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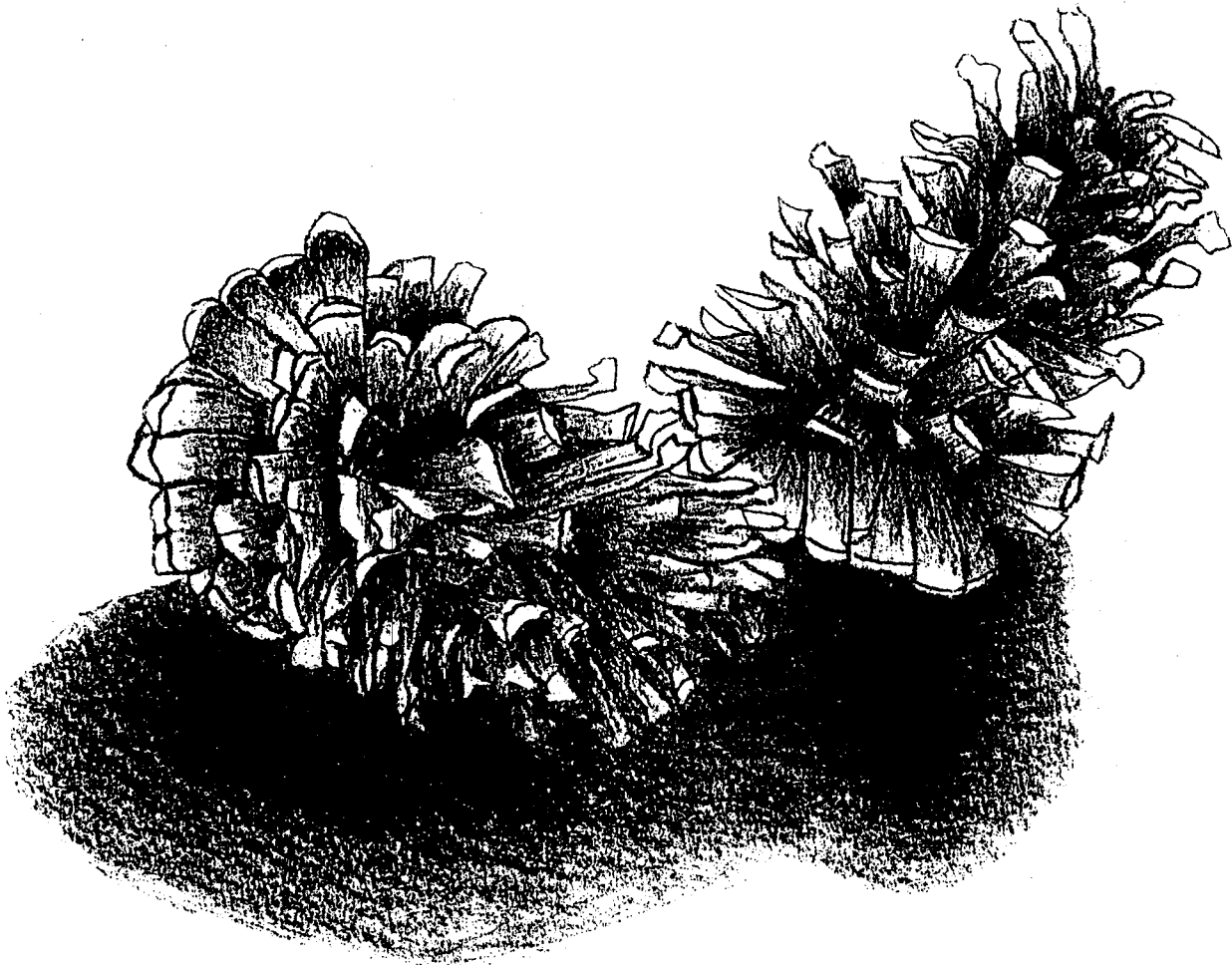
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(512) 463-5561
FAX (512) 463-5569
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Texas Administrative Code

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Texas Register

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Circulation/Marketing

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Texas Department of Transportation

Public Notice 12555

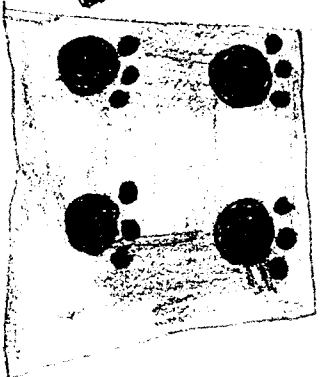
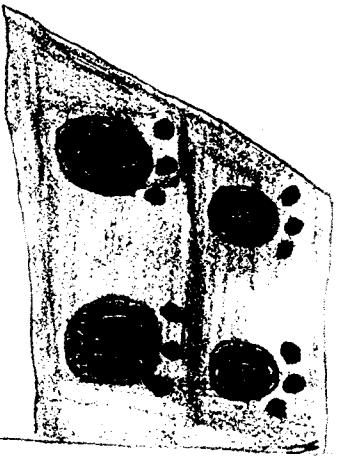
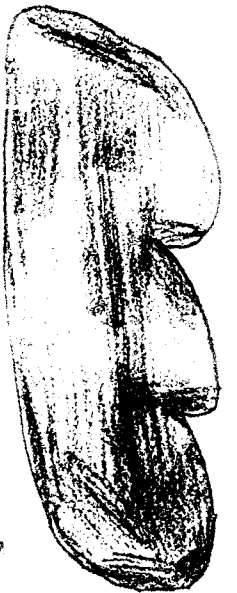
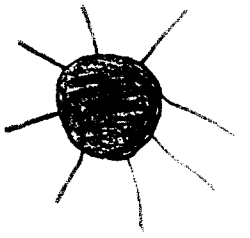
Texas Water Development Board

Request for Proposals 12556

Texas Workforce Commission

Requests for Proposals 12557

Name: Brad Neally
Grade: 11
School: China Spring High School



Effective date: January 1, 1999
Proposal publication date: October 2, 1998
For further information, please call: (512) 438-3765

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 2. Environmental Policy

Subchapter B. Memoranda of Understanding with Natural Resource Agencies

43 TAC §2.24

The Texas Department of Transportation adopts the repeal of §2.24, concerning Memorandum Of Understanding with the Texas Historical Commission and the Texas Antiquities Committee, and simultaneously adopts new §2.24, concerning Memorandum Of Understanding with the Texas Historical Commission. Section 2.24 is adopted without changes to the proposed text as published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7196) and will not be republished.

EXPLANATION OF ADOPTED REPEAL AND NEW SECTION

Transportation Code, §201.607, requires the department to adopt a Memorandum of Understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment, the preservation of the natural environment, or for the preservation of historic or archeological resources. Section 201.607 also requires the department to adopt the memoranda and all revisions by rule and to periodically evaluate and revise the memoranda. In order to meet the legislative intent and to ensure that historic and archeological resources are given full consideration in accomplishing the department's activities, the department has evaluated the memorandum adopted in 1992 and finds it necessary to adopt the repeal of §2.24, and to simultaneously adopt new §2.24 in a revised form. New §2.24 describes procedures providing for Texas Historical Commission (THC) review of Texas Department of Transportation projects which have the potential to affect cultural resources within the jurisdiction of THC.

New §2.24 describes the purpose of the new section, including implementing provisions of Texas Transportation Code, §201.607, and the rules for coordination of state-assisted transportation projects, Title 43, Texas Administrative Code, §§2.40-2.51, which underline the need for and importance of comprehensive environmental coordination for all transportation projects. Section 2.24 also provides definitions for words and terms used in the MOU.

Subsection (a) explains the purpose of the MOU, including a statement of TxDOT policy regarding the identification of environmental impacts of TxDOT projects; the basis for project decisions; public input; the use of a systematic interdisciplinary approach in project development; and the intention to strive for environmentally sound transportation activities. The MOU provides a formal mechanism by which THC may review TxDOT projects.

Subsection (b) provides the authority for this Memorandum of Understanding under Texas Transportation Code, §201.607,

which directs TxDOT to adopt MOUs with appropriate environmental resource agencies, including THC.

Subsection (c) provides definitions for this section.

