the appropriate district office has been made. If any solution openings or sinkholes are discovered during the inspection of the facility site, no excavation or installation activities shall proceed until the commission has reviewed and approved the methods proposed to protect the aquifer from any potential adverse impacts by the underground storage tank system.

(h) Notification.

(1) Requirements of Chapter 334 of this title (relating to Underground Storage Tanks). Prior to commencing any construction related to an installation or replacement activity which has been approved by the commission, the upgrading or modification of existing systems as required in this section, or any planned removal of an underground storage tank system, the owner or the owner's designated representative shall comply with the applicable construction notification requirements of Chapter 334 of this title (relating to Underground Storage Tanks).

(2) Assessment of excavation by qualified geologist. The qualified geologist who prepared the geologic assessment shall

inspect the excavation. If any solution openings or sinkholes are discovered during such subsequent excavation inspection, all construction activities and all related activities shall be immediately suspended and may not proceed until the appropriate district office has been notified by the owner or the owner's designated on-site personnel, and until the commission has reviewed and approved the methods proposed to protect the aquifer from any potential adverse impacts. The owner or the owner's designated representative must immediately notify the district office of any significant recharge features encountered during construction activities before continuing construction.

(3) Tank registration. Upon completion of any significant underground storage tank construction activity, the owner or the owner's designated representative shall compiy with the applicable tank registration requirements in Chapter 334 of this title (relating to Underground Storage Tanks).

(4) Required additional information. The executive director may require the submittal of additional detailed construction and/or planning materials if such materials are considered necessary to reasonably assure that the construction activity meets the applicable requirements of this section.

(i) Modification of previously approved underground storage tank system plans. The owner of any approved underground storage tank system must notify the appropriate district office in writing and obtain approval from the executive director prior to making any physical modification to the approved underground storage tank system, except for modifications to existing systems performed pursuant to subsection (d) of this section.

(j) Compliance. The application for approval of an underground storage tank system may be conditionally approved by the executive director. The owner of the approved underground storage tank system shall be responsible for compliance with this section and any special conditions of an approved plan through all construction phases of the underground storage tank system. Failure to comply with all conditions of the executive director's approval is a violation of this rule.

(k) Term of approval. The executive director's approval of a new or replacement underground storage tank system under the provisions of this section shall expire within one year after the date of initial approval, unless prior to the expiration of the initial one-year period, commencement of construction related to the approved underground storage tank system has occurred. A written request for the executive director's approval of an extension must be received no earlier than 60 days and no later than 30 days prior to the expiration date of an approved plan or an approved extension, so that the executive director may approve the request for an extension. Requests for extensions are subject to fees outlined in Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions). The executive director's approved extension will expire six months after the expiration date of the approved plan or any approved extensions. Any requests for extensions received by the commission after the expiration date of an approved plan or an approved extension will be considered as a new application and will be subject to appropriate fees. An extension may not be granted if the proposed plan or requirements of these rules have changed.

(l) Exceptions. Sewage holding tanks, as defined in §313.3 of this title (relating to Defintions) shall not be subject to the provisions of this section.

§313.11. Above-Ground Storage of Static Hydrocarbons and Hazardous Substances.

(a) Approval by the executive director. Approval of the design plans for above-ground storage tank systems to be located on the recharge zone and on the transition zone for the containment of static hydrocarbons or hazardous substances must be obtained from the executive director prior to initiation of the above-ground storage tank system installation or replacement activity. An application for approval must be submitted in quadruplicate to the appropriate district office.

(b) Other applicable commission rules. Persons who own, install, operate, or maintain an above-ground storage tank system containing solid waste, as defined in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), must also comply with the applicable rules of that chapter.

(c) New facilities. New facilities used for the above-ground storage of static hydrocarbons or hazardous substances must be constructed within controlled drainage areas that are sized to capture one and one-half times the storage capacity of the system and that direct any spillage to a point convenient for the collection and recovery of the spillage. The controlled drainage area must be constructed of or in a material suitably compatible with and impervious to the material being stored. Any spillage from such storage facilities must be removed from the controlled drainage area for disposal within 24 hours of spillage. Permanent storage facilities smaller than, or with a cumulative volume of less than, 1,000 gallons are exempt from this section.

(d) Contents of above-ground storage tank system design plans.

(1) Completed and signed application. Signed application with complete information in accordance with requirements set forth in subsection (a) of this section and Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions).

(2) Detailed description of the above-ground storage tank facility. Narrative report containing a detailed description of the general facility, the controlled drainage area, the above-ground storage tank system, and project plans.

(3) Geologic assessment. A geologic assessment prepared by a qualified geologist shall include, at a minimum, the following descriptions:

(A) area and site-specific geology and stratigraphy;

(B) faults and fractures, and their locations relative to the above-ground storage tank system;

(C) soils and surficial deposits, and their locations relative to the above-ground storage tank system;

(D) significant recharge features, and their locations relative to the above-ground storage tank system; and

(E) narrative assessment of the potential impact on the Edwards Aquifer from the installation and operation of an above-ground storage tank system, as designed and proposed.

(4) General location map. A general location map, showing:

(A) the site location on a copy of an official recharge zone Map(s) –with quadrangle name(s), recharge zone, transition zone, and their boundaries clearly labeled shall be submitted. (When necessary, a spliced composite map composed of copied parts of the official recharge zone Maps, with quadrangle names clearly indicated, may be submitted.); and

(B) a drainage plan shown on the recharge zone Map, indicating the path of drainage from the above-ground storage tank system to the boundary of the recharge zone.

(5) Above-ground storage tank system design plans. Design plans for the above-ground storage tank system shall address the requirements specified in subsection (c) of this section, and include:

(A) a detailed site location plan, to scale and showing all system components;

(B) construction drawings, drawn to scale and illustrating in detail the tank system components; and

(C) manufacturers' specifications for each component of the above-ground storage tank system.

(6) General closure plan. Closure plan, generally describing the plans for eventual tank, piping, and containment area removal and testing of soils for releases or contamination.

(7) Release contingency plan. Release contingency plan, generally describing plans and procedures for notification, tank and piping evacuation, collection and disposal of the spilled material, repair or replacement of equipment, and remediation if necessary.

(e) Site inspection by appropriate district office. Installation of tanks or controlled drainage area shall not commence until written approval of the executive director is obtained, and until an inspection of the facility site by a representative of the appropriate district office has been made. If any solution openings or sinkholes are discovered during the inspection of the facility site, no excavation or installation activities shall proceed until the commission has reviewed and approved the methods proposed to protect the aquifer from any potential adverse impacts by the underground storage tank system.

(f) Notification.

(1) Prior to commencement of construction. Prior to commencing any construction related to above-ground storage tank system installation or replacement activity, the applicant must notify the appropriate district office of when the related activity will commence, and under which approved above-ground storage tank system plan the related activity will proceed.

(2) During construction. The holder of an approved above-ground storage tank system plan must immediately notify the district office of any significant recharge features encountered during construction activities before continuing construction. If any solution openings or sinkholes are discovered during construction activities, all related activities must be immediately suspended and may not proceed until the appropriate district office has been notified by on-site personnel, and the commission has reviewed and approved the methods proposed to protect the aquifer from any potential adverse impacts.

(g) Modification of previously approved above-ground storage tank system plans. The holder of any approved above-ground storage tank system plan must notify the appropriate district office in writing and obtain approval from the executive director prior to making any physical modification of the approved above-ground storage tank system.

(h) Compliance. The application of approval of an above-ground storage tank system may be conditionally approved by the executive director. The holder of the approved above-ground storage tank system shall be responsible for compliance with this section and any special conditions of an approved plan through all construction phases of the above-ground storage tank system. Failure to comply with all conditions of the executive director's approval is a violation of this rule.

(i) Term of approval. The executive director's approval of a new or replacement above-ground storage tank system under the provisions of this section shall expire within two years after the date of initial approval, unless prior to the expiration of the initial two-year period, commencement of construction related to the approved above-ground storage tank system has occurred. A written request for the executive director's approval of an extension must be received no earlier than 60 days and no later than 30 days prior to the expiration date of an approved plan or an approved extension, so that the executive director may approve the request for an extension. Requests for extensions are subject to fees outlined in Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions). The executive director's approved extension will expire six months after the expiration date of the approved plan or any approved extensions. Any requests for extensions received by the commission after the expiration date of an approved plan or an approved extension will be considered as a new application and will be subject to appropriate fees. An extension may not be granted if the proposed plan or requirements of these rules have changed.

§313.12. Exceptions.

(a) General. It is the policy of the commission to strictly enforce this chapter. Nevertheless, situations that would warrant exceptions to these rules will arise. Exceptions to the provisions of this chapter may be granted by the executive director if equivalent protection for the Edwards Aquifer can be demonstrated. Approvals of such requested exceptions will be reviewed on a case-by-case basis.

(b) Procedure for requesting an exception.

(1) Written Requests. A person desiring an exception to the provisions of this chapter must file a written request with the executive director stating in detail:

(A) the nature of the exception requested;

(B) the justification for granting the exception; and

(C) any other information that the executive director or his representative reasonably requests.

(2) Submittal of requests for exceptions. All requests must be submitted in quadruplicate.

(3) Decisions regarding requests for exceptions. Decisions regarding exceptions to §313.7 of this title (relating to Private Sewage Facilities) may be made by the manager of the appropriate district office. All decisions regarding exceptions made by the manager of the appropriate district office are appealable to the executive director by following the procedures of this subsection. If the Commissioners Court for the county in which the private sewage facility is located, or is proposed to be located, regulates private sewage facilities pursuant to rules approved by the Texas Water Commission under the Texas Water Code, §26.032 and §313.7(a) of this title (relating to Private Sewage Facilities), then decisions regarding exceptions to those rules must be made by the Commissioners Court. This paragraph shall expire at midnight, August 31, 1989, unless otherwise authorized by law.

§313.13. Review of Decisions of the Executive Director.

(a) Justiciable interest. Any person having a justiciable interest in a matter on which a decision has been made by the executive director under this chapter, and who is aggrieved by the decision, may request the commis- sion to review the decision.

(b) Request for review. A request for review must be in writing and must specifically state each issue in the decision of the executive director to which the aggrieved person objects. The request for review of the decision must be filed with the commission within 30 days of the date on which the executive director issues his decision. Final commission determination regarding the request for review is a prerequisite to judicial appeal.

§313.14. Enforcement. It shall be unlawful for any person to fail or refuse to comply with any provision of this chapter or of any applicable regulation or order of the Texas Water Commission issued pursuant to this chapter and in accordance with Chapter 26 and other relevant provisions of the Texas Water Code. Any person who is found to be in noncompliance with this chapter or other relevant regulations, orders, and/or laws shall be liable for penalties and may be the subject of enforcement proceedings initiated by the executive director under the Texas Water Code, Chapter 26.

§313.15. Underground Water Conservation Districts. The commission recognizes the authorities, powers, and duties of special-purpose districts, created by the Texas Legislature or by the commission under the Texas Water Code, Chapter 52, as underground water conservation districts to con-

serve, prevent waste of, and protect the quality of underground water. The commission, in order to foster cooperation with local government, encourages districts to assist the commission in its administration of this chapter through carrying out the following functions within the areal extent of their geographic jurisdiction that includes the recharge zone and/or transition zone:

(1) cooperate with licensing authorities in carrying out the provisions of this chapter;

(2) conduct such geologic investigations as are necessary to provide updated information to the executive director regarding the official maps of the recharge zone and transition zone;

(3) monitor the quality of water in the Edwards Aquifer; and

(4) maintain maps of activities on the recharge zone and transition zone.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907729 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-8087

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Subchapter B. Edwards Aquifer in Williamson county

• 31 TAC §§313.21-313.30

(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 Water 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, 5.105, 26.011, 26.046, and 28.011, which provides the Texas Water Commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§313.21. Purpose.

§313.22. Definitions.

§313.23. Water Pollution Abatement for Regulated Developments.

§313.24. Sewage Collection Systems.

§313.25. Wastewater Treatment and Disposal Systems.

§313.26. Private Sewage Facilities.

§313.27. Prohibited Activities.

§313.28. Static Hydrocarbon and Hazardous Substance Storage Facilities.

§313.29. Exceptions.

§313.30 Review of Decisions of Executive Director.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907727 James Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-8087

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• 31 TAC §313.21-313.26

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011, which provides the Texas Water Commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§313.21. Required Submissions. Required submissions must be filed in quadruplicate with the appropriate district office in order to request approval by the executive director of any plans or amendments to the following:

(1) water pollution abatement plans filed under §313.4 of this title (relating to Water Pollution Abatement Plans for Regulated Developments);

(2) sewage collection system plans filed under §313.5 of this title (relating to Organized Sewage Collection Systems); and

(3) static hydrocarbons and hazardous substance storage tank system construction or renovation plans filed under §313.10 (relating to Underground Storage of Static Hydrocarbons and Hazardous Substances) and §313.11 (relating to Above-Ground Storage of Static Hydrocarbons and Hazardous Substances).

§313.22. Person or Entity Required to Apply. Unless otherwise provided under this chapter, the owner of an existing or proposed regulated development, sewage collection system, or static hydrocarbons or hazardous substance storage facility for which plans or amendments to plans must be approved under this chapter must file the application for approval.

§313.23. Signatories to Applications.

(a) Required signature. All applications must be signed as follows:

(1) for a corporation–by a principal executive officer of at least the level of vice-president or by a duly authorized representative. A representative must submit written proof of the authorization;

(2) for a partnership–by a general partner;

(3) for a political entity such as a municipality, state, federal, or other public agency–by either a principal executive officer or a duly authorized representative. A representative must submit written proof of the authorization; and

(4) for an individual or sole proprietor–by the individual or sole proprietor, as applicable.

(b) Proof of authorization to sign. The executive director may require written proof of authorization to sign any application.

§313.24. Contents of Application.

(a) Forms provided by the executive director. Applications for approval filed under this chapter must be made on a form provided by or approved by the executive director. Each application for approval must include at a minimum, the following:

(1) name of the development, subdivision, or facility for which the application is submitted;

(2) location of the project or facility for which the application is submitted, presented with sufficient detail and clarity, so that the project site and its boundaries can be located on a field inspection;

(3) name, address, and telephone number of the owner and, if different, the name, address, and telephone number of all persons signing the application;

(4) information needed to determine the appropriate fee under §13.26:

(A) for water pollution abatement plans and amendments to plans–the total acreage of the regulated development;

(B) for sewage collection system plans and amendments to plans–the total linear footage of all lines; and

(C) for underground and above-ground static hydrocarbons and hazardous substance storage tank system plans–the total number of tanks or piping systems;

(5) any other information relating to the application which the executive

director may require.

(b) Required information. Each application must also include the following information, as applicable:

(1) for water pollution abatement plans, the information required under §313.4 of this title (relating to Water Pollution Abatement Plans for Regulated Developments);

(2) for sewage collection system plans, the information required under §313.5 of this title (relating to Organized Sewage Collection Systems);

(3) for static hydrocarbons and hazardous substance storage system plans, the information required under §313.10 of this title (relating to Underground Storage of Static Hydrocarbons and Hazardous Substances) or §313.11 of this title (relating to Above-Ground Storage of Static Hydrocarbon and Hazardous Substances).

§313.25. Application Fees. The owner making an application for approval or amendment of any plan under this chapter must pay an application fee in the amount set forth in §313.27 of this title (relating to Amount of Fees). The fee is due and payable at the time the application is filed. The fee must be sent to the commission's Austin office, accompanied by an Edwards Aquifer Fee Application Form, provided by the executive director. Application fees must be paid by check, certified check, or money order, payable to the Texas Water Commission. If application fees in the correct amount are not submitted, the executive director is not required to consider the application until the correct fee is submitted.

§313.26. Fees Related to Requests for Extensions. The owner making an application for an extension of an approval of any plan under this chapter must pay $100 for each extension request. The fee is due and payable at the time the application is filed. The fee must be sent to the commission's Austin office, accompanied by an Edwards Aquifer Fee Application Form, provided by the executive director. Application fees must be paid by check, certified check, or money order, payable to the Texas Water Commission. If application fees in the correct amount are not submitted, the executive director is not required to consider the application until the correct fee is submitted.

§313.27. Fee Schedule.

(a) Water pollution abatement plans. For water pollution abatement plans and amendments, the application fee shall be based on the total acreage of regulated development for which approval is sought, as follows:

Number of Acres	Fee
less than 5 acres:	$100
at least 5 acres, but less than 10 acres	250
at least 10 acres, but less than 25 acres	400
at least 25 acres, but less than 50 acres	600
at least 50 acres, but less than 100 acres	800
100 acres or more:	1,000

(b) Sewage collection systems. For sewage collection system plans and amendments, the application fee shall be based on the total number of linear feet of all lines for which approval is sought. The fee shall be $.10 per linear foot, with a minimum fee of $100 and maximum fee of $2,000.

(c) Underground and above-ground storage tank systems. For static hydrocarbons or hazardous substance storage tank systems facility plans and amendments, the application fee shall be based on the number of tanks or piping systems for which approval is sought. The fee shall be $100 per tank or piping system, with a minimum fee of $100 and a maximum fee of $2,000.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907728 James Haley
Director, Legal Division
Texas Water Commission

Proposed date of adoption: September 29, 1989

For further information, please call: (512) 463-8087

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• 31 TAC §§313.61-313.66

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

These repeals are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011, which provide the Texas Water Commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Code and other laws.

§313.61. Application Required.

§313.62. Person or Entity Who Must Apply.

§313.63. Signatories to Applications.

§313.64. Contents of Applications.

§313.65. Application Fees.

§313.66. Amount of Fees.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907725 James Haley
Director, Legal Counsel
Texas Water Commission

Proposed date of adoption: September 29, 1989

For further information, please call: (512) 463-8087

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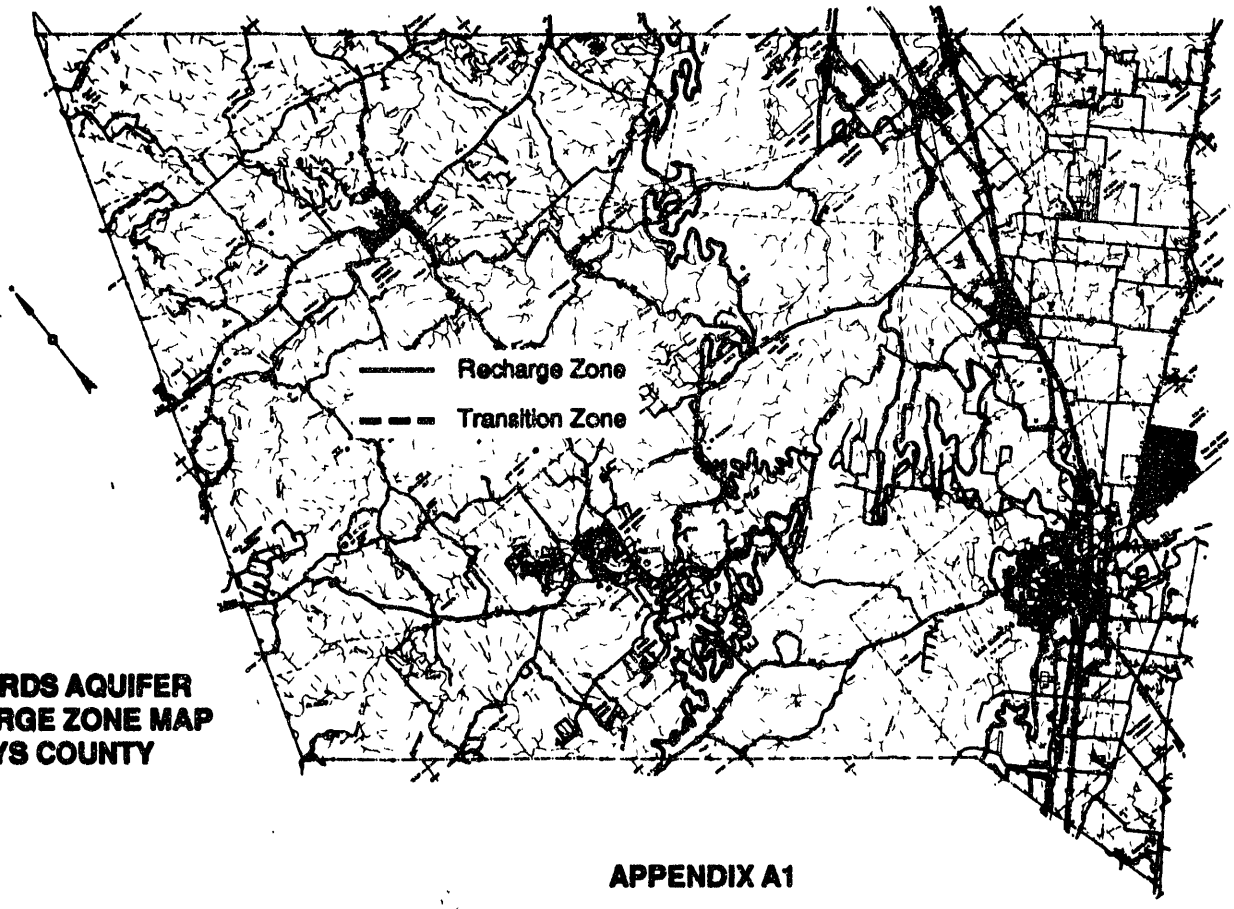
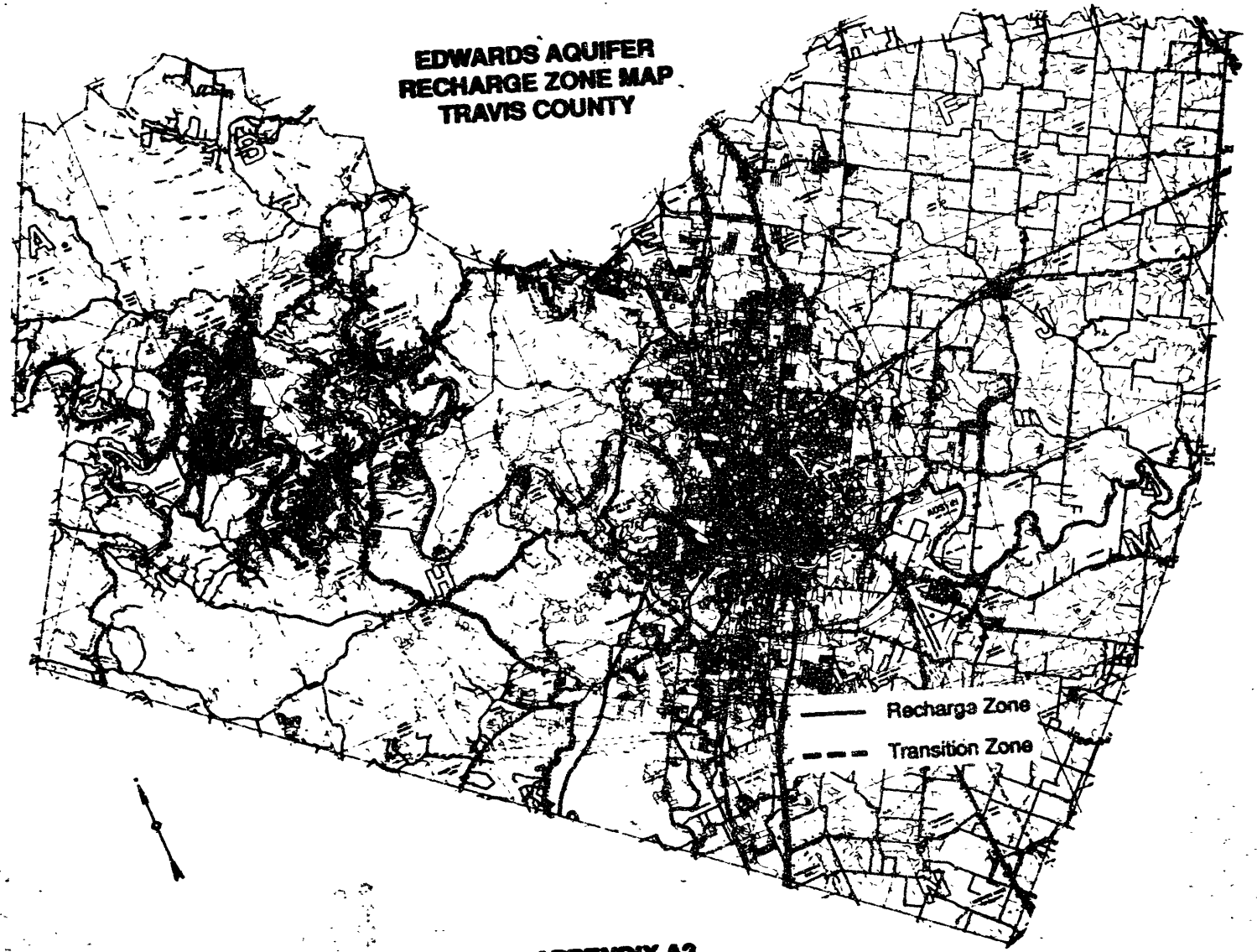
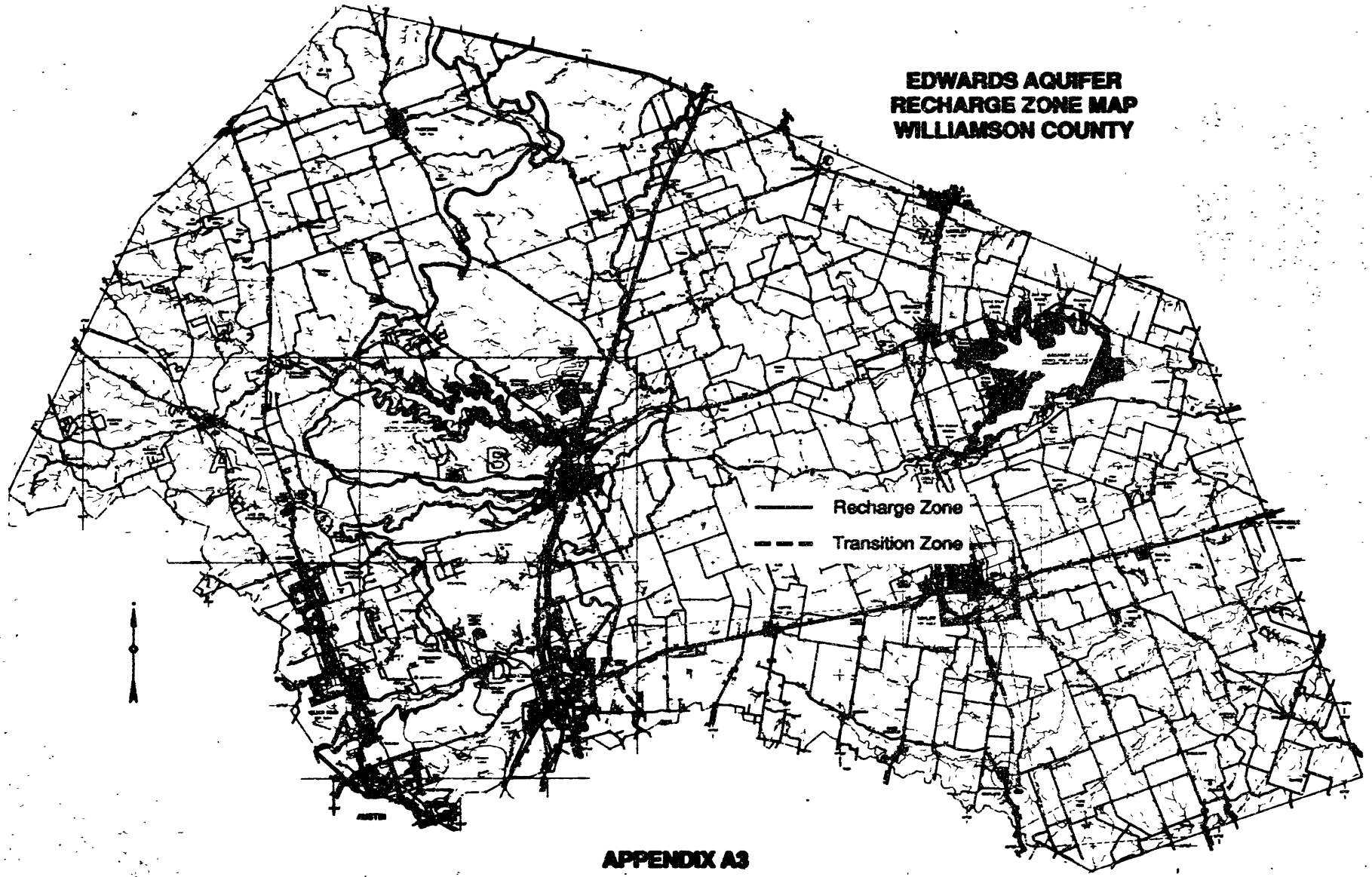