Subsection (d) outlines the responsibilities of the department and THC. The department's responsibilities include planning and designing safe, efficient, effective and environmentally sensitive transportation facilities; the timely and efficient construction of transportation facilities; and the ongoing maintenance of transportation facilities. THC serves as the State Historic Preservation Office in Texas, which includes reviewing federally assisted, licensed or permitted undertakings for their effects to archeological and historic resources, regulating the disposition and management of State Archeological Landmarks, and issuing permits for the taking, excavation, restoration or study of State Archeological Landmarks.

Subsection (e) contains a new provision for early project planning for cultural resources, which provides for implementation of TxDOT's commitment to performing early identification of cultural resources located within the area of potential effects of adopted transportation projects, implementing alternative methods, techniques, and other strategies that are reasonable and feasible and that will enhance efficiency in complying with cultural resource laws, and providing the public and interested parties with opportunities to provide input and express their views concerning potential impacts to historic properties.

Subsection (f) contains procedures for coordination regarding archeological resources as required by state and federal statutes and regulations (13 TAC Chapter 26 and 36 CFR Part 800) including provisions for the identification of archeological sites, the requirements for archeological surveys, provisions for determining site significance through archeological eligibility testing, provisions for archeological excavation/data recovery, a process for dealing with archeological sites found after award of contract, and provisions for artifact recovery and curation.

Subsection (g) contains procedures for coordination regarding historic properties as required under state and federal statutes and regulations (13 TAC Chapter 26 and 36 CFR Part 800), including provisions for a consideration of historic properties during early project development.

Subsection (h) outlines provisions for the identification of historic properties as required by state and federal laws and regulations (13 TAC Chapter 26 and 36 CFR Part 800) and for an evaluation of the historic significance of these properties.

Subsection (i) provides for assessing and mitigating effects for these historic properties as required under state and federal statutes and regulations (13 TAC Chapter 26 and 36 CFR Part 800).

Subsection (j) concerns the environmental document and public involvement.

Subsection (k) provides for dispute resolution as required under state and federal laws and regulations.

Subsection (l) provides for the review and update of this memorandum by January 1, 2002.

COMMENTS

No comments were received on the proposed repeal or new section.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

This rulemaking action has been determined to be subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.) and the rules of the Coastal Coordination Council (31 TAC Chapters 501-506). As required by 31 TAC §505.22(a), this rulemaking action must be consistent with all applicable CMP policies.

As required by 31 TAC §505.22(e), this action has been reviewed for consistency, and it has been determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that transportation projects be located at sites that to the greatest extent practicable, avoid and otherwise minimize the potential for adverse effects to coastal natural resource areas from construction and maintenance of roads, bridges, causeways, and other development associated with the project. This rulemaking action provides a means for identifying the environmental impacts of department transportation projects on archeological resources and historic properties, for coordination of these projects with the relevant state resource agency, and for inclusion of these investigations and coordination in the environmental documentation for each project. All of these purposes will provide a mechanism for minimizing adverse effects of department projects on coastal historic areas. For these same reasons, the rulemaking action is consistent with the CMP goal of protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas.

STATUTORY AUTHORITY

The repealed section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.607, which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or the preservation of the natural environment or for the preservation of historic or archeological resources and that these memoranda and all revisions be adopted as rules.

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

Filed with the Office of the Secretary of State on November 23, 1998.

TRD-9817920

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: December 13, 1998

Proposal publication date: July 10, 1998

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

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the

work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.607, which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or the preservation of the natural environment or for the preservation of historic or archeological resources and that these memoranda and all revisions be adopted as rules.

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

Filed with the Office of the Secretary of State on November 23, 1998.

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Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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

Chapter 4. Employment Practices

Subchapter D. Substance Abuse Program

43 TAC §§4.30-4.37, 4.39, 4.40

The Texas Department of Transportation adopts amendments to §§4.30-4.37, 4.39, and 4.40, concerning the department's substance abuse program. Sections 4.31-4.37 are adopted with changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9268). Sections 4.30, 4.39 and 4.40 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §§4.30-4.37, 4.39, and 4.40 reflect changes in federal and state laws and regulations as well as department policy. The Federal Highway Administration in Title 49, C.F.R., Part 382 and Part 40, requires the department to make policy and procedure revisions to reflect changes to federal regulations governing commercial drivers.

In addition to the required policy changes, the department is proposing pre-employment drug testing of all external final applicants who might potentially drive for the department as well as reasonable cause testing of any employee who is suspected of being under the influence of alcohol or drugs in the workplace. The department's compelling interest in conducting these tests is a concern for the safety of the traveling public. Almost all department employees are required to drive as part of their jobs as they plan, build, maintain and inspect roads; travel to training, meetings or conferences; and conduct other department business using state vehicles or their own personal vehicles. As a result of this requirement, all job vacancy notices contain the statement that the department will conduct driving record checks with the Department of Public Safety on all final applicants for all vacant positions. Driving for the department is an activity which, if performed under the influence of alcohol or drugs, could pose a direct and immediate threat to the safety of the traveling public. There is a causal connection between the duty of driving for the department and the fear that the traveling public will be harmed.

Concerning the expectations of privacy, employees know that the department is highly regulated by the Federal Highway Administration, which mandates drug and alcohol testing of commercial drivers and marine crewmembers. All employees will be informed of the new testing program at least 90 days before they are subject to testing. Applicants have a reduced expectation of privacy since they already are subjected to pre-employment physicals, reference checks, and driving record checks.

Unlike pre-employment testing, reasonable cause testing will be based on a reasonable suspicion of drug or alcohol use in the workplace including observations and information regarding a pattern of unusual physical appearance, poor work performance, excessive absences, tardiness, poor judgment, carelessness, erratic behavior, or the odor of marijuana or alcohol.

A reasonable suspicion of employees working under the influence of alcohol or drugs will be based upon the testing decision of a supervisor trained in recognizing and documenting the signs and symptoms of alcohol and drug use. Reasonable cause testing will be conducted as soon as possible after an incident and only when there are physical and/or behavioral indicators of drug and alcohol use. Furthermore, all decisions will require validation by the substance control officer, written approval by the district engineer, division director, office director, applicable member of the administration or designee and verbal approval by the substance abuse program staff of the Human Resources Division who are knowledgeable about the issues and criteria for reasonable cause testing.

The department has an obligation to the taxpayers to work safely and productively. If employees are working under the influence of alcohol or drugs, then they are unable to work in a safe, efficient and effective manner. The Human Resources Division receives an average of two calls per week regarding employees who are suspected of working under the influence of alcohol or drugs. Currently, supervisors use reasonable cause criteria to determine whether employees who are not subject to testing should be mandatorily referred to the Employee Assistance Program (EAP) for working under the influence, but they are often reluctant to take administrative or disciplinary action without the objective data that a test result provides. Testing would provide the additional objective facts needed to provide consistency throughout the department in policies and procedures for handling employees who are working under the influence. Testing procedures will require a strict chain of custody procedure and reliable drug and alcohol testing methods.

Confidentiality of all drug testing information is protected, and the ability to appeal a department action under the substance abuse program is provided in §4.39. Established policies, procedures and guidelines for reasonable cause testing will apply to all department employees. All employees will be given advance written notice and information regarding these new policies and procedures.

In support of pre-employment and reasonable cause testing, there are studies which emphasize the effectiveness of drug and alcohol testing and show it to be a major factor in the reduction of employee drug and alcohol use and the improvement of safety. Public safety is recognized as a reasonable and legitimate concern that justifies testing of prospective employees as well as current employees. The United States Coast Guard reported a reduction in employee

drug and alcohol use from 10% in 1983 to three percent in 1986 after implementation of a drug and alcohol testing program. Further, two other State Departments of Transportation (DOTs) conduct pre-employment testing of all external applicants, 19 conduct reasonable cause testing for all employees, and an additional nine state DOTs conduct reasonable cause testing for safety sensitive employees who are not subject to any federal regulations.

Specific surveys conducted by the National Institute on Drug Abuse (NIDA) report that drug and alcohol use is a serious problem among the employed population. NIDA states that 70% of all illegal drug users are employed either full-time or part-time and one in 12 full-time employees report current use of illegal drugs. The United States Chamber of Commerce, in testimony presented in 1987 to the United States House of Representatives Committee on Government Operations, reported on a survey of drug users which revealed that 75% said they had used drugs on the job, 64% admitted drugs had adversely affected their job performance, 44% said they had sold drugs to other employees and 18% said they had stolen from coworkers to support their habits.

Additional studies have been well documented that show the strong correlation that exists between poor job performance and drug use including inefficiency, incompetence, mismanagement, high absenteeism, skill impairments and a decrease in productivity which results in a waste of the taxpayer's money and potential exposure of the government employer to liability for serious accidents and injuries caused by drug users on the job.

In addition to pre-employment testing of all external final applicants who might potentially drive for the department and reasonable cause testing for all employees, the department proposes that substance abuse disciplinary suspensions without pay be for a minimum of five work days due to recent court interpretations of the Fair Labor Standards Act (FLSA). For FLSA exempt employees, the suspensions must be within the same work week.

The department requires that all employees who violate substance abuse prohibitions and are mandatorily referred to the EAP provide a fitness-for-duty form completed by a medical doctor or licensed practitioner. This form ensures that employees are fit to return to any driving duties, commercial driving duties, crewmember duties, or safety sensitive duties for the department.

In an effort to deter employees from violating the substance abuse policy for a second time, the department proposes to reduce from two to one the number of times an employee can be mandatorily referred to the EAP for violating the Substance Abuse Program Rules. A mandatory referral is not counted the first time if the employee is assessed by the EAP as not needing assistance with a chemical dependency problem or if the referral is for a DUI/DWI conviction.

The department also proposes that final applicants not be hired for seasonal positions if they have a DUI/DWI conviction within the three years preceding the date of their application if driving is an essential function of the position.

The department proposes that, because employees who drive for the department and who are mandatorily referred for a DUI/DWI conviction are an increased safety risk, these employees need to be removed from safety sensitive and crewmember

duties as well as driving duties until they receive a completed fitness-for-duty form.

The department is deleting the provision for employees under 21 years of age who are convicted of Driving Under the Influence of Alcohol by a Minor (DUIABM) but is adding the words "any other alcohol or drug related arrest or conviction" to replace DUIABM. The department recognizes that a DUIABM could not be enforced since the offense does not appear on an individual's driving record. The department requires employees whose driver's licenses are suspended due to Administrative License Revocation because of a DUI/DWI or any other alcohol or drug related arrest or conviction, to report the license suspension within one work day upon return to work rather than one work day after the suspension. This will allow employees to return to the workplace before having to report the suspension. The reporting requirement for employees to report a DUI/DWI or any other alcohol or drug related conviction is being changed from three days to within one work day upon return to work in order to make all reporting requirements consistent.

The department proposes to require different disciplinary actions for employees who are authorized to drive for the department and who fail to report license suspensions. Because the department will be subjected to a greater liability, employees who continue to drive for the department with a suspended license will be terminated. Those employees who fail to report their license suspension and who do not drive for the department will be suspended for five days without pay.

The department proposes that crewmembers be subject to random testing for alcohol at an annual rate of up to 25% of all crewmembers in an effort to deter employees from performing crewmember duties while under the influence of alcohol and to provide the department with a baseline positive rate in order to evaluate the extent of alcohol use.

The department proposes to require that employees who test positive on any type of drug or alcohol test in their initial six month probation period be terminated. This will deter new employees from violating the substance abuse policy and eliminate the undue hardship imposed upon supervisors and co-workers because of an employee's absence after being referred for treatment (which may include losing their driver's or mariner's license for up to one year).

The department also proposes changes to comply with federal regulations including: conducting pre-employment inquiries to request information on positive drug and alcohol tests and refusals to test from previous employers of all final applicants for commercial driver positions who have performed commercial driving duties in the previous two years; reducing the requirement for random alcohol testing for commercial drivers from 25% to 10% annually because the positive alcohol rates for the industry and the department were less than 0.2% and 0.5%, respectively, for two consecutive years; and changing testing procedures to allow employees who are unable to produce a specimen up to three hours to do so and to allow medical review officers to verify a drug test as positive without discussing the positive test with the employee if the employer or the medical review officer has not been able to make any contact with the employee and 14 days have passed.

Sections 4.30-4.37, 4.39, and 4.40 include changes of all reporting requirements to within one work day upon the employee's return to work for employees who: are convicted on charges of criminal drug statute violations occurring in the workplace; are

arrested, charged, indicted or convicted for selling, distributing, transporting and manufacturing drugs inside or outside the workplace; are convicted of a DUI/DWI; and have had their driver's license suspended. These events currently have varying time limits for reporting, which are being modified for the sake of uniformity in order to avoid confusion. Employees will no longer be required to report any of these events prior to returning to work, which makes the reporting requirements more practicable. These sections also extend suspensions for certain violations from three working days to five working days without pay for department employees who violate the substance abuse policy. For FLSA exempt employees, such suspensions must be within the same work week. These sections authorize the removal of any employee who is suspected of violating substance abuse policy from all driving duties, commercial driving duties, crewmember duties, and safety sensitive duties. A provision offering employees the option of transferring to another work location if duties are not available is not applicable or feasible and has been deleted. The term "disciplinary action" has been replaced with "administrative and disciplinary actions" for clarification. All employees who are required to take leave for substance abuse violations may use sick leave. The paragraph regarding confidentiality has been deleted from all sections because it is redundant and provided for in §4.38. These policy changes are also necessary for improved efficiency in the administration of the department's Substance Abuse Program.

Section 4.30 adds additional references to federal regulations.

Section 4.31 amends definitions for: alcohol test to include establishing an individual's breath concentration; and the form that employees sign to acknowledge their awareness of the DUI/DWI policy. The department is excluding a conviction of Driving Under the Influence of Alcohol By a Minor (DUIABM) from the definition of a DUI/DWI. The section amends the definition of "employee" to clarify that temporaries under contract to the department are not considered employees, and adds "immediate" to the definition of "family members" to clarify who can use the EAP. This section: changes the definition of "EAP counselors" to be consistent with federal language; adds the definition of "office director" to replace the deletion of "special office" in consistency with the department's new organizational structure; deletes the term "perform on a routine basis" as it is not used in the text of the rules; deletes the definition of "receive a DUI/DWI" which was replaced with "conviction of a DUI/DWI"; clarifies the definitions of "serious accident" and "serious marine accident" to explain that an employee is subject to post-accident testing if any person is injured beyond first aid; clarifies "safety sensitive position" to require the performance of an activity at least four times within a 12-month period; and rewords substance control officer to delete the unnecessary reference to appointment of those employees.

Section 4.32 specifies that employees are prohibited from consuming or possessing an alcoholic beverage, inappropriately using an inhalant, or using or possessing a dangerous drug while operating a state vehicle. Supervisors are prohibited from allowing employees to continue to perform official duties if they have knowledge that an employee has inappropriately used inhalants. This section requires pre-employment drug testing of all external final applicants and establishes guidelines to determine reasonable cause drug or alcohol testing for those employees who are observed and documented to be working under the influence in the workplace. It requires that supervisors be trained on the signs and symptoms of drug

and alcohol abuse and the policies and procedures related to reasonable cause testing prior to making a determination to test. This section also establishes procedures for administering a test following a determination of reasonable suspicion. This section requires final approval for reasonable cause testing by the district engineer, division director, office director, applicable member of the administration or designee and the substance abuse program staff of the Human Resources Division. All department employees will be notified in writing that they are subject to testing. This section provides for the removal of employees who are suspected of working under the influence from all driving duties, commercial driving duties, crewmember duties, and safety sensitive duties. The employee will either be reassigned or required to take leave, pending a decision to test, until an alcohol test is administered or 24 hours have passed.