EDWARDS AQUIFER
RECHARGE ZONE MAP
HAYS COUNTY

APPENDIX A1


EDWARDS AQUIFER
RECHARGE ZONE MAP
TRAVIS COUNTY
Recharge Zone
Transition Zone

APPENDIX A2


EDWARDS AQUIFER
RECHARGE ZONE MAP
WILLIAMSON COUNTY
A
B
Recharge Zone
Transition Zone

APPENDIX A3

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter K. Hotel Occupancy Tax

• 34 TAC §3.163

The Comptroller of Public Accounts proposes an amendment to §3.163, concerning exemptions. The amendment takes into account recent legislative changes required by House Bill 1147, regarding exemptions from the state hotel occupancy tax.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in allowing the comptroller to efficiently regulate exemption activities. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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

Issued in Austin, Texas on August 23, 1989.

TRD-8907736 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-4004

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• 34 TAC 3.164

The Comptroller of Public Accounts proposes an amendment to §3.164, concerning exemption certificate. The amendment takes into account changes in the exemption certificate due to recent legislative changes required by House Bill 1147, regarding exemptions from state hotel occupancy tax.

Ben Lock, director of comptroller's economic analysis center, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in allowing the comptroller to efficiently regulate exemption activities. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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

Issued in Austin, Texas on August 23, 1989.

TRD-8907734 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-4004

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

New Jail Design, Construction, and Furnishing Requirements

• 37 TAC §259.69

The Texas Commission on Jail Standards proposes an amendment to §259.69, concerning new jail design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§259.69. Power-Operated [Electromechanical] Locks. Power-operated [Electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped with power-operated [electromechanical] locks.

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

Issued in Austin, Texas on August 18, 1989.

TRD-8907754 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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New Lockup Design, Construction, and Furnishing Requirements

• 37 TAC §259.164

The Texas Commission on Jail Standards proposes an amendment to §259.164, concerning new lockup design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted

to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1 which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§259.164. **Power-Operated [Electromechanical] Locks.** **Power-operated [Electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic** [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped with power-operated [electromechanical] locks.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907753 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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New Low-risk Design, Construction and Furnishing Requirement

• 37 TAC §259.248

The Texas Commission on Jail Standards proposes an amendment to §259.248, concerning new low-risk design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1 which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§259.248. **Power-Operated [Electromechanical] Locks.** **Power-operated [Electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic** [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped with power-operated [electromechanical] locks.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907752 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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Podular Direct Supervision Design, Construction, and Furnishing Requirements

• 37 TAC §259.358

The Texas Commission on Jail Standards proposes an amendment to §259.358, concerning podular/direct supervision design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§259.358. **Power-Operated [Electromechanical] Locks.** **Power-operated [Electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic** [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped with power-operated [electromechanical] locks.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907751 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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Chapter 261. Existing Construction Rules

Existing Jail Design, Construction, and Furnishing Requirements

• 37 TAC §261.58

The Texas Commission on Jail Standards prpposes an amendment to §261.58, concerning existing jail design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§261.58. **Power-Operated [Electromechanical] Locks. Power-operated [Electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic** [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped with power-operated [electromechanical] locks.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907750 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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Existing Lockup Design, Construction, and Furnishings Requirements

• 37 TAC §261.153

The Texas Commission on Jail Standards proposes an amendment to §261.153, concerning existing lockup design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§261.153. Power-Operated [Electromechanical] Locks. **Power-operated [Electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic** [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped with power-operated [electromechanical] locks.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907749 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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Existing Low-risk, Design, Construction, and Furnishing Requirements

• 37 TAC §261.237

The Texas Commission on Jail Standards proposes an amendment to §261.237, concerning existing low-risk design. This amendment changes terminology in minimum jail standards from electromechanical to power-operated locks which will authorize the use of pneumatic locks.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation of a jail locking system as well as an improved maintenance capability and ease of management. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§261.237. **Power-Operated** [Electromechanical] Locks. **Power-operated** [electromechanical keyed] locks, where used, shall be motor, solenoid, or pneumatic [motor or solenoid] type, providing electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of door upon closing. A door position [indicator] switch and door position [location] indicator shall be provided for all doors equipped with power-operated [electromechanical] locks. Heavy-duty detention-type door closers should be provided on all swinging doors equipped withpower-operated [electromechanical] locks.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907747 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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Chapter 275. Supervision of Inmates

• 37 TAC §275.2

The Texas Commission on Jail Standards proposes an amendment to §275.2, concerning corrections officer appointment and training. This amendment will require the licensing of jailers when employed by a private firm which operates a facility for county government.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the requirement of training and licensing of jailers operating a private facility, thus assisting in creating a safe and suitable environment. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§275.2. Corrections Officer Appointment and Training. Personnel employed or appointed as jailers or guards of county jails shall meet the requirements of the Texas Commission on Law Enforcement Officer Standards and Educationunder the provisions of §211.78 of this title (relating to Minimum Training Standards Required

for Jailers or Guards of County Jails). Personnel assigned to facilities that are operated under provisions of a contract between a private firm and the commissioners court of a county shall comply with this requirement. Under the provisions of Texas Civil Statues, Article 4413(29aa), §§7A, 7B, and 8A.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907746 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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• 37 TAC §275.4

The Texas Commission on Jail Standards proposes an amendment to §275.4, concerning supervisory personnel. This amendment changes the requirement for jailers when operating a jail that has a capacity of 10 or more.

Jack E. Crump, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government. Effect on local government for the first five-year period the section will be in effect will be an estimated additional cost of $900, 000 in fiscal years 1990-1994. There will be no effect on small businesses.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the requirement of a dedicated jailer when jails operate with a population of 10 or more. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Title 18, Article 5115. 1, which provide the Texas commission on Jail Standards with the authority to promulgate rules affecting county jails.

§275.4. Supervisory Personnel. Inmates shall be supervised by an adequate number of corrections officers to comply with state law and these standards. One corrections officer shall be provided on each floor of the facility where 10 or more inmates are housed, with no less than one corrections officer per 48 inmates or increment thereof for direct inmate supervision. Jails that consistently house 10 or more inmates shall provide a dedicated jailer to provide inmate supervision. This function shall not be an additional duty for dispatchers of similar departmental positions. This officer shall provide visual image supervision not less than hourly. Sufficient corrections officers as accepted by the commission shall be provided to perform functions required by minimum jail standards such as booking, classification, discipline and grievance, education and rehabilitation, inmate movement, library privileges, (i.e. visitation, correspondence, telephone, commissary, and religious services) and recreation and exercise. A waiver may be granted by the commission as to minimal supervisory personnel-to-inmate ratios required elsewhere in these rules. A plan, concurred in by both commissioners court and the sheriff's department, may be submitted to the commission, which provides for adequate and reasonable staffing of a jail facility. This rule shall not preclude the Texas Commission on Jail Standards from requiring staffing in excess of minimum requirements when deemed necessary to provide a safe, suitable, and sanitary jail, nor preclude submission of variance requests as provided by statute or these sections.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907748 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: September 29, 1989

For further information, please call: (512) 463-5505

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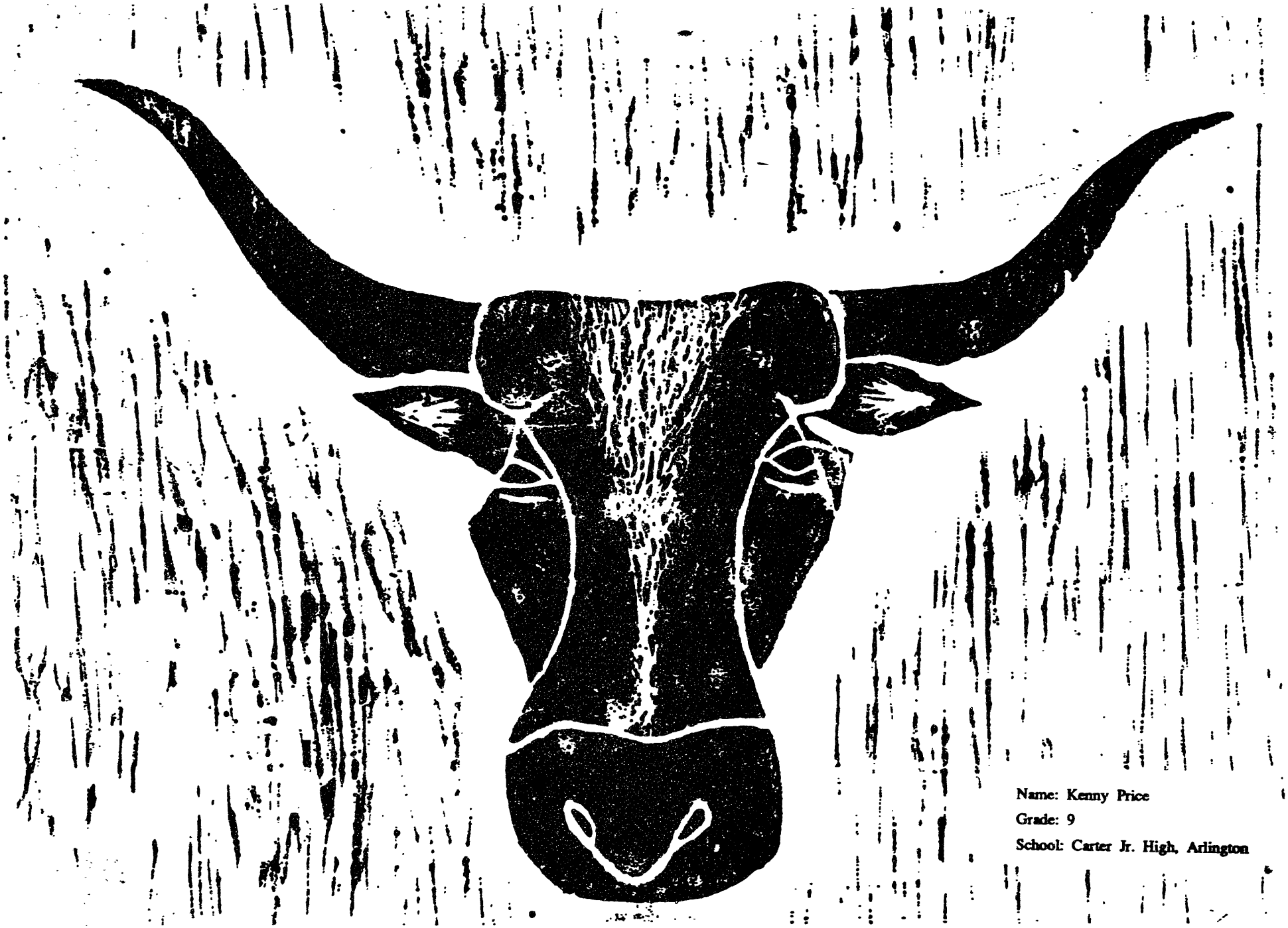

Name: Kenny Price

Grade: 9

School: Carter Jr. High, Arlington

Adopted Sections

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

• 31 TAC §§116.1, 116.3, 116.5, 116.6, 116.10-116.13

The Texas Air Control Board (TACB) adopts amendments to §§116.1, 116.3, 116.5, 116.6, and 116.10-116.13. Sections 116.5, 116.6, and 116.10 are adopted with changes to the proposed text as published in the March 31, 1989, issue of the *Texas Register* (14 TexReg 1627). The amendments to §§116.1, 116.3, and 116.11-116.13 are adopted without changes and will not be republished. In concurrent rulemaking, TACB is adopting the repeal of §116.7, concerning special permits.