This section establishes time limits for alcohol and drug testing and describes the type of training all supervisors will receive prior to making a determination to test any employee. It describes the administrative and disciplinary actions, including a mandatory referral to the EAP or termination from the department for an employee who violates the substance abuse prohibitions, including an employee who tests positive on a drug or alcohol test or refuses a test. This section also establishes procedures for employees who have an alcohol test result of 0.02 or greater but less than 0.04 and provides for additional requirements placed on employees who test positive on a drug or alcohol test, including return-to-duty testing, a completed fitness-for-duty form, and follow up testing. This section provides procedures for employees who are assessed by the EAP as not needing assistance with a chemical dependency problem. With the exception of those employees subject to §4.34, §4.35 and §4.36, employees who refuse to test will be mandatorily referred to the EAP and will be required to take return-to-duty and follow-up tests. This section provides for the termination of all employees who do not successfully complete treatment. Employees who are removed from regular duties because of impaired performance due to lawful use of drugs are required to bring in a physician's statement before returning to regular duties. New employees who test positive in their initial probation period or who refuse to test in their initial probation will be terminated. This section proposes a reduction from two to one in the number of times an employee can be mandatorily referred and successfully complete treatment before being terminated. Two types of mandatory referrals that will not count toward termination are first mandatory referrals when the EAP assesses the employee as not needing assistance with a chemical dependency problem and employees who are convicted of a DUI/DWM. Employees who are referred by the EAP to outside treatment providers or counselors are responsible for any costs incurred as a result of the referral. Fitness-for-duty forms are required for all employees who are mandatorily referred to the EAP before they are allowed to return to any driving duties, commercial driving duties, crewmember duties, or safety sensitive duties. This section also requires the EAP to provide written notification for those employees who are assessed as not needing assistance with a chemical dependency problem.

Section 4.33 clarifies that the department will not offer an applicant a position when driving is an essential or marginal function of the job if the employee has been convicted of two DUI/DWMs within the previous three year period. In addition, an applicant who has been convicted of one DUI/DWM, within the previous three years from the date of application, will not be

offered a position unless the applicant agrees to successfully complete EAP treatment.

The department will not hire a seasonal employee who has been convicted of a DUI/DWM within the previous three years from the date of application if driving is an essential function. All employees' driver's license records will be checked not less than once a year. All employees are required to report license suspensions to the department within one work day upon return to work. Employees who are authorized to drive for the department and who have a suspended license but do not drive for the department, will receive counseling by their supervisor and be suspended for five days without pay. Employees who are authorized to drive for the department will be terminated if they drive for the department with a suspended license. The fitness-for-duty letter referenced in §4.33 is being replaced with a standardized fitness-for-duty form. Procedures which presently exist in §4.32 have been deleted from §4.33.

Section 4.34 requires final applicants for commercial driver positions to pass a pre-employment drug test, including current employees when a job vacancy notice is posted or when an employee is transferred or promoted to a commercial driver position. The test may be waived if the employee has been previously drug tested by the department, and all drug tests were negative. A current employee who fails to pass a pre-employment drug test will not be hired for the position and will be mandatorily referred to the EAP. This section establishes a procedure for conducting pre-employment inquiries for applicants for commercial driver positions who have performed commercial driving duties during the preceding two years from the date of application. Information to be requested may pertain to any previous positive drug and alcohol tests and refusals to test.

Section 4.34 also prohibits allowing a commercial driver to perform driving duties if the supervisor receives information that the driver has had a positive drug or alcohol test or a refusal to test until the department receives information that the driver has completed the required treatment. Conditionally hired commercial drivers will be terminated if they have not completed the required treatment. Commercial drivers will be tested on a random basis at an annual rate of at least 10% of all drivers but not more than 25% for alcohol testing. Procedures for reasonable cause testing, administrative and disciplinary actions, and mandatory referral and treatment have been moved to §4.32.

Section 4.35 requires post-accident testing for crewmembers to be conducted as soon as practicable, even if it is after the specified time period. Crewmembers are subject to random testing for alcohol at an annual rate of at least 10% but not more than 25%.

Section 4.36 adds additional activities which are considered safety sensitive and, if performed by an employee, will subject him or her to drug and alcohol testing. In order to ensure consistency within the department, this section deletes the word "routinely" as it pertains to safety sensitive activities and adds the more specific requirement that performing a safety sensitive activity at least four times within a 12-month period subjects that employee to testing as a safety sensitive employee.

Section 4.37 provides guidelines for allowing an employee up to three hours to produce a specimen. It also includes the procedures for the collection of urine specimens based on the split sample method of collection. This section establishes a

procedure for the medical review officer to verify a positive test result without any contact with the employee and replaces the term "retest" with the words "split specimen test." This section provides additional guidelines for split specimen testing.

Section 4.39 clarifies the procedure to appeal adverse actions taken under the proposed sections.

Section 4.40 adds administrative actions to the department's records retention procedures concerning substance abuse program records.

RESPONSE TO COMMENTS

On October 1, 1998, a public hearing was held to receive comments, views, and/or testimony concerning the proposed amendments. No oral comments were received, however, 15 individuals submitted various comments on the proposed amendments. Twelve of those comments expressed support of some or all of the proposed amendments.

Comment: One commenter expressed concern about including Driving Under the Influence of Alcohol by a Minor (DUIABM) in the definition of "Conviction of a DUI/DWI" in §4.31 (15), Definitions. The commenter stated that a DUIABM is a Class C misdemeanor citation and may only indicate that alcohol was detectable on the individual's breath, while a DUI/DWI is a Class A misdemeanor and indicates that the individual was actually impaired while driving.

Response: The department recognizes that a prohibition on receiving a DUIABM could not be enforced since the offense does not appear on an individual's driving record. Therefore, DUIABM will be excluded from definition (15), "Conviction of a DUI/DWI."

Comment: One commenter expressed concern about criterion (B) in the definition of "serious accident" in §4.31(48), regarding whether an injured employee is able to return to work the day following the injury to perform regular duties. The commenter suggested that the definition read "...who is unable to return to work the workday following the injury" to include accidents which happen on Friday or the day before a holiday.

Response: The department's post-accident testing decision for injuries that require medical attention beyond first aid are based on a physician's statement as to whether the injured employee would be able to return to work the day following the injury, regardless of whether that day is a weekend or holiday.

Comment: One commenter expressed concern about criterion (C) in the definition of "serious accident," regarding damage to a vehicle which causes it to be inoperable. The commenter suggested that the definition also include "damage to the part of the vehicle that is its primary function."

Response: The definition "damage to a vehicle which causes it to be inoperable" includes damage to any part of a vehicle that is its primary function.

Comment: One commenter suggested that the phrase "tests positive" for alcohol be clarified by stating an actual limit that is defined by law, since it is not illegal to have a small or insignificant amount of alcohol (unlike an illegal substance) in one's system. The commenter further suggested that the definition of drug include "an illegal or abused substance" and identify in the policy the specific names of prescription drugs which are to be included in the testing.

Response: The department agrees and wording is being added to §4.32 to clarify that a positive test means "a positive drug test or an alcohol test result of .04 or greater." The alcohol test result of .04 or greater is mandated by federal regulations. A dangerous drug is defined in §4.31, Definitions, as "a narcotic drug, controlled substance, and marijuana as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §802." This reference includes illegal drugs and legal, controlled substances. Therefore, it is not necessary to add the term "illegal or abused substance." The department only tests for marijuana, cocaine, opiates, phencyclidine (PCP) and amphetamines.

Comment: One commenter expressed concern about requiring all external final applicants to take a pre-employment drug test prior to working for the department, just because they may potentially drive for the department, as stated in §4.32 (b)(1), All Department Employees. The commenter did recommend, however, that if pre-employment testing is absolutely critical to ensure safe driving for the department, all new and veteran employees who drive for the department be required to pass an initial drug test and be subject to random testing thereafter. The commenter felt that only testing new employees and testing them only once during their career is inconsistent and ineffective.

Response: In the interest of public safety and to limit the liability for the department, all external final applicants who could potentially be authorized to drive for the department will be subject to pre-employment drug testing. Pre-employment drug testing is not required for current employees as they are subject to the substance abuse policy violations and will be subject to reasonable cause testing if they are suspected of working under the influence of alcohol or drugs. Testing all employees would also be cost-prohibitive for the department.

Comment: One commenter expressed concern about the vagueness of term "reasonable cause" as described in §4.32 (b)(1). The commenter was concerned that reasonable cause testing might be used by supervisors to harass less productive employees who may only seem to be under the influence of alcohol or drugs when in fact they are not.

Response: The department has sufficient controls in place to prevent supervisors from misusing the reasonable cause testing procedures. The decision to test an employee must be based on a reasonable belief, by a supervisor who has been trained on the signs and symptoms of alcohol and drug use, that the employee is under the influence of alcohol or drugs and must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use. The supervisor and SCO must document all observations and any reasonable cause testing must be approved by the district engineer, division director, office director, or applicable member of the administration and by the Substance Abuse Program staff in the Human Resources Division.

Comment: In reference to §4.32 (b)(1), a commenter wanted clarification on the categories of drugs that employees are tested for and to ensure that the drug categories are clearly stated in the policy. The commenter also stated concerns about employees taking prescription medications which may cause them to test positive and suggested that employees be required to report prescriptions to supervisors if the medication states

that heavy equipment should not be operated while taking the prescription.

Response: The categories of drugs that the department tests for are listed in §4.37(b)(2)(A), Test Procedures, and include only those required by federal regulations. It is not appropriate for the department to require employees to report legally prescribed drugs. As described in §4.32(c)(3), the lawful use of drugs is prohibited if an employee's performance is impaired. Additionally, if an employee tests positive for a legal prescription, the Medical Review Officer may report the test as a medical negative and inform the department if the employee is medically unqualified to drive while taking the prescription.

Comment: Three comments were submitted regarding suspension without pay as described in §4.32(c), All Department Employees. One commenter requested that the amendment be clarified, another commenter questioned the requirement that suspensions of five working days for FLSA exempt employees must be in the same work week, and a third commenter suggested that employees who are suspended without pay for not reporting substance abuse violations be suspended indefinitely.

Response: In order to comply with the Fair Labor Standards Act, department policy requires that suspensions without pay be for a minimum of five working days, which must be within the same work week for FLSA exempt employees. The Act requires that all FLSA exempt employees be paid their full salary for any week in which they perform work regardless of the number of days or hours worked. The Substance Abuse Program rules specifically state in §4.32(c), that employees who fail to report substance abuse policy violations "within one work day upon return to work will be suspended for five working days without pay." The department considers five days suspension without pay to be sufficient.

Comment: Four comments were received regarding the administrative and disciplinary actions to be taken for employees who refuse to test as described in §4.32 (c)(1)(B)(viii)(I). One commenter felt that it is discriminatory to treat commercial drivers who refuse to test differently than employees without a commercial driver's license. Another commenter stated that since all employees are subject to drug and alcohol testing, any employee who refuses a reasonable cause or random drug or alcohol test should be mandatorily referred to the EAP. However, two commenters suggested that any employee who refuses a required drug or alcohol test be terminated.

Response: All employees with the exception of commercial drivers, crewmembers, or safety sensitive employees will be mandatorily referred if they refuse to test. Employees who are in commercial driver, crewmember, or safety sensitive positions are treated differently when they refuse to test because of the frequency with which they perform the essential functions of their jobs in potentially hazardous settings. A single alcohol or drug-related lapse by one of these employees carries an elevated risk of irreversible and catastrophic consequences. Therefore, this subsection will not be changed.

Comment: With regard to §4.32(c)(9), one commenter asked whether or not employees who have already been mandatorily referred to the EAP will be "grandfathered in."

Response: In §4.32(c)(9), it states, "An employee who received and completed two mandatory referrals prior to November 1, 1998, will be terminated if mandatorily referred for a third time. An employee who received and completed one mandatory

referral prior to November 1, 1998, will be mandatorily referred for the second time, if necessary, and will be terminated if mandatorily referred for a third time." The date of November 1, 1998, has been changed to January 1, 1999 for this final adoption.

Comment: Another commenter suggested that we not allow any mandatory referrals to the Employee Assistance Program for violating the Substance Abuse Program Rules.

Response: The department disagrees with the suggestion and is committed to the rehabilitation and restoration of employees whose performance is impaired due to alcohol or drug abuse and therefore gives employees an opportunity to be rehabilitated through the Employee Assistance Program. In the interest of safety, however, the number of times an employee can be referred to the EAP for substance abuse has been decreased from two to one in §4.32(c)(g).

Comment: Regarding §4.33(b)(3), Employees Who Drive for the Department, one commenter wanted confirmation that a summer employee who has been convicted of a DWI should not be hired by the department. This commenter also stated that the department will probably not know whether or not they have had a DUI/ABM because they are not reported on the driving records of individuals under 21 years old.

Response: The Substance Abuse Program rules state that a final applicant will not be hired for a seasonal position requiring driving as an essential function if he or she has been convicted of a DUI/DWI within the three years preceding the date of application. The department recognizes that a DUI/ABM is not reported on the driving records of individuals under 21 years old; therefore, §4.31(15) is adopted with a change to exclude DUI/ABM from the definition of a "Conviction of a DUI/DWI".

Comment: One commenter expressed concern with regard to mandatorily referring and removing from driving, safety sensitive, and crewmember duties any employee who is convicted of a DUI/DWI as described in §4.33(f)(2), Employees Who Drive for the Department. The commenter feels that the state should not control employees' private lives by monitoring off-the-job use of drugs and/or alcohol.

Response: Almost all department employees are required to drive as part of their jobs, as they plan, build, maintain and inspect roads, travel to training, meetings or conferences, and conduct other department business using state vehicles or their own personal vehicles. Driving is an activity which, if performed under the influence of alcohol or drugs, could pose a direct and immediate threat to the safety of the traveling public. Employees who drive for the department and require mandatory referral for a DUI/DWI conviction are an increased safety and liability risk for the department. However, employees will be mandatorily referred to the EAP only if they are convicted, not just arrested, for a DUI/DWI.

Comment: With regard to §4.33(d), one commenter stated that the penalty should be the same for employees who fail to report a license suspension but continue to drive for the department and those who fail to report suspension but do not continue to drive for the department. The commenter stated that by the employee not reporting, we are aware that they have a problem. A second commenter suggested that employees whose driver's licenses are suspended due to Administrative License Revocation for an arrest or conviction of a DUI/DWI be

terminated, regardless of whether they drive for the department with a suspended license.

Response: The department recognizes that both offenses are serious but employees who fail to report license suspensions and continue to drive on department business pose a greater liability risk requiring stricter disciplinary action. Therefore, the section will not be changed.

Comment: One commenter disliked the requirement to terminate employees who are convicted of two DUI/DWIs within a five-year period as described in §4.33(f)(4), because the driver's record check only covers a three year period and the Substance Control Officers would have to track this themselves.

Response: Substance Control Officers should not rely solely on a three year driving record check for convictions of a DUI/DWI. The Substance Abuse Program staff supports the districts, divisions and offices in maintaining records for all employees who have DUI/DWI convictions and have been mandatorily referred to the Employee Assistance Program.

Comment: One commenter asked why alcohol testing is not included in the pre-employment testing requirements as described in §4.34(c)(1)(A), Commercial Drivers. The commenter also questioned the need to test employees if there have not been any incidents of drug or alcohol related problems during their employment, and suggested that all employees be tested every three years.

Response: Federal regulations do not require alcohol testing for pre-employment. Regarding pre-employment drug testing, the department wants to ensure that everyone who is in a safety sensitive, commercial driver or crewmember position has had a recent negative drug test result, regardless of whether they have had any substance related problems before. Testing every employee every three years would be cost-prohibitive for the department.

Comment: One commenter expressed concern with Post-Accident testing as described in §4.34(c)(2), and commented that testing decisions and collection should be conducted by law enforcement authorities at the scene rather than by the department. The commenter stated that this would save money and cut down on the amount of department time spent gathering information and sending employees for testing.

Response: The department disagrees with the suggested comment since it is responsible for administering and enforcing policy related to drug and alcohol testing. The department has no authority to delegate this responsibility to another agency.

Comment: One commenter questioned random testing as described in §4.34(c)(2), Commercial Drivers, and asked whether employees who have a commercial driver's license (CDL), but are not in a position that requires a CDL, are included in the random testing pool.