The majority of the changes in the sections involve the removal or modification of references to the term special permits and to the repealed section number (§116.7). A new provision is added to §116.3 to provide for voidance of a significantly deficient permit application. Section 116.5 is amendment to clarify that public notification is not required by the agency for all permit amendments, and obsolete language regarding effective dates is removed from §§116.3 and 116.10. The date of the Standard Exemption List is revised in §116.6 and Standard Exemptions Numbers 71, 93, and 117 are revised to replace references to §116.7. Finally, wording is added to §116.11 to clearly state that the agency does not require fees for amendments to special permits and to state that a permit fee is not refunded if a permit application is voided.

A public hearing was held on April 27, 1989, in Austin. Testimony was received from 19 commenters during the comment period which closed April 28. The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal. A commenter who agreed with the proposal in its entirety is classified as being for the proposal. Those commenting in favor of the proposal were the Texas Mid-continent Oil and Gas Association (TMOGA) and the Texas Chemical Council (TCC). Those commenting against the proposal were the Outdoor Nature Club of Houston, the Harris County Pollution Control Department (Harris County), two members of the Galveston Bay Conservation and Preservation Association, Texas Eastman Company, the City of Shoreacres, the United States Environmental Protection Agency (EPA), Texas Utilities Electric Company (TU Electric), and nine individuals. A summary of the comments and a discussion of the issues relating to the amendments follow.

No specific comments were received regarding the proposed revisions to §§116.1, 116.6, 116.12, and 116.13 or to Standard Exemptions Numbers 71, 93, and 117. TMOGA and TCC gave general support to the entire proposal.

Four commenters submitted remarks concerning the proposed changes to §116.3. Harris County, and TMOGA supported the addition of a new subsection (f) to provide for the voidance of a significantly deficient permit application. One individual objected to the allowance of a six-month period after voidance during which an application may be resubmitted without payment of a new permit fee. The commenter contended that an applicant should pay every time an application is filed in order to defray agency expenses for permit application review. The purpose of the six-month period is to allow an applicant reasonable time to provide all needed information in a second application before the agency begins the additional review. In either case, the agency will not begin the application review until all information is submitted. In this way, needless agency expenses may be avoided.

TU Electric requested that a warning notice be issued to an applicant prior to voidance of a permit application. The commenter recommended language as an addition to new subsection (f) to provide for notification of intent to void an application. The agency believes that the commenter's suggestion has merit, but that the purpose would be accomplished more effectively by adding appropriate wording to §116.5 rather than to §116.3(f). The commenter's recommended language has been modified and added to the fourth sentence of §116.5.

Two commenters submitted remarks concerning the proposed revisions to §116. 5. An individual requested that public notification be required for all permit amendments and that the phrase "significant increases in emissions," as used in the preamble to the March 31 proposal, be defined. As mentioned in that proposal, the agency does not require public notification for all permit amendments, but only for cases involving significant increases in emissions. Since Chapter 116 does not specify public notification requirements for permit amendments, the addition of new public notification requirements to satisfy the commenter's request would require a new rulemaking process to allow public review and comment on such a proposal. The agency requires public notification of permit amendments only if the changes to an existing facility will represent a notable departure from established operations. Notable changes or "significant increases in emissions" usually indicate that a specified amount of a particular pollutant is being increased over the current production level or is being introduced as an additional air contaminant. Such amounts are reviewed by the agency on a case-by-case basis and may range from less than one ton per year of a hazardous-type chemical to 250 or more tons per year of a criteria pollutant such as nitrogen oxides. The agency determines the significance of emissions increases through a close examination of the amount of increase, the character of the pollutant, and the operation of the facility.

TU Electric mentioned a possible error in the proposal as published in the *Texas Register* on March 31. The commenter thought that the proposed new language should be deleted and the old language reinstated. The revisions, as they appeared in the *Texas Register*, were printed accurately.

There were no comments on the two changes in §116.6(a). However, the Standard Exemption List Rate is changed to reflect the date of adoption of the latest revisions to that list (August 11, 1989).

One commenter submitted remarks concerning the proposed revision to §116. 10(a)(7). EPA indicated that temporary installations and portable stationary sources are not allowed to relocate without a new permit unless requirements are met for either attainment areas or nonattainment areas, as applicable. The commenter cited federal prevention of significant deterioration (PSD) and nonattainment area review specifications for major stationary sources and major modifications and asserted that §116.10(a)(7) will need to be revised to address those requirements. Section 116.10(a)(7) outlines only public notification and comment procedures, not new major source requirements under PSD or nonattainment area review. These latter requirements are covered under §116. 3 (concerning consideration for granting permits to construct and operate). Repeating the requirements here would be duplicatory and inappropriate for the subject matter.

Seventeen commenters addressed the proposed revisions to §116.10(b)(1). TMOGA and TU Electric supported the addition of language to allow a maximum 20-day comment period for applications for permits not subject to federal PSD and nonattainment area requirements. The agency historically has referred to such permits as state or nonfederal permits.

Nine individuals, three members of two environmental groups, the City of Shoreacres, and Harris County opposed a 20-day comment period for state permits. These commenters argued that permit applications can be difficult for the general public to understand that the average working person has limited review time during normal business hours, that even a 30-day comment period is barely adequate, and that any improvements in TACB permitting efficiency with a 20-day period would be minimal at best. Further, the mayor of the City of Shoreacres stated that a 20-day comment period would not allow time for city council consideration and action when needed. The agency has reconsidered the need for a reduced public comment period and, in light of testimony received, has withdrawn the proposed revisions to §116.10(b)(1) which would have provided for a 20-day comment period for non-federal permits. The result is a 30-day comment period for all permit applications.

EPA objected to the proposed 20-day comment period for state permits contending that all permits are subject to federal requirements and must have a 30-day comment period. The commenter listed sections of the Code of Federal Regulations as a basis for this opinion and concluded that a 20-day comment period is not approvable by EPA. The commenter's contention regarding the 20 day comment period is moot since the agency has withdrawn the proposal. The agency continues to take issue with EPA's assertion that federal jurisdiction exists regarding the entirety of the permitting program. However, this difference does not impact the present proposal and can be addressed at another time when resolution of this question would serve a specific purpose.

One commenter addressed the proposed revisions to §116.11(e), regarding not requiring fees for amendments to special permits. An individual contended that such fees were necessary to help pay for agency resources needed to process amendments to special permits. The words "amendments to special permits" were proposed to clarify that the agency will not charge fees for amendments to special permits. Section 3.29 of the Texas Clean Air Act (TCAA) does not explicitly require such fees as it does for other kinds of authorizations to construct or operate. Consequently, TACB is of the opinion that the agency may not charge fees for special permit amendments under the legal principle of express provision. Special permit amendments hold an implied exclusion from fees in the TCAA.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3. 09(a), which provide TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation TACB makes.

§116.5. Representations in Application for Permit and Exemption. All representations with regard to construction plans and operation procedures in an application for a special permit, a permit to construct, or a permit to operate, or in any request for an exemption become conditions upon which a subsequent exemption, special permit, or permit to construct or operate are issued. It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless he first makes application to the executive director to amend his permit, special permit, or exemption in that regard and such amendment is approved by the executive director. Within 90 days of receipt of an application to amend a permit, special permit, or exemption, the executive director shall mail written notification informing the applicant that the application is complete or that it is deficient. If the application is deficient, the notification shall state any additional information required, and the intent of the executive director to void the application if information for a complete application is not submitted. Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification. Within 150 days of receipt of a completed application, the executive director shall mail written notice informing the applicant of his decision to approve or not approve the amendment provided that no requests for public hearing or public meeting on the proposed facility have been received and the applicant has provided public notification as required by the executive director. If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director. If the executive director finds that the amendment was not approved or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13(b).1, §3, the executive director shall reimburse the permit fee which was remitted with the application.

§116.6. Exempted Facilities.

(a) Pursuant to the Texas Clean Air Act (TCAA), §3.27(a), the facilities or types of facilities listed in the Standard Exemption List, dated August 11, 1989, as filed in the Secretary of State's Office and herein adopted by reference, are exempt from the permit requirements of the TCAA §§3.27 and 3. 28, because such facilities will not make a significant contribution of air contaminants to the atmosphere; provided, however, that:

(1) actual emissions from the proposed facility shall not exceed 250 tons per year of carbon monoxide or nitrogen oxides or 25 tons per year of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen. In addition, total actual emissions from the property where the proposed facility is to be located shall not exceed 250 tons per year of carbon monoxide or nitrogen oxides or 25 tons per year of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen, unless at least one facility at such property has been subject to public notification and comment as required by §116.10 of this title (relating to Public Notification and Comment Procedure);

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

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

§116.10. Public Notification and Comment Procedure.

(a) Public notification procedures.

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

(7) Exemption of previously permitted facilities. Upon written request by the owner or operator of a facility which previously has received a permit or special permit from TACB, the executive director or his designated representative may exempt the relocation of such facility from the requirements of this section if he findings no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will create a nuisance.

(b) Comment procedures.

(1) Comment period. Interested persons may submit written comments, including requests for public hearings pursuant to the Texas Clean Air Act, §3. 271(c), on the construction permit application and on the executive director's preliminary decision to issue or not to issue the permit to the executive director. All such comments and hearing requests must be received in writing within 30 days of the last publication date of the notices specified in subsection (a)(3) and (4) of this section. The comment period for continuance reviews of operating permits and for concrete batch plants which meet the conditions of a standard exemption is 15 days. All written comments submitted to the executive director pursuant to this subsection shall be considered in determining whether to issue or not to issue the permit.

(2) (No change.)

(c) (No change.)

(d) Notification of new determinations as to best available control technology. If the requirements of any permit to construct will incorporate a new determination of best available control technology pursuant to §116.3 (a) (3) of this title (relating to Consideration for Granting Permits to Construct and Operate), the executive director shall so notify the public by publication of a notice in the *Texas Register* within 60 days after the issuance of any such permit.

(e) Consequences of exceeding time limits. If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director. If the executive director finds that the permit was not

issued or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13(b).1, §3, the executive director shall reimburse the permit fee which was remitted with the application.

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

Issued in Austin, Texas on August 22, 1989.

TRD-8907691 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: September 12, 1989

Proposal publication date: March 31, 1989

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

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• 31 TAC §116.7

The Texas Air Control Board (TACB) adopts a repeal of §116.7, without changes to the proposed text as published in the March 31, 1989, issue of the *Texas Register* (14 TexReg 1630). The section number will be reserved for future rulemaking. In concurrent rulemaking, TACB is deleting references to special permits throughout the other sections of Chapter 116, except that references to existing special permits are retained where ongoing requirements continue to apply. The agency will no longer issue special permits, but will issue regular preconstruction permits for facilities previously receiving special permits.

A public hearing was held April 27, 1989, in Austin. A total of seven commenters supported the proposed repeal. Those in favor were the Harris County Pollution Control Department, Texas Eastman Company, the Texas Mid-continent Oil and Gas Association, Texas Utilities Electric Company, the Texas Chemical Council, the United States Environmental Protection Agency, and one individual. No one opposed the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act (TCAA) and to amend any rule or regulation TACB makes.

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

Issued in Austin, Texas on August 22, 1989

TRD-8907692 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: September 12, 1989

Proposal publication date: March 31, 1989

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

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State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has adopted a filing submitted by the Surety Association of America of revised forms and endorsements for commercial crime insurance.

In accordance with the provisions of Texas Insurance Code, Article 5. 97, a text of the proposed filing has been filed in the Office of the Chief Clerk of the State Board of Insruance. The proposed filing has been available foor public inspection for 15 days and a public hearing was not requested by any party.

The Board has adopted proposed revisions to the Crime General Provisions Form CR 10 00; the Change Endorsement, Form CR 50 01, and the Coindemnity Endorsement, Form 50 04.

The revisions to the crime general provisions form include: deletion of the word "Form" from the title; capitalization of the word "Declarations" when used in the form; revision of the valuation-settlement clause and insertion of the word "or" between parts (a) and (b) of the definition of employee. The titles of the "Change Endorsement" and the "Coindemnity Endorsement" have been changed to "Policy Change" and "Coindemnity" respectively and the references to a single limit have been eliminated. The latter revision was made to accommodate the Surety Association of America's withdrawal of Plan 2.

The revisions submitted by the Surety Association of America were filed by the Insurance Services Office, Inc., (ISO). These forms are under the joint filing jurisdiction of the Surety Association of America and ISO; therefore, the same revisions were filed by both organizations.

It is proposed that the revision forms and endorsements become effective November 1, 1989.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas on August 23, 1989.