Response: Only commercial drivers who drive a commercial motor vehicle for the department on a regular or a back-up basis are included in the pool of commercial drivers who are subject to random testing.

Comment: One commenter suggested that the department increase the requirement for random alcohol testing for commercial drivers from 25% to 50% annually.

Response: It is a federal requirement that commercial drivers be tested on a random basis at an annual rate of at least 10% but no more than 25% for alcohol testing.

Comment: One commenter suggested that employees be routinely notified whether or not they are "certified as safety sensitive employees" as described in §4.36(a), Safety Sensitive Employees, to ensure they are aware that they are in fact safety sensitive and subject to certain prohibitions and testing as such.

Response: An employee is required to complete a certification form upon hire which is notification that they are certified as a safety sensitive employee and are subject to drug and alcohol testing. This certification remains in effect unless the employee's job activities or position changes.

Comment: One commenter questioned the three hour time limit during which employees are given to produce a specimen for collection described in §4.37(b)(1)(B)(ix), Test Procedures. The commenter was under the impression that employees had 24 hours to produce a specimen. Another commenter suggested that employees who are unable to produce a specimen be allowed only two hours to do so, rather than three.

Response: Because this is a federal requirement, the time limit has been increased from two hours to three hours.

Comment: Regarding §4.37(b)(3)(D)(ii), one commenter suggested that the Medical Review Officer be able to verify a drug test as positive without discussing the positive test with the employee if the employer or the Medical Review Officer has not been able to make any contact with the employee within seven days, rather than 14.

Response: The 14 day time frame is a federal requirement.

Comment: Another commenter asked whether the Medical Review Officer is a department employee, questioned whether Medical Review Officers are qualified to evaluate test results, and wanted to know what would happen if the employee was out of town and not able to be contacted.

Response: The term "Medical Review Officer" (MRO) is defined in §4.31 of the rules. If a test is verified as positive because the MRO was unable to talk with the employee directly and 14 days have passed, the employee may contact the MRO and ask that the verification be reopened so that the employee can present information for further review as described in §4.37(b)(3)(D)(iii).

Comment: One commenter asked whether prescription medications that have alcohol in them would result in a positive test and whether employees may retake the test if they disagree with the results.

Response: As described in §4.37(d), if the result of an initial alcohol test shows an alcohol concentration of .02 or greater, a confirmatory test will be conducted at least 15 but no more than 20 minutes after the initial test to confirm the individual's breath alcohol concentration. The results of the confirmatory test are final.

Comment: Regarding §4.40, Records and Retention, one commenter questioned whether the requirement to retain records of individuals who do not pass a drug or alcohol test should apply not only to employees but also to final applicants who do not pass a pre-employment drug test.

Response: According to federal regulations, the department must retain any verified positive tests for employees or final applicants (pre-employment tests) for a minimum of five years.

Comment: One commenter suggested that the department conduct random testing of all employees.

Response: Due to the cost as well as concerns about the constitutionality of testing all employees on a random basis, the department has chosen not to conduct random testing of all department employees at this time. Only commercial drivers and crewmembers will be subject to random testing.

In addition to those changes the department is making from comments received on the proposed amendments, the following will address additional revisions and changes.

The proposed amendment to §4.31, Definitions, was published with an error in the definition of "Serious marine accident." A phrase in the definition should have read "Any reportable marine accident..." instead of "Any reasonable marine accident..." This error has been corrected.

The department is adopting §4.32 with a change to clarify that those employees who refuse to test and are mandatorily referred to the EAP will be subject to return-to-duty and follow-up testing, with the exception of commercial drivers, crewmembers, and safety sensitive employees. Thus, the administrative actions are the same for employees who test positive as for those employees who refuse to test. The department always intended to require the same administrative actions of return-to-duty and follow-up testing for employees who refuse to test and are assessed as needing assistance with a chemical dependency problem. However, the department inadvertently failed to make this explicit in the prior version. In addition, as proposed, the rules state that employees who test positive in their initial probation period will be terminated. Therefore, to be consistent the department is clarifying §4.32 to state that the same disciplinary action of termination is taken for those employees who refuse to test in their initial probation period as for those who test positive in their initial probation period.

STATUTORY AUTHORITY

The amended sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

§4.31. Definitions.

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

(1) **Aftercare** - The second phase in treatment for alcohol, inhalant, and/or drug dependency. This phase usually follows inpatient treatment or intensive outpatient treatment, and may consist of weekly counseling sessions. The frequency and duration of these counseling sessions is designated by the treatment program's staff physician.

(2) **Air blank** - A reading by an evidential breath testing device (EBT) of ambient air containing no alcohol; in EBTs using gas chromatography technology, a reading of the device's internal standard.

(3) **Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

(4) **Alcohol concentration** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

(5) **Alcohol test** - A scientifically recognized chemical test which establishes an individual's blood alcohol level or a breath test which establishes an individual's breath alcohol concentration.

(6) **Alcoholic beverage** - A beverage which contains alcohol.

(7) **Breath alcohol technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

(8) **Chain of custody** - Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen, utilizing an approved department chain of custody form from time of collection to receipt by the laboratory, and upon receipt by the laboratory, an appropriate laboratory chain of custody form to account for the sample or sample aliquots within the laboratory.

(9) **Chain of custody form** - A form which, at a minimum, includes an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

(10) **Collection container** - A container into which the employee urinates to provide the urine sample used for a drug test.

(11) **Collection site** - A place designated by the department where individuals present themselves for the purpose of providing a specimen of urine to be analyzed for the presence of drugs.

(12) **Collection site person** - A specifically trained person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

(13) **Commercial driver** - An employee who operates a commercial motor vehicle on a routine, intermittent, or occasional basis for the department.

(14) **Commercial motor vehicle** - A motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

(A) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(B) has a gross vehicle weight rating of 26,001 or more pounds;

(C) is designed to transport 16 or more passengers, including the commercial driver; or

(D) is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

(15) **Conviction of a DUI/DWI** - A conviction, probated sentence, appeal, or deferred adjudication of a conviction or probated sentence while on-duty or off-duty for driving a commercial or non-commercial vehicle while under the influence of alcohol or drugs or while intoxicated (DUI/DWI).

(16) **Crewmember** - An individual who:

- (A) is on board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document whether or not the individual is a member of the vessel's crew;
- (B) is engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document;
- (C) occupies a position, or performs the duties and functions of a position, required by the vessel's Certificate of Inspection;
- (D) performs the duties and functions of patrolmen or watchmen; or
- (E) is specifically assigned the duties of warning, mustering, or controlling the movement of passengers during emergencies.
- (17) **Dangerous chemical or material** - A flammable, combustible, toxic, or corrosive chemical or material which has the potential to cause serious bodily harm to the traveling public and other employees if handled improperly.
- (18) **Dangerous drug** - A narcotic drug, controlled substance, and marijuana as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §802.
- (19) **Department** - The Texas Department of Transportation.
- (20) **DHHS guidelines** - Mandatory Guidelines for Federal Drug Testing Programs of the U.S. Department of Health and Human Services (53 Fed. Reg. 11970; April 11, 1988).
- (21) **Directly involved** - Involvement in a serious accident or a serious marine accident on a department ferry, in which the involved employee's order, action, or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing that accident.
- (22) **District** - One of 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.
- (23) **District engineer** - The chief administrative officer in charge of a district of the department.
- (24) **Division** - An organizational unit in the department's Austin headquarters.
- (25) **Division director** - The chief administrative officer of a division of the department.
- (26) **Drive for the department** - Driving a vehicle, including an employee's personal vehicle, when driven during the course and scope of employment, or operating motor-driven equipment, including but not limited to rollers, tractors, graders, ferries, and aircraft for the department, notwithstanding ownership of the vehicle or equipment and the frequency of driving or operating duties.
- (27) **Drug test** - A scientifically recognized chemical test administered in accordance with DHHS guidelines and which analyzes an individual's urine for evidence of marijuana, cocaine, opiates, phenylidine (PCP), and amphetamines. This test consists of laboratory testing in two parts, an initial test and a confirmatory test, respectively conducted with portions of the same original specimen.
- (28) **DUI/DWI Policy and Driving Requirements Policy Statement of Notification** - A department form signed by employees which acknowledges their awareness of the DUI/DWI policy and Driving Requirements policy.
- (29) **Employee** - A person employed by the department in a full-time, part-time, temporary, project, or seasonal position. This does not include a temporary employee under contract to the department.
- (30) **Employee Assistance Program (EAP)** - A program designed to assist employees and their immediate family members in dealing with emotional and personal problems, including alcohol, inhalant, and drug abuse, affecting or potentially affecting the employee's work performance and safety.
- (31) **Employee Assistant Program counselors** - Licensed physicians (Medical Doctors or Doctors of Osteopathy), or licensed or certified psychologists (Texas State Board of Examiners of Psychologists or other regulating board), social workers (Texas State Board of Social Worker Examiners or other regulating board), employee assistance professionals (Employee Assistance Professionals Association, Inc. or other regulating board), or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse or other regulating board) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.
- (32) **Evidential breath testing device (EBT)** - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).
- (33) **Final applicant** - A person who is given a conditional offer of initial employment, or a department employee who is conditionally approved for a transfer or promotion.
- (34) **Human Resources Division** - An organizational unit in the department's Austin headquarters which oversees human resource functions for the department.
- (35) **Impaired performance** - The inability to perform assigned duties or to perform those duties in a safe and effective manner.
- (36) **Inappropriate use of an inhalant** - The use of an inhalant in a manner other than that for which it was intended and which causes or is known to cause intoxication.
- (37) **Incident** - An action or situation that raises a reasonable suspicion of drug or alcohol misuse.
- (38) **Inhalant** - A breathable chemical that produces mind-altering vapors, including but not limited to volatile solvents, aerosols, nitrites, and anesthetics.
- (39) **Investigation** - The collection and analysis of information.
- (40) **Laboratory** - A laboratory certified to meet the standards of the DHHS guidelines.
- (41) **Mandatory referral** - A referral to the EAP which requires an employee to report to the EAP and successfully complete treatment or be terminated from employment with the department.
- (42) **Medical review officer (MRO)** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the department's program who has knowledge of substance abuse disorders, and appropriate medical training to interpret and evaluate an individual's confirmed positive

test result together with his or her medical history and any other relevant biomedical information.

(43) Office director - The chief administrative officer of a specialized organizational unit of the department that is headquartered in Austin.

(44) Operation of a vessel - To navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems, including determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position or speed, and maintaining a lookout; controlling, operating, monitoring, maintaining, or testing the vessel's propulsion and steering systems, electric power generators, bilge, ballast, fire, and cargo pumps, deck machinery including winches, windlasses, and lifting equipment, lifesaving equipment and appliances, firefighting systems and equipment, and navigation and communication equipment; and mooring, anchoring, and line handling, loading or discharging of cargo or fuel, assembling or disassembling of tows, and maintaining the vessel's stability or watertight integrity.

(45) Possession of alcohol or dangerous drugs - Having alcohol or dangerous drugs in an area under an employee's effective control.

(46) Program - The department's substance abuse program.

(47) Safety sensitive position - A full-time, part-time, temporary, project, or seasonal position which requires the performance of activities that are assigned and performed at least four times within a 12-month period which if performed with inattentiveness, errors in judgement, diminished coordination, dexterity, or composure could clearly result in mistakes that could present a real and imminent threat to the personal health and safety of other employees or the public, and which are performed with such independence that it cannot be reasonably assumed that those mistakes could be prevented by a supervisor or another employee, including activities having one or more of the following characteristics: a direct, immediate relationship to safety and intimately related to the prevention of harm to the traveling public or other employees; fraught with extraordinary peril such that a single alcohol or drug-related lapse by an employee could have irreversible and calamitous consequences; and performed in an extraordinarily hazardous setting such that careless performance carries with it the attendant risk of catastrophic consequences.

(48) Serious accident - Any accident that occurs while performing a safety sensitive function or driving a commercial motor vehicle and which results in:

(A) a death or an injury to a person, other than an employee directly involved in the accident, requiring professional medical treatment beyond first-aid;

(B) an injury to an employee directly involved in an accident requiring professional medical treatment beyond first-aid who is unable to return to work the day following the injury to perform regular duties;

(C) damage to a vehicle which causes it to be inoperable; or

(D) receipt of a citation under state or local law for a moving traffic violation arising from the accident.

(49) Serious marine accident - Any reportable marine accident which results in:

(A) a death or an injury to a person other than an employee directly involved in the accident requiring professional medical treatment beyond first aid;

(B) an injury to an employee directly involved in an accident requiring professional medical treatment beyond first-aid who is unable to return to work to perform regular duties;

(C) damage to property in excess of \$100,000;

(D) actual or constructive total loss of any ferry subject to Coast Guard inspection under 46 U.S.C. §3301, or not subject to Coast Guard inspection if 100 gross tons or more;

(E) a discharge of oil of 10,000 gallons or more into navigable waters of the United States; or

(F) a discharge of a reportable quantity of a hazardous substance into navigable waters or the environment of the United States.

(50) Specimen bottle - A bottle, after being labeled and sealed, used to transmit a urine sample to the laboratory.

(51) Substance control officer - An employee who administers the Substance Abuse Program.

(52) Successful completion of treatment - Completion of a treatment program, the composition and length of which is to be prescribed by the EAP counselor or the treatment program's staff physician, which may include aftercare. This includes compliance with all EAP treatment recommendations and requirements and passing all required drug and alcohol tests while in treatment.

(53) Treatment - Medical and/or psychological treatment for alcohol, inhalant, and/or drug dependency, which may consist of inpatient treatment followed by aftercare, intensive outpatient treatment followed by aftercare, or educational and/or counseling sessions.

(54) United States Department of Transportation (DOT) - The cabinet level department of the United States government administering regulations requiring alcohol or drug testing (14 C.F.R. Parts 61, 63, 65, 121, and 135; 49 C.F.R. Parts 199, 219, 382, 653, and 654), in accordance with 49 C.F.R. Part 40.

(55) Use of alcohol or a dangerous drug - The consumption of a beverage, mixture, or preparation, including a medication, containing alcohol or the taking of a dangerous drug (whether orally, by inhalation, or by injection), or being under the influence of alcohol or a dangerous drug.

(56) Workplace - All department offices, construction sites, temporary laboratory sites, maintenance sites, ferries, and any other location where an employee performs assigned duties.

§4.32. All Department Employees.

(a) Prohibited conduct. Department employees have an obligation to project a positive image at all times to other employees and the public in order to uphold the public's trust in the department.

(1) The consumption of an alcoholic beverage, the possession of an open container of an alcoholic beverage, the inappropriate use of an inhalant, and the illegal use or possession of a dangerous drug is prohibited in the workplace, while on duty or while operating a state vehicle.

(2) An employee is prohibited from reporting to work, performing official duties, or operating a state vehicle while under the influence of alcohol, inhalants, or illegally used drugs or, if performance is impaired, while under the influence of lawfully

prescribed or over-the-counter substances. The appropriate use of prescribed or over-the-counter drugs is permitted if work performance is not impaired.

(3) The department prohibits the illegal sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs in the workplace, while on duty, or while operating a state vehicle. This prohibition includes any violation of state and federal controlled substances acts. Each employee must notify his or her supervisor of a conviction on charges of criminal drug statute violations occurring in the workplace within one work day upon return to work after such conviction. Pursuant to the Drug Free Workplace Act 1988, 41 U.S.C. §§701-707, the department will in turn notify the appropriate federal agency of such conviction within 10 days of receipt of the notice.

(4) The department prohibits the illegal sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs by any employee outside of the workplace. A final applicant who has been convicted of felony charges related to the illegal sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs and who is still on probation or parole for that conviction will not be hired by the department.

(5) A supervisor having actual knowledge that an employee possesses or is using dangerous drugs, possesses an open container of an alcoholic beverage, or is consuming an alcoholic beverage or inappropriately using inhalants while performing official duties for the department may not allow the employee to continue to perform official duties.

(6) An employee who violates the policies and prohibitions of this section will be subject to consistently applied discipline, up to and including termination from the department. In addition to or in lieu of disciplinary action, an employee will be mandatorily referred to the EAP and required to successfully complete treatment, as described in subsection (d) of this section.

(7) The department provides an employee assistance program and encourages employees to voluntarily use the services of the employee assistance program or treatment program to deal with alcohol, inhalant, or drug abuse before it affects job performance. Successful completion of such programs may mitigate the need for discipline.

(8) Each employee, as a condition of employment, must comply with this section and must signify his or her acknowledgement by signing a department form.

(b) Testing. An employee will be notified, in writing, that he or she is subject to drug or alcohol testing, prior to being required to submit to an alcohol or drug test.

(1) Pre-employment testing.

(A) The department shall not hire or employ an external final applicant when a Job Vacancy Notice (JVN) has been posted for any position in the department and the person could potentially be required to drive for the department in that position, unless that person passes a drug test.

(B) The department will notify a final applicant of the results of a pre-employment drug test, including the names of the drugs that were verified as positive, if the applicant requests the results.

(2) Reasonable cause testing. An employee who is reasonably suspected of using alcohol or dangerous drugs in the workplace or of performing official duties while under the influence of alcohol or dangerous drugs will be required to undergo an alcohol or drug test.

(A) The decision to test must be based on a reasonable belief by a supervisor, who has been trained on the signs and symptoms of alcohol and drug use, including alcohol or dangerous drugs based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use. The observations of physical, behavioral, or performance indicators of probable use may include indications of the chronic and withdrawal effects of dangerous drugs. The decision to test cannot be made by a supervisor who has not been trained on the signs and symptoms of alcohol and drug use.

(B) When a supervisor reasonably suspects an employee of using alcohol or dangerous drugs in the workplace or of performing official duties while under the influence of alcohol or dangerous drugs, he or she will contact the substance control officer immediately. The supervisor or substance control officer will submit a written report of his or her observations to the program staff in the Human Resources Division within 24 hours.

(C) If there is reasonable suspicion that the employee is under the influence of alcohol or drugs, it may be reasonable to conclude that the employee may be impaired to the extent that continued performance of duties will constitute a real and present danger to personal safety or property. Pending a decision to test under this subsection or if testing is not available, the employee will be removed from:

(i) driving duties;

(ii) commercial driving duties which include:

(I) operating motorized equipment;

(II) inspecting, servicing, or conditioning any vehicle; or

(III) supervising, assisting with or loading or unloading a motor vehicle;

(iii) safety sensitive activities as described in §4.36(a) of this title (relating to Safety Sensitive Employees); or

(iv) crewmember duties.

(D) An employee will be reassigned to other duties, if appropriate, or required to take leave until:

(i) an alcohol test is administered and the employee's alcohol concentration measures less than 0.02;

(ii) twenty-four hours have elapsed following the determination that there is reasonable suspicion that the employee has violated the prohibitions concerning the use of alcohol or drugs; or

(iii) a drug test is administered and a negative result is reported by the medical review officer.

(E) The substance control officer will make an immediate inquiry into the circumstances and confer or counsel with the employee, as may be appropriate. The substance control officer will document whether testing is justified based on the supervisor's report and the substance control officer's independent analysis. Reasonable cause testing for any employee must be approved by the district engineer, division director, office director, applicable member of the

administration, or a designee not below the level of assistant district engineer, deputy division director, or director of administration, and by the program staff in the Human Resources Division.

(F) An alcohol test should be administered within two hours following an incident. If an alcohol test is not administered within two hours, the department will continue to try to test up to eight hours following an incident. The substance control officer will prepare a record stating the reasons the alcohol test was not promptly administered.

(G) A drug test should be administered as soon as possible. If a drug test is not administered within 32 hours following an incident, the department will cease attempts to administer a drug test, and prepare a record stating the reasons the test was not promptly administered.

(3) Training. All supervisors and substance control officers must be trained in the signs and symptoms of drug and alcohol use and on the department's policy and procedures related to reasonable cause testing prior to any testing determinations.

(c) Administrative and disciplinary actions.

(1) Consumption of an alcoholic beverage, the possession of an open container of an alcoholic beverage, dangerous drug possession or use, or the inappropriate use of an inhalant. An employee may be subject to administrative and disciplinary actions, including termination from the department for consumption of an alcoholic beverage, the possession of an open container of an alcoholic beverage, dangerous drug possession or use, or the inappropriate use of an inhalant.

(A) An employee in the workplace, while on duty, or while operating a state vehicle may not:

- (i) possess an open container of an alcoholic beverage or consume an alcoholic beverage;
- (ii) possess or take a dangerous drug whether orally or by inhalation or injection; or
- (iii) inappropriately use an inhalant.

(B) If an employee is directly observed participating in any of the prohibited activities outlined in this subsection, the following procedure will be used.

(i) The supervisor or substance control officer will immediately remove an employee from performing any duties listed in subsection (b)(2)(C) of this section.

(ii) If the supervisor has a reasonable suspicion that the employee is working under the influence at this time, based on documented observed physical, behavioral, or performance indicators, the employee will be sent for a reasonable cause test under subsection (b) of this section.

(iii) If the supervisor does not have sufficient documented observed indicators of the employee working under the influence at this time, the employee will be given an opportunity to offer a reasonable explanation for the observed circumstances and behaviors. At the same time, the supervisor or substance control officer will immediately provide the employee with a letter which:

(I) summarizes the observed circumstances and behavior;

(II) notifies the employee that the consumption of alcohol, the possession of an open container of an alcoholic beverage, the possession or use of dangerous drugs, or the inappropriate

use of an inhalant in the workplace, while on duty or while operating a state vehicle, subjects the employee to administrative and disciplinary actions;

(III) advises the employee that he or she is being given an opportunity to offer a reasonable explanation; and

(IV) advises the employee of the action to be taken if he or she refuses to explain his or her actions or if his or her response indicates that he or she violated the policies and prohibitions of subsection (a) of this section or is insufficient or not acceptable.

(iv) If the employee refuses to explain his or her actions or if the employee's response indicates that he or she has violated the policies and prohibitions of subsection (a) of this section or is insufficient or not acceptable or the supervisor has sufficient documented observed indicators of the employee under the influence or the employee has an alcohol test result of .04 or greater, then the supervisor or the substance control officer will mandatorily refer the employee to the EAP and require him or her to successfully complete treatment, under subsection (d) of this section. Additional disciplinary actions may also be taken. In addition, the employee will be removed from his or her official job duties and required to take sick leave, vacation leave, compensatory time or leave without pay if the employee has exhausted his or her accrued leave, until 24 hours have passed.

(v) If the employee has an alcohol test with a result of .02 or greater but less than .04 or the employee has been sent for a drug test, the supervisor or the substance control officer will remove the employee from official duties and the employee will be required to take sick leave, vacation leave, compensatory time or leave without pay, if the employee has exhausted his or her accrued leave, until:

(I) 24 hours have passed following the alcohol test; or

(II) a negative drug test result has been reported by the medical review officer.

(vi) If the employee has a drug test with a verified positive result, then the supervisor or the substance control officer will mandatorily refer the employee to the EAP and require him or her to successfully complete treatment, under subsection (d) of this section.

(vii) In addition to actions described in this subsection, an employee who has a positive drug test result or an alcohol test result of .04 or greater or who violates §4.34(b)(1)-(5) of this title (relating to Commercial Drivers) will complete the following requirements.

(I) The employee will undergo a return-to-duty alcohol or drug test. The alcohol test must indicate a result of less than .02 or a drug test must indicate a verified negative result. An employee who fails to pass a return-to-duty drug or alcohol test has not successfully completed treatment and will be terminated.

(II) The employee will provide a completed fitness-for-duty form as provided in subsection (d)(3) of this section prior to resuming any duties listed in subsection (b)(2)(C) of this section once he or she has completed the initial phase of treatment. An employee who is subject to §§4.34-4.36 of this subchapter and who is not required to provide a completed fitness-for-duty form as provided in subsection (d)(3) of