TRD-8907739 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 1, 1989

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

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The State Board of Insurance has adopted an amendment to the *Texas Automobile Manual*. Rule 74., Section E.2.a. of the *Texas Automobile Manual* has been amended to include a new subsection reading as follows.

(51) Driver's Safety Study course requires certification issued on or after September 15, 1989 by A Approved Defensive Driving School.

This amendment is effective September 15, 1989.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907744 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 15, 1989

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

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The State Board of Insurance has adopted a filing submitted by the Surety Association of America (SAA) of new fidelity coverage forms and revised manual pages for crime insurance.

The major changes contained in the filing are the establishment of a new coverage plan, Plan 11-Governmental Entities, and the withdrawal of Coverage Plan 2-Single Limit Option. Additional changes have been made to the eligibility rules for the financial institution bond forms and the experience rating plans.

Coverage Plan 11 is comprised of Coverage Forms O, P, and B. Forms O and P are new forms which provide employee dishonesty coverage to governmental entities. Form O provides converge on a per loss basis and Form P provides coverage on a per employee basis. The new forms replace the currently approved public employees blanket bond.

Supplementing the new coverage forms are new and revised endorsements. Many of the

new endorsements parallel and supersede coverage amendments available under the public employees blanket bond. There are also new endorsements which contain amendments applicable to all employee dishonesty coverage forms (i.e. Forms A, O, and P). Several existing endorsements have been revised to reflect their applicability to Coverage Forms O and P.

The rating procedure for Forms O and P is similar to the procedure used for the public employees blanket bond. There are no rate consequences associated with these forms.

The board also adopted the SAA's request to withdraw Coverage Plan 2-Single Limit Option. Withdrawal was requested because similar coverage can be obtained under Coverage Plan 1.

Additional changes, to the Financial Institutions Section of the rate manual, were adopted. The eligibility rules for Financial Institution Form 24 have been expanded to include federal reserve banks, federal land banks,and federal home loan banks. This change necessitated the withdrawal of Insuring Forms 6, 10, and 20. The revised eligibility rules also stipulate that clearing in houses and clearing house associations are eligible for the same financial institution bond form as their member institutions.

The revisions to the eligibility rules for financial institutions required corresponding revisions to the applicable experience rating plans. The definitions provided under Rating Plan 1 have been expanded to reflect the broader application of Financial Institution Form 24. Rating Plans 6, 7, 8, 9, 10, 13, and 15 were rendered obsolete and have been withdrawn.

SAA has proposed that this filing become effective November 1, 1989, under the following rule of application: These changes are applicable to all policies effective on or after November 1, 1989. No policy effective prior to November 1, 1989 shall be endorsed or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 23, 1989.

TRD-8907743 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 1, 1989

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

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The State Board of Insurance has approved a filing by the Crum & Forster Insurance Group Companies of Basking Ridge, New Jersey proposing a rate revision to the Standard Insurance Agents' and Brokers' Errors and Omissions Program. This rate revision increases the current rates by an overall level of 17.3%. Editorial changes to policy writing manual and an option of two additional increase limit factors are a part of this filing.

This filing was approved to become effective September 15, 1989.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 22, 1989.

TRD-8907689 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 15, 1989

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

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Cosmetology Commission

Sunday, September 10, 1989, 9 a.m. The commission will meet at the Radisson Plaza Hotel, 700 San Jacinto, Austin. According to the revised agenda, the commission will make introductions; consider adoption of rule changes; sing inter-agency contract with barber board; update on building; redistrict inspection areas; receive designated dates for commission meetings; minutes of last meeting; elect officers; discuss variation from section 21; executive session; and pending litigation.

Contact: Laura Donges, 1111 Rio Grande, Austin, Texas 78701, (521) 463-3183.

Filed: August 22, 1989, 10:28 a.m.

TRD-8907670

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Texas Health and Human Services Coordinating Council

Thursday, August 31, 1989, 9 a.m. The Technical Workgroup will meet in the MIS Conference Room (Room 2291), Texas Youth Commission, 4900 North Lamar, Austin. According to the agenda, the council will discuss interim results of field tests of common application, data collecting and analysis, and training levels of care.

Contact: Tom Olsen, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 22, 1989, 3:58 p.m.

TRD-8907699

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Texas Housing Agency

Thursday, August 24, 1989, 2 p.m. The Personnel and Programs Committee met at the Holiday Inn Crowne Plaza, 2222 West Loop South, Houston. According to the emergency revised agenda summary, the committee received staff allocation report concerning the local initiative focused rate mortgage program. The emergency status was because of the urgent public necessity to consider this item before current executive administrator resigns effective September 1, 1989, to properly provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 233, 1989, 4:23 p.m.

TRD-8907770

Friday, August 25, 1989, 9:30 a.m. The Ad Hoc Executive Administrator Search Committee met at the Holiday Inn Crowne Plaza, 2222 West Loop South, Houston. According to the emergency revised agenda summary, the committee while in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g), to review and consider candidates for executive administrator to make recommendations to the board. The emergency status was necessary due to the urgent public necessity to hire a new executive administrator to administer agency programs to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 23, 1989, 4:23 p.m.

TRD-8907771

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Department of Information Resources (A.I.T.C.)

Tuesday, September 5, 1989, 9 a.m. The open council will meet in Room 106, Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the council will approve minutes, receive the executive director's report, technology assessment committee proposal approval, consultant contract, fiscal year 1990 operating budget; staff reports and disaster recovery operations center TASSCC report.

Contact: Lynn B. Polson, 510 South Congress Avenue, Austin, Texas 78701, (512) 463-5530.

Filed: August 24, 1989, 8:26 a.m.

TRD-8907774

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State Board of Insurance

Wednesday, August 30, 1989, 8:45 a.m. The board will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will consider extension of effective date of new personnel manual and final authority for personnel actions.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 22, 1989, 2:01 p.m.

TRD-8907690

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Texas Commission on Law Enforcement Officer Standards and Education

Friday, September 8, 1989, 10 a.m. The commission will meet in Suite 100, Law Enforcement Management Institute, 1606 Headway Circle, Austin. According to the agenda, the commission will recognize visitor; approve minutes of May 19, 1989 meeting; discuss TASP test; certification of class for October 21st session of Module I; and receive staff reports.

Contact: Jack L. Ryle, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: August 23, 1989, 11:23 a.m.

TRD-8907757

Tuesday, September 12, 1989, 1 p.m. The commission will meet in Room 310, Old Supreme Courtroom, Capitol Building, Austin. According to the agenda summary, the commission conduct a public hearing on the following: work session, rules voted as proposals in March to be voted for final adoption which include 1 new rule and 2 amendments, withdrawal of §211.75; discuss new rules and amendments to be voted as proposals which include 6 amendments

and 2 rules, entry level reading, writing tests and basic certificate; accreditation committee report, academy license application of San Antonio College; and the peace officer memorial.

Contact: Johanna McCully-Bonner, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: August 24, 1989, 9:08 a.m.

TRD-8907776

Wednesday, September 13, 1989, 9 a.m. The commission will meet in Room 310, Old Supreme Courtroom, Capitol Building, Austin. According to the agenda summary, the commission will elect officers if appointment of new commissioner(s) is made; approve minutes of June 7, 1989, meeting; discuss rules voted as proposals in March to be voted for final adoption which include 1 new rule and 2 amendments, withdrawal of §211.75, discussion of new rules and amendments to be voted as proposals which include 6 amendments and 2 rules; discuss entry level reading, writing tests and basic certificate; accreditation committee report; academy license application for San Antonio College, the peace office memorial; consider reinstatement of A. J. Drones, license actions on revocations, suspensions, voluntary surrenders; legislation and staff activities. .

Contact: Johanna McCully-Bonner, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: August 24, 1989, 9:08 a.m.

TRD-8907775

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Texas Parks and Wildlife Department

Wednesday, August 30, 1989, 10 a.m. The Texas Parks and Wildlife Commission will meet in Complex Building B, Parks and Wildlife Headquarters, 4200 Smith School Road, Austin. According to the agenda, the commission will discuss stocking policy.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 22, 1989, 1:55 p.m.

TRD-8907686

Wednesday, August 30, 1989, 12 noon The Land Acquisition Committee will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda summary, the committee will consider land acquisition mission statement and process: planning, prioritizing and implementation.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 22, 1989, 1:56 p.m.

TRD-8907681

Wednesday, August 30, 1989, 12 noon The Land Acquisition Committee will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda summary, this will be a closed meeting - concerning land acquisition in Nacogdoches County.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 22, 1989, 1:56 p.m.

TRD-8907682

Wednesday, August 30, 1989, 2 p.m. The Texas Parks and Wildlife Commission will meet in complex Building B, 4200 Smith School Road, Austin. According to the agenda, the commission will conduct the annual meeting concerning any issue relating to the department.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 22,1 989, 1:55 p.m.

TRD-8907684

Wednesday, August 30, 1989, 7 p.m. The Texas Parks and Wildlife Commission will meet at 1205 North Lamar, Austin. According to the agenda summary, the commission will have a social event and no formal action is planned, the commission may discuss items on the public hearing agenda scheduled for August 31, 1989, 9 a.m.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 22, 1989, 1:56 p.m.

TRD-8907683

Thursday, August 31, 1989, 9 a.m. The Texas Parks and Wildlife Commission will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda summary, the commission will approve court reporter minutes; present awards; consider local park and boat ramp funding; land acquisition--Eisenhower birthplace SHS; nontoxic shot implementation schedule; late season migratory game bird proc. 1989-1990; and shell, gravel and marl permit applications--South Concho River; land acquisition--Lake Mineral Wells Sp; nomination for oil and gas lease--Caprock Canyons SP; pipeline easement--Rancho de las Cabras SHS, Murphree WMA; concession contract--San Jacinto battleground; artificial reef advisory committee; grazing lease contracts--Wetland WMA; sale of departmental information; renaming of Kerrville SRA and other park units; hunting of desert bighorn sheep--Sierra Diablo WMA; fiscal year 1990 operating and operational plan.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (52) 389-4802.

Filed: August 22, 1989, 1:55 p.m.

TRD-8907685

Thursday, August 31, 1989, 12 noon Texas Parks and Wildlife Commission will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda, this will be a closed meeting, concerning approval of June 15, 19889 minutes and the battleship Texas litigation update.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 22, 1989, 1:55 p.m.

TRD-8907687

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State Preservation Board

Thursday, August 24, 1989, 2 p.m. The board met in Room 220, Lt. Governor's Committee Room, State Capitol, Austin. According to the emergency revised agenda, the board approved minutes; took up old or unfinished business; new business: listing of change requests, realtors project, capitol gift shop, approval of fiscal year 1990 operating budget, GLO and capitol project orientation. The emergency status was necessary because geotechnical contract was added to agenda and this requires board approve due to the amount being in excess of $10,000.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas, (512) 463-5495.

Filed: August 22, 1989, 1:10 p.m.

TRD-8907677

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Public Utility Commission of Texas

Wednesday, August 30, 1989, 9 a.m. The commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will hold an open meeting and consider the following dockets: 8529, 8810, 8625, 7297, 8565, 7330, 7577, 8642, and project nos. 8870 and 8698.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 22, 1989, 4:10 p.m.

TRD-8907710

Wednesday, August 30, 1989, 1 p.m. The Administrative Board will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will discuss and take action on: reports, budget and fiscal matters including a report on the status of the lease of PUC offices and a workshop to review the agency's fiscal year 1990 operating budget; TECA expense relating to the universal service fund, status of the task force on real-time pricing and strategic rate design, appointment of members to the advisory com-

mittee for relay service for the deaf, access charge task force, adjourn for executive session to consider litigation and personnel matters; consider discussions from executive session, and set time and place for next meeting.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 22, 1989, 4:10 p.m.

TRD-8907709

Monday, September 11, 1989, 10 a.m. The Hearing Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will hold a prehearing conference on Docket No. 8995--application of Southwestern Bell Telephone Company for expansion of plexar (sm) custom digital service for Rockwall International.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 22, 1989, 4:09 p.m.

TRD-8907711

Thursday, October 5, 1989, 9 a.m. The Hearing Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the meeting was rescheduled from Wednesday, September 27, 1989, 10 a.m., and the board will conduct a hearing on the merits of Docket No. 8660--application of Alenco Communications, Inc. to amend certificate of convenience and necessity within Web County; Docket No. 8684--application of Southwestern Bell Telephone Company to amend certificate of convenience and necessity within Webb County; Docket No. 8719--application of Valley Telephone Cooperative, Inc. to amend certificate of convenience and necessity within Webb County.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 22, 1989, 4:11 p.m.

TRD-8907708

Monday, October 9, 1989, 9.a.m. The Hearing Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing was rescheduled from September 9, 1989, 10 a.m., the hearing division will consider the merits of Docket No. 8667--application of GTE Southwest Inc. for approval of 911 tariff amendments, including adoption of customer specific rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 23, 1989, 1:58 p.m.

TRD-8907769

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Texas Municipal Retirement System

Friday, September 8, 1989, 9 a.m. The Board of Trustees will meet at 1200 North IH-35, Austin. According to the agenda summary, the board will approve minutes of June 16, 1989, meeting; review and approve service and disability retirements; supplemental death benefits; extended supplemental death benefits; financial statements; hear and consider request of Lanny Lambert, City of Terrell, to change effective date of retirement for two retired employees; resolution concerning updated service credit for the system; report from director and legal counsel; and any other business before the board.

Contact: Jimmie L. Mormon, P.O. Box 2225, Austin, Texas 78768, (512) 476-7577.

Filed: August 22, 1989, 12:09 p.m.

TRD-8907676

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Texas Water Commission

Thursday, September 7, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: August 22, 1989, 11:07 a.m.

TRD-8907678

Thursday, September 7, 1989, 10 a.m. The Hearings Examiners will met in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will hear Docket No. 8127-A-rate increase hearing on Tawakoni Water Utility Corporation requested by City of Quinlan.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:12 p.m.

TRD-8907707

Friday, September 8, 1989, 10 a.m. The Hearings Examiners will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will consider Docket No. 8067-G--notice of rate increase of Shady Hollow Estates Water Supply Corporation.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:15 p.m.

TRD-8907705

Friday, September 8, 1989, 10 a.m. The Hearings Examiners will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners conduct a hearing on Docket No. 7871-C--amendment No. 10065 - certificate of convenience and necessity of East Fork Water Supply Corporation.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:15 p.m.

TRD-8907706

Monday, September 11, 1989, 10 a.m. The Hearings Examiners will meet in Room 512, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8051-R-rate increase of Kerrville South Water Company.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:15 p.m.

TRD-8907703

Monday, September 11, 1989, 10 a.m. The Hearings Examiners will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8050-R-rate increase of Montague Water System.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:15 p.m.

TRD-8907704

Friday, September 15, 1989, 10 a.m. The Hearings Examiners will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8097-G-rate increase of Scenic Oaks Water Supply Corporation.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:16 p.m.

TRD-8907701

Friday, September 15, 1989, 10 a.m. The Hearings Examiners will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8115-W-rate increase of Harris County Municipal Utility District No. 132.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:16 p.m.

TRD-8907702

Monday, September 18, 1989, 10 a.m. The Hearings Examiners will meet in Room 512, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8108-rate increase of Randy Hunt doing business as Hunt's Water Operations and Terrie Hunt doing business as H & H Water Ltd.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:17 p.m.

TRD-8907698

Monday, September 18, 1989, 10 a.m. The Hearings Examiners will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8017-S-application for transfer of a water certificate of convenience and necessity for Highland Service Company.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:17 p.m.

TRD-8907700

Tuesday, September 19, 1989, 10 a.m. The Hearings Examiners will meet in the Auditorium, Texas Air National Guard Headquarters Building, Route 4, Box 273, Beaumont. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8045-C-application for amendment or decertification of water certificate of convenience and necessity No. 11036 of O. F. Newton doing business as Countryside Estates.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:18 p.m.

TRD-8907697

Friday, September 22, 1989, 10 a.m. The Hearings Examiners will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8104-A-rate increase of Lor Water Service, Inc.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:18 p.m.

TRD-8907696

Monday, September 25, 1989, 10 a.m. The Hearings Examiners will meet in Room 512, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8073-C-an amendment to a water certificate of convenience and necessity and report of sale for Stevens Water Company.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:19 p.m.

TRD-8907694

Monday, September 25, 1989, 10 a.m. The Hearings Examiners will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearings examiners will conduct a hearing on Docket No. 8081-C-application for a water certificate of convenience and necessity by Kempner Water Supply Corporation.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 22, 1989, 3:19 p.m.

TRD-8907695

Tuesday, October 17, 1989, 2 p.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on the conversion of Aransas County water control and improvement district no. 1 to a municipal utility district in Aransas County, Texas.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 22, 1989, 3:19 p.m.

TRD-8907693

Tuesday, November 7, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will consider Application No. 5251--Alan H. Roberts, new permit to authorize construction, maintenance of a dam and to divert water on an unnamed tributary of Prairie Creek, tributary of Big Cypress Creek (goes out of state), Camp County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 463-8265.

Filed: August 23, 1989, 11:02 a.m.

TRD-8907763

Tuesday, November 7, 1989, 10 a.m. The commission will meet in Room 118 Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will hear Application No. 5252--application by Dallas County Community College to use two existing dams and reservoirs (dam and reservoir numbers 1 and 2) and further seeks to construct a cofferdam (dam no. 3), located on Jackson Branch, tributary of White Rock Creek, tributary of Trinity River, Dallas County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 23, 1989, 11:02 a.m.

TRD-8907764

Tuesday, November 14, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will hear Application No. 19-2182B--Leo V. Lyssy, Fred J. Lyssy, Nick Lyssy and Clem Lyssy to amend Certificate No. 19-2181A for water diversion from San Antonio River, Wilson County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 463-8151.

Filed: August 23, 1989, 11:02 a.m.

TRD-8907761

Tuesday, November 14, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will hear Application No. 5253--Charles F. Haas, to divert and use water from Colorado River, San Saba County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 23, 1989, 11:02 a.m.

TRD-8907762

Tuesday, November 28, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will hear Application No. 19-2176A Poth Land and Cattle Company to amend certificate of adjudication No. 19-2176 for water diversion from the San Antonio River, Wilson County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 463-8151.

Filed: August 23, 1989, 11:03 a.m.

TRD-8907758

Tuesday, November 28, 1989, 10 a.m. The commission will meet in Room 118 Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will hear Application No. 02-4946A of Atlee Kohl and Dianne M. Siebens, trustees, to amend Certificate No. 02-4946 to divert water from the Red River, Red River County.

Contact: Pete Hawthorne, P.O. Box 13087, Austin, Texas 78711, (512) 463-8266.

Filed: August 23, 1989, 11:03 a.m.

TRD-8907760

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Regional Meetings

Meetings Filed August 22, 1989

The Atascosa County Appraisal District, Appraisal Review Board will meet at 1010 Zanderson, Jourdanton, August 31, 1989, at 8 a.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas, (512) 769-2730.

The Bosque Central Appraisal District, Board of Directors met in the District Office, 104 West Morgan Street, Meridian, August 25, 1989, 7 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665.

The Central Counties Center for MHMR Services, Board of Trustees and Executive Staff met at Frank's Lakeview Inn, Belton Damsite, Belton, August 26, 1989, at 9 a.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas, (817) 778-4841.

The Central Texas MHMR Center, Board of Trustees met at 408 Mulberry Drive, Brownwood, August , 1989, at 5 p.m. Information may be obtained from Danny Armstrong, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, ext. 102.

The Coryell County Appraisal District, Board of Directors met in the District Office, 113 North 7th Street, Gatesville, August 28, 1989, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Coryell County Appraisal District, Board of Directors met in the District Office, 113 North 7th Street, Gatesville, August 28, 1989, at 7:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76428, (817) 865-6593.

The Fisher County Appraisal District, Appraisal Review Board will meet in the Commissioner's Courtroom, County Courthouse, Roby, August 28-31, 1989, September 1 and September 5-8, 1989, at 9 a.m. Information may be obtained from Teddy Kral, P.O. Box 516, Roby, Texas 79543, (915) 776-2733.

The Mason County Appraisal District, met at 206 Ft. McKavitt Street, Mason, August 28, 1989, at 7:30 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

The Nueces River Authority, Board of Directors met in the Staghorn Inn, Three Rivers, August 24, 1989, at 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810.

The Tarrant Appraisal District, Board of Directors met at 2301 Gravel Road, Fort Worth, for an emergency meeting on August 24, 1989 at 9 a.m. Information may be obtained from Olive Miller, 2301 Gravel Road, Fort Worth, Texas 76118. (817) 595-6005.

The Texas Municipal League (risk and insurance management services), Board of Trustees, Insurance Trust Fund, met on the First Floor Conference Room, Southwest Tower, 211 East 7th Street, Austin, August 26, 1989, at 9 a.m. Information may be obtained from Rhonda, Ruckel, 211 East 7th Street, Suite 1020, Austin, Texas 78701, (512) 478-6601.

TRD-8907669

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Meetings Filed August 23, 1989

The Ark-Tex Council of Governments, Executive Committee will meet at Papacita's Restaurant, 1904 South Jefferson, Mt. Pleasant, August 31, 1989, at 5:30 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Bastrop County Appraisal District, Board of Directors will meet in the Texas Grill Restaurant, 101 Highway 71 West, Bastrop, August 30, 1989, at 11:30 a.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Golden Crescent Regional Planning Commission, Board of Directors will meet in the GCRPC Board Room, Building 102, Regional Airport, Victoria, August 30, 1989, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Gonzales County Appraisal District, Appraisal Review Board met at 928 St. Paul Street, Gonzales, August 28, 1989 and August 30, 1989, at 1 p.m. Information may be obtained from Glenda Strackbein, 928 St. Paul Street, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Heart of Texas Region MHMR, Board of Trustees met at 110 South 12th Street, Waco, August 24, 1989, at 11:45 a.m. Information may be obtained from Helen Jasso, 110 South 12th Street, Waco, Texas 76701, (817) 752-3451.

The Lee County Appraisal District, Board of Directors will meet at 218 East Richmond Street, Giddings, August 30, 1989, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Lone Star Municipal Power Agency, met in the Huntsville City Hall, 1212 Avenue M, Huntsville, August 28, 1989, at 5:30 p.m. Information may be obtained from Cathy Locke, P.O. Box 9960, College Station, Texas 77840, (409) 764-3507.

The North Plains Groundwater Conservation District, Board of Directors met in the PDRA Office, Pittman-Shieldknight Building, 511 West 11th Street, Spearman, August 28, 1989, at 10 a.m. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401.

The Region XVI Education Service Center, Board of Directors will meet in the Lubbock Room, Sutphen's, 16th and Madison, Amarillo, August 31, 1989, 1 p.m. Information may be obtained from Kenneth M. Laycock, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521

TRD-8907716

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

ACTION

ACTION, The Federal Volunteer Agency

The ACTION office in Texas is accepting applications for Volunteers in Service to America (VISTA) project sponsors. Eligible sponsors may be federal, state, or local public agencies or private non-profit organizations. VISTA projects are normally approved for a period of one year and renewable for a total of five years. VISTA Volunteers serves a project on a full-time basis and receives a monthly subsistence allowance as well as medical benefits.

VISTA projects must directly address problem areas related to low-income communities. Programming emphasis for VISTA projects include, but are not limited to, literacy, anti-hunger efforts, re-employment, homelessness, drug and alcohol abuse, and rural related problems. Programming efforts must be designed to ensure the long term impact of VISTA on alleviating the identified problem by using community private sector and volunteer resources to the fullest. Each VISTA project must focus on the mobilization of community recources and on the eventual absorption of the VISTA volunteers activities by other facets of the community.

Interested persons should request an application and technical assistance from: ACTION, State Program Office, 611 East 6th Street, Suite 107, Austin, Texas 78701, (512) 482-5671.

This is a continuous announcement and will be effective until funding has been exhausted. The ACTION State Office will review applications as to the suitability of proposals based on criteria published in the *Federal Register, ACTION: Final Notice of VISTA Guidelines*, Volume 50, Number 147, July 31, 1985.

Issued in Austin, Texas on August 17, 1989.

TRD-8907638 Jerry Thompson
State Program Director
ACTION

Filed: August 21, 1989

For further information, please call: (512) 482-5671

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Texas Air Control Board

Notice of Contested Case Hearing Number 261

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not Emergency Order Number 89-02 issued by the executive director of TACB on July 19, 1989, pursuant to TACB §116.13 should be affirmed, modified, or set aside. Emergency Order Number 89-02 authorized the construction of a replacement heater for the F-226 Recycle Gas Heater at Gas Oil Hydrofining Unit 1 at the Baytown, refinery of Exxon Company, U.S.A.

Time and Place of Hearing. The examiner has set the hearing to begin at 1 p.m. on September 14, 1989, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin.

What the Applicant Must Prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, §13, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. Exxon Company, U.S.A. must demonstrate, by a preponderance of the evidence, that the proposed construction with associated emissions will meet the requirements of the Texas Clean Air Act, (TCAA), §3.272 Texas Civil Statutes, Article 4477-5, and TACB §116.13.

Deadline For Requesting to be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB staff. Any person who may be affected by emissions from the proposed change of service and construction who wants to be made a party must send a specific written request for party status to Hearings Examiner Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723 by 5 p.m. on September 7, 1989. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to TACB before publication of this notice will not be considered as a request for party status.

Public Attendance and Testimony. Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, at (512) 451-5711, extension 350, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but does not want to be a party, may call the TACB Legal Division at (512) 451-5711, extension 350, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information About the Order and TACB Rules. Information about the order and copies of TACB's rules and regulations are available at the TACB Regional Office located at 5555 West Loop, Suite 300, Bellaire, Texas 77401 and the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§3.15, 3.16, 3.17, and 3.272, TACB procedural rules 103.11(5), 103.31, and 103.41, and TACB §116.13(c).

Issued in Austin, Texas on August 23, 1989.

TRD-8907755 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: August 23, 1989

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

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State Banking Department

Notice of Postponement of Hearing

The August 24, 1989, hearing on the application to withdraw excess earnings from trust deposits filed by Service Corporation International, Houston, has been postponed and rescheduled for October 24, 1989.

Additional information may be obtained from Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on August 23, 1989.

TRD-8907731 Ann Graham
General Counsel
State Banking Department

Filed: August 23, 1989

For further information, please call: (512) 479-1200

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Texas Education Agency

Request for Applications

RFA #701-89-010. This request for applications is filed in accordance with Texas Civil Statutes, Article 6252-11c.

Description. The Texas Education Agency requests applications for two projects of a science in-service program for science educators pursuant to the provisions of the Elementary and Secondary Education Act (ESEA). The science in-service program provides funds for the development, distribution, and training in the use of materials for introductory physical science and introductory biology teachers. The developed materials will be printed and accompanied by other forms of media or technology. The contractor will design the materials to demonstrate safe and effective instruction in science and support the content and methodology outlined in Title 19, Chapter 75 of the Texas Administrative Code. The program will consist of two separately funded projects: one for high school introductory physical science and one for introductory biology. Any school district, education service center, college or university, private company, nonprofit organization, or individual may submit an application to the Document Control Center at the Texas Education Agency.

Dates of Projects. The project starting date will be November 24, 1989. The project ending date will be August 31, 1990.

Project Amount. The maximum funding for each of the high school introductory physical science project and introductory biology projects is $75, 000.

Selection Criteria. Contracts for the two projects will be awarded based on the quality and originality of the proposed materials, the experience and expertise of the project personnel, and the long range applicability of the materials.

Further Information. A copy of the complete request for application may be obtained by writing or calling the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

For clarifying information about this request, contact Dr. Joe Huckestein, Director of Science, Division of General Education, Texas Education Agency, (512) 463-9585.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., October 27, 1989.

Issued in Austin, Texas on August 18, 1989.

TRD-8907680 W. N. Kirby
Commissioner of Education

Filed: August 22, 1989

For further information, please call (512): 463-9212

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RFA #701-89-008. This request for applications is filed in accordance with Texas Civil Statutes, Article 6252-11c.

Description. The Texas Education Agency requests applications for two projects of a science in-service program for science educators pursuant to the provisions of the Elementary and Secondary Education Act (ESEA). The program will consist of two separately funded projects: one for high school physical science and one for science laboratory safety and chemical wastes disposal. The first project calls for the training of facilitators on the use of materials developed by Texas Tech University under the Education for Economic Security Act, Title II (RFP 701-88-011). The second project calls for the training of facilitators on the use of materials developed by Corpus Christi State University under the Education for Economic Security Act, Title II (RFA 701-88-011) other forms of media or technology. The contractor will present the materials to demonstrate effective instruction in science and support the content and methodology outlined in Title 19, Chapter 75 of the Texas Administrative Code. Any school district, education service center, college or university, private company, nonprofit organization, or individual may submit an application to the agency.

Dates of Projects. The project starting date will be November 24, 1989. The project ending date will be August 31, 1990.

Project Amount. The maximum funding for the high school physical science project is $40,000; and the maximum funding for the laboratory safety and chemical wastes disposal is $80,000.

Selection Criteria. Contracts for the two projects will be awarded based on the experience and expertise of the project personnel, time commitment of each person, budget and cost effectiveness, and evaluation design.

Further Information. A copy of the complete request for application may be obtained by writing or calling the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

For clarifying information about this request, contact Dr. Joe Huckestein, Director of Science, Division of General Education, Texas Education Agency, (512) 463-9585.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., October 27, 1989.

Issued in Austin, Texas on August 18, 1989.

TRD-8907679 W. N. Kirby
Commissioner of Education

Filed: August 22, 1989

For further information, please call: (512) 463-9212

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Texas Department of Health
Request for Proposals

Purpose. The Texas Department of Health (TDH) is requesting proposals to provide contract services to the department's diabetes programs within the Chronic Disease Prevention Program. The diabetes education network grant (DEN) will support the development of comprehensive diabetes patient and professional education programs to benefit diabetic public health clients.

Description of activities. The activities include: support for a diabetes education facilitator team composed of a nurse educator, nutritionist/dietitian, and a clerk who would develop patient and professional education programs for medically indigent clients; the development, coordination, and integration of comprehensive preventive and treatment services for medically indigent diabetic clients.

Eligible applicants. Eligible applicants for this grant are county health departments, community health centers, primary care centers, and other ambulatory treatment facilities serving a large number of medically indigent clients with diabetes located in Public Health Regions 3, 6, 7, and 8. Applicants should have ambulatory outpatient treatment facilities, or have a contract with such facilities for provision of care to public health clients.

Budget limitations. The department will award one contract for the DEN Grant. A maximum of $110,000 will be available in Fiscal Year 1990. Funding for 1991 will be available if applicant demonstrates achievement of 1990 goals and presents a completed application for continuation funding. The continuation application will be available by May, 1990.

Contract period. The proposed contract period is from November 1, 1989-August 31, 1990.

Date due. Proposals from applicants are due by 5 p.m. on or before October 1, 1989. Please mail grant application to Charlene Laramey, Director, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. Proposals received late, for any reason, will not be considered.

Final selection. The department's Chronic Disease Prevention Program will make the selection. The department reserves the right to accept or reject any or all of the proposals submitted and is under no legal requirement to execute a contract on the basis of this advertisement.

Contact. The request for proposal application form and additional information may be obtained from Dora McDonald, Diabetes Program, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7534.

Issued in Austin, Texas, on August 23, 1989.

TRD-8907740 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: August 23, 1989

For further information, please call: (512) 458-7534

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Purpose. The Texas Department of Health (TDH) is requesting proposals to provide contract services to the department's diabetes programs within the Chronic Disease Prevention Program. The services would address the prevention of blindness and lower extremity amputations due to diabetes, and coexisting diabetes and hypertension for public health clients.

Description of activities. The activities include detection, intervention, patient education, referral for treatment, and appropriate follow-up services for prevention of diabetic complications such as diabetic eye disease, lower extremity amputations, and problems caused by coexistent hypertension and diabetes in public health clients aged 18 years and older.

Eligible applicants. Eligible applicants for this program are city/county health departments, community health centers, primary care centers, and other federally funded health centers serving a large number of medically indigent clients with diabetes located in Public Health Regions 3, 6, and 8.

Budget limitations. The department will award three-five contracts. The maximum grant award will not exceed $75,000.

Contract Period. The proposed contract period is from November 1, 1989-August 31, 1990.

Date due. Proposals from applicants are due by 5 p.m. on or before October 1, 1989. Please mail grant application to Charlene Laramey, Director, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. Proposals received late, for any reason, will not be considered.

Final selection. The department's Chronic Disease Prevention Program will make the selection. The department reserves the right to accept or reject any or all of the proposals submitted and is under no legal requirement to execute a contract on the basis of this advertisement.

Contact. The request for proposal application form and additional information may be obtained from Dora McDonald, Diabetes Program, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7534.

Issued in Austin, Texas, on August 23, 1989

TRD-8907741 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: August 23, 1989

For further information, please call: (512) 458-7534.

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Texas Department of Human Services
Correction of Error

The Texas Department of Human Services (DHS) submitted proposed new sections that contained errors as published in the August 8, 1989, issue of the Texas Register (14 TexReg 3879).

On page 3888, §27.405 should read:

§27.405. Allowable and Unallowable Costs.

(a) General information. DHS defines allowable and unallowable costs in order to identify expenses that are reasonable and necessary when an economical and efficient provider cares for Medicaid recipients. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates. To achieve this objective, DHS compiles a rate base consisting, if possible, only of allowable cost information. When DHS classifies a particular type of expense as unallowable for purposes of compiling a rate base, the classification does

not mean that individual providers must not make expenditures of this type. Allowable costs included in the rate base reflect only the costs and maximum reimbursement rates associated with an economical and efficient operator. DHS Medicaid contracted providers must report costs in accordance with the generally accepted accounting principles (GAAP) of the American Institute of Certified Public Accountants. However, if particular DHS cost reporting requirements conflict with GAAP, with Internal Revenue Service requirements, or with other authorities, the DHS requirements take precedence for Medicaid provider cost reporting purposes.

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

(1) Allowable costs - Those expenses that are reasonable and necessary in the normal conduct of operations relating to recipient care in an ICF-MR. Whenever possible, only allowable costs are included in the rate base.

(A) The word "reasonable" applies to the amount expended. The test of reasonableness is that the amount expended does not exceed the cost which should be incurred by a prudent business operator seeking to contain costs.

(B) The word "necessary" applies to the relationship of the cost to the provision of care. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of an ICF-MR, and must meet all of the following requirements.

(i) The expenditure is not for personal or other activities not specifically related to the provision of long-term care.

(ii) The cost does not appear on the list of specific unallowable costs.

(iii) The cost bears a significant relationship to recipient care. The test of significance in this case is whether there would be an adverse impact on recipient health, safety, or general well-being if the expenditure were eliminated.

(iv) The expense was incurred in the purchase of materials, supplies, or services provided directly to the recipients or staff of individual ICFs-MR in the conduct of normal operations relating to recipient care.

(v) The costs are not unallowable under other federal, state, or local laws or regulations.

(C) The phrase "normal conduct of operations relating to recipient care" applies to costs for, but not limited to, the following.

(i) Expenses for facilities, materials, supplies, or services not used by an ICF-MR solely for providing long-term recipient care. Whenever otherwise allowable costs are attributable partially to personal or other business interests and partially to ICF-MR recipient care, the latter portion may be allowed on a pro rata basis if the proportion used for ICF-MR recipient care is well-documented.

(ii) Related-party transactions. Allowable costs are those which result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the ICF-MR is the cost to the related party. Allowable costs in this regard are limited either to the actual purchase prices paid by the related party or to the usual and customary charges for comparable goods or services, whichever is less. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This affiliation or association can be based on common ownership, past or present mutual interests in long term care or other types of enterprises, or family ties.

(2) Unallowable costs - Expenses that are not reasonable or necessary for the provision of recipient care in an ICF-MR, in accordance with the criteria specified in paragraph (1) of this subsection. Unallowable costs are not included in the rate base used for determining recommended reimbursement rates.

On page 3890, §27.407 should read:

§27.407. List of Allowable Costs.

(a) The following list of allowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §27.405 of this title (relating to Allowable and Unallowable Costs).

(1) Compensation of ICF-MR employees. This allowable cost includes compensation of only those employees who provide services directly to the recipients or staff of individual ICFs-MR in the normal conduct of operations relating to recipient care: qualified mental retardation professionals (QMRPs); director of nursing; registered nurses; licensed vocational nurses; trainers, aides, and other salaried direct care staff; medical clerks; food service supervisor; cooks and other food service personnel; laundry and housekeeping staff; recreational staff; social workers; administrator; assistant administrator; houseparents; accountants and bookkeepers; other clerical and secretarial staff; and buildings, equipment, and grounds maintenance staff. Compensation includes:

(A) wages and salaries;

(B) payroll taxes and insurance, including Federal Insurance Contributions Act (FICA) or social security contributions, unemployment compensation insurance, and workmen s compensation insurance; and

(C) employee benefits, including employer-paid health, life, accident, and disability insurance for employees; uniform allowances and meals provided to employees as part of an employment contract; contributions to an employee retirement fund; and deferred compensation. The allowable portion of deferred compensation is limited to the dollar amount that an employer contributes during a cost reporting period. The expense:

(i) must represent a clearly enumerated liability of the employer to individual employees;

(ii) must not be incurred as a benefit to employees who do not provide services directly to the recipients or staff of individual facilities, and

(iii) must not represent a form of profit sharing.

(2) Compensation of owners, partners, or stockholders, other than the facility administrator or assistant administrator, who provide services directly to the recipients or staff of individual facilities. If the owners,

partners, or stockholders are involved in other income-earning activities outside the individual facilities, the allowable compensation expense is limited to the pro rata portion of the actual working time spent in the facility.

(3) Compensation of outside consultants. This includes medical director, registered nurse, social worker, pharmacist, audiologist, psychologist, recreational therapist, records librarian, physical therapist, occupational therapist, dentist, speech therapist, psychiatrist, and QMRP.

(4) Management fees paid to unrelated parties.

(5) Management fees paid to related parties, cash management expenses, and other home-office overhead expenses. Cash management expenses, other home office overhead expenses, and management fees paid to a related organization must be clearly derived from the actual cost of materials, supplies, or services provided directly to an individual facility. A facility that is owned, operated, or controlled by another individual(s) or organization(s) may report the allowable portion of costs for materials, supplies, and services provided directly to that facility. The allowable portion of such costs to a given facility is limited to those expenses that can be directly attributed to the individual establishment.

(A) In multi-facility organizations where the clear separation of costs to individual facilities is not always possible, the allowable portion of actual costs for materials, supplies, and services may be allocated to individual Texas facilities on a pro rata basis. Although the preferred allocation method for these costs is a resident-day-of-service basis, providers who wish to use a pro rata cost basis may do so. Once a provider has chosen an allocation method, however, he must consistently use that method in subsequent cost reports.

(B) In organizations with multiple levels of management, costs incurred at levels above the individual facility in Texas are allowable only if the costs are incurred in the purchase of materials, supplies, or services directly used by facility staff in the conduct of normal operations relating to recipient care. In addition, the facility must furnish adequate documentation to demonstrate that the costs adhere to the following criteria.

(i) Of the functions that Medicare and Medicaid both cover, only those required for participation in Medicaid in Texas and not reimbursed from non-Medicaid sources are allowable.

(ii) The expense does not duplicate other expenses.

(iii) The expense is not incurred for personal or other activities not specifically related to the provision of recipient care.

(iv) The expense does not exceed the amount that a prudent business operator seeking to contain costs would incur.

(C) Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of recipient care. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by DHS auditors to perform required tests of allowability. During the course of an audit, the facility must furnish any reasonable documentation requested by DHS auditors within 30 calendar days of the request. If the provider does not present the requested material within 30 days or during the course of the audit, whichever is longer, the audit is closed and DHS automatically disallows the costs in question.

(D) Expenses for private aircraft are allowable only if:

(i) all criteria in subparagraphs (B) and (C) of this paragraph are satisfied;

(ii) flight logs are maintained, including dates, mileage, passenger lists, and destinations, to demonstrate that trips are related to recipient care in Texas; and

(iii) the provider furnishes documentation demonstrating that the expenses for travel via private aircraft are not greater than those for commercial alternatives.

(6) Utilization review committee. This includes professional fees.

(7) Materials and supplies. This includes food and nonalcoholic beverages; dietary supplements; food service supplies; cooking utensils; laundry and housekeeping supplies; office supplies; and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment.

(8) Utilities. This includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph.

(9) Buildings, equipment, and capital expenses. It is generally expected that buildings, equipment, and capital are used by an ICF-MR solely in the course of normal operations in the provision of recipient care, and not for personal business. Whenever this is not the case, the portion of the costs relating directly to the provision of ICF-MR recipient care may be allowed on a pro rata basis, if the proportion of use for recipient care is documented.

(A) Depreciation and amortization expense. Property owned by the provider and improvements to owned, leased, or rented ICF-MR property that are valued at more than $500 at the time of purchase must be depreciated or amortized, using the straight-line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows:

(i) buildings: 30 years, with a minimum salvage value of 10%. Since rates are uniform by class of service, all buildings are uniformly depreciated on a 30-year-life basis regardless of the actual date of construction or purchase. In other words, allowable depreciation is calculated by deducting 10 percent from the allowable historical basis of the asset and dividing the remainder by 30. Exceptions to this rule are permissible when providers choose a useful-life basis in excess of 30 years.

(ii) building equipment; buildings and grounds improvements and repairs; durable medical equipment, furniture, and appliances; and power equipment and tools used for buildings and grounds maintenance: minimum schedules consistent with Estimated Useful Lives of Depreciable Hospital Assets, published by the American Hospital Association; and

(iii) transportation equipment used for the transport of recipients or materials and supplies utilized by the ICF-MR: a minimum of three years for passenger automobiles; five years for light trucks and vans; and seven years for buses with a minimum salvage value of 10%.

(B) Provider-owned property. Property owned by the provider and improvements to property owned, leased, or rented by the provider that are valued at less than $500 at the time of purchase may be treated as ordinary expenses.

(C) Rental and lease expense. Rental and lease expense paid to a related party is limited to the actual allowable cost incurred by the related party. This includes buildings, building equipment, transportation equipment used for the transport of recipients or materials and supplies utilized by the ICF-MR, durable medical equipment, furniture and appliances, and power equipment and tools used for buildings and grounds maintenance.

(D) Interest expense.

(i) Interest expenses are allowable on loans for the acquisition of allowable items, subject to all of the requirements for allowable costs plus two additional requirements:

(I) the loan must be documented in writing; and

(II) the loan must be made in the name of the provider as maker or co-maker of the note.

(ii) Interest expenses on related-party loans are limited to the lesser of:

(I) the cost to the provider, which is the cost to the related party; or

(II) the prevailing national average prime interest rate during the year in which the loan contract was finalized, as reported by the U.S. Department of Commerce, Bureau of Economic Analysis, in the Survey of Current Business and the Business Conditions Digest.

(E) Tax expense. This includes real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees.

(F) Insurance expense. This includes facility fire and casualty, professional liability and malpractice, and transportation equipment insurance.

(10) Contract services by outside vendors. This includes daily direct care services, food service, laundry and linen service, housekeeping service, and professional services such as those of accountants and attorneys.

(11) Business and professional association dues. This cost is limited to associations devoted primarily to issues of client care.

(12) Outside training costs. These costs are limited to direct costs of transportation, meals, lodging, and registration fees for training personnel who render services directly to the recipients or staff of individual facilities. To qualify as an allowable cost, the training must:

(A) take place in the continental United States; and

(B) be related directly and primarily to recipient care.

(13) Expenses for pre-vocational training. When these services are provided jointly to a variety of recipients in such a way that they may be classified as prevocational training or active treatment for some recipients and as vocational training for others, the allowable portion of the expenses is the portion that qualifies as active treatment. The allowable portion must be determined on a pro rata recipient-day-of-service basis. It includes the cost of buildings, utilities, supplies, and staff utilized in the provision of such services.

On page 3896, §27.419(2)(C)(iii) should read: (iii) Other long-term liabilities.

On page 3897, §27.419(3)(E)(iv) should read: (iv) Meals: employees and guests.

On page 3898, §27.419(4)(J)(ix) should read: (xi) Amortization: leasehold improvements.

On page 3899, §27.419(6)(D) should read: (D) ICF-MR I contracted beds - Client days of service provided. (i) ICF-MR I-Medicaid, (ii) Other clients.

On page 3899, the following certification should appear immediaately after §27.419:

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

Issued in Austin, Texas on August 2, 1989.

TRD-8906866 Charles Stevenson
Acting Commissioner
Texas Department of Human Services

Propsed date of adoption: October 1, 1989

For further information, please call (512) 450-3765.

Also, on page 3899, the following heading should appear immediately before §27.501: Subchapter E. Integration and Provision of Services

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The Texas Department of Human Services submitted a proposed amendment which contained an error as published in the August 18, 1989, issue of the *Texas Register* (14 TexReg 4114).

Section 29.606(q) should read:

(q) Hospitals with 100 or fewer licensed beds.

The policies in this subsection apply only to hospital fiscal years beginning on or after November 1, 1989, and are applicable only to hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year. At final cost settlement of the hospital's fiscal year, the depatment or its designeedetermines what the amount of reimbursement during the fiscal year would have been if the department or its designee reimbursed the hospital under similar methods and procedures used in the Social Security Act, Title XVII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination ismade without imposign a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital underthe prospective payment system, the department or its designee reimburses the difference to the hospital.

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Notice of Correction of Open Solicitation

The Texas Department of Human Services (DHS) submitted an open solicitation notice for potential contractors desiring to construct a 90-bed nursing facility for certain counties. The notice appeared in the April 25, 1989, issue of the *Texas Register* (14 TexReg 2042). A notice of correction of open solicitation was published on May 16, 1989, issue of the *Texas Register* (14 TexReg 2433), indicating that a secondary random drawing would be held on September 4, 1989. Instead, the drawing will be held on September 5, 1989, at 2 p.m. in the Board Room, first floor, East tower, 701 West 51st Street, Austin.

Issued in Austin, Texas on August 23, 1989.

TRD-8907730 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: August 23, 1989.

For Further information, please call: (512) 450-3765

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State Board of Insurance

Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for incorporation in Texas of New Era Life Insurance Company, a domestic life insurance company. The home office is in Houston.

2. Application for admission to do business in Texas of FL Life Insurance Company (Assumed name in Texas for First Landmark Life Insurance Company), a foreign life insurance company. The home office is in Omaha, Nebraska.

Issued in Austin, Texas on August 22, 1989.

TRD-8907688 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: August 22, 1989

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

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The University of Texas, Harris County Psychiatric Center

Notice of Consultant Contract

The University of Texas Harris County Psychiatric Center (HCPC), in accordance with provisions of Texas Civil Statutes, Article 6252-11c, invites proposals for the services of a consultant to assist in the development of a long-range plan to upgrade the information processing capability of the agency. The plan will support requests for funding, acquisition of required hardware and software, and will guide subsequent agency systems planning.

The objective of the consulting engagement is the determination of the most cost-effective software and hardware strategy considering costs of staff, capital, and other resources necessary to ensure successful implementation of the selected strategy. The deliverables of the engagement are a long-range plan which conforms to the Automated Information and Telecommunications Council guidelines.

The proposal must demontstrate awareness of the scope of the technical assistance required to compelement agency expertise and resources; provide a feasible workload and schedule for achieving the engagement objective; provide a statement of the firm's qualifications and those of the staff who would be responsible for the engagement; provide sample deliverables and contact information of clients for which similar consulting services have been provided; and request a fee that is reasonable for the workload and skill level of consultant staff required.

Issued in Austin, Texas on August 18, 1989.

TRD-8907675 Michael E. Shepherd

Filed: August 22, 1989

For further information, please call: (713) 741-6951

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Texas Water Commission

Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of August 14-August 18, 1989.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application–new permit, amendment, or renewal.

Channel Terminal Corporation and Stemil, Inc., doing business as Intercontinental Terminals Company; Deer Park; bulk liquids storage terminal and commercial wastewater treatment facility; 2627 Tidal Road in the City of Deer Park, Harris County; 01984; amendment.

FFP Operating Partners, L.P.; Fort Worth; wastewater treatment facility for truck stop; on U.S. Highway 287, approximately one mile southeast of the City of Harrold, Wilbarger County; 03123; new.

Wildwood Property Owners Association; Village Mills; wastewater treatment facility; at the corner of Balsawood and Chestnut Streets in the community of Wildwood; approximately 1/4 mile south of Lake Kimble and approximately 2 1/2 miles west of the intersection of U.S. Highways 69 and 287 and FM Road 3063, Hardin County; 11184-01; amendment.

Rodney Burch; Vinton; wastewater treatment facility; approximately 800 feet east of the intersection of State Highway 87 and State Highway 62, approximately 1/2 mile northwest of the State Highway bridge over Cow Bayou, Orange County; 13488-01; new.

Leroy B. Walker; Kirbyville; Tanglewood Subdivision Wastewater Treatment Plant; east of Cedar Bayou, approximately 1,600 feet north of the confluence of Horsepen Bayou and Cedar Bayou, approximately 6,500 feet southwest of the intersection of Interstate Highway 10 and State Highway 146, Chambers County; 12043-01; renewal.

City of Hallettsville; wastewater treatment facility; on the east bank of the Lavaca River, approximately 1,000 feet downstream from the U.S. Highways 90-A and 77 bridge across the Lavaca River in the City of Hallettsville, Lavaca County; 10013-01; renewal.

Koppers Industries, Inc.; Pittsburg; facility which produces coal tar chemicals, creosote, and coal tar pitches; [illegible] of Federal Road, south of Old Industrial Road, and adjacent to the Armco site in the City of Galena Park, Harris County; 01034; renewal.

United States Army Corps of Engineers; Wylie; Clear Lake Park wastewater treatment facility; approximately 3.3 miles south of the intersection of FM Road 546 and FM Road 982, on the north side of Lake lavon in Clear lake Park, Collin County; 12049-01; renewal.

United States Army Corps of Engineers; Wylie; Brockdale Park wastewater treatment facility; approximately 2.3 miles northeast of the intersection of FM Road 1378 and FM Road 2514, on the west side of Lake Lavon in Brockdale Park, Collin County; 12050-01; renewal.

United States Army Corps of Engineers; Wylie; Collin Park wastewater treatment facility; approximately 2.7 miles southeast of the intersection of FM Road 1378 and FM Road 2514, on the southwest side of Lake Lavon in Collin Park, Collin County; 12051-01; renewal.

State Department of Highways and Public Transportation; Johnson County rest area-southbound lane wastewater treatment facility; on the southbound right-of-way of Interstate Highway 35W, at a point approximately 3.9 miles south of Burleson, Johnson County; 12952-01; renewal.

Castone Development Corporation; Katy; wastewater treatment facility; on the south side of FM Road 1093, at a point approximately 5.5 miles west of State Highway 6 in Fort Bend County; 12827-01; renewal.

Joe Lee Rathman; Bastrop; cattle feedlot; on County Road 235, approximately 1. 5 miles north-northwest of the intersection of FM Road 20 and FM Road 812, southwest of the City of Bastrop, Bastrop County; 03100; new.

Issued in Austin, Texas on August 18, 1989.

TRD-8907653 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: August 21, 1989

For further information, please call (512) 463-7906

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Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

The Texas Committee on the Purchase of Products and Services of Blind and Severely Disabled Persons was established by the Legislature in 1975. Originally called the Texas Committee on the Purchase of Blind-Made Products, the agency developed the "State-Use Program" to provide employment opportunities for blind individuals. The committee's goals were to furnish products and services to the state and other political subdivisions and to reduce the institutionalization of disabled persons.

In 1978, Texas Industries for the Blind and Handicapped, Inc. (TIBH), a nonprofit agency, was designated the administrative link between individual workshops and purchasers for various political entities. The Legislature changed the committee's name in 1981 and extended the scope of the program to include all disabilities.

The nine-member committee meets at least quarterly to study new products, product changes and revisions, new service contracts, and renewal service contracts. As necessary, the agency takes corrective action to reassign contracts and to suspend and/or reinstate workshops participating in the program. The committee also authorizes the preparation and distribution of an annual catalog of products and services and the program's annual report to the legislature.

One of the committee's most important functions is to monitor and adjust the commission fees TIBH charges workshops. With few exceptions, primarily certain travel expenses, the State-Use Program is funded entirely through the collection of such fees.

Sales under the program have grown from $550,000 in 1980 to over $17 million in 1988. Statewide, 143 workshops currently participate, and disabled workers earned more than $5.5 million in wages last year.

The committee may be contacted in Austin at (512) 459-2605, or in Houston at (713) 527-9651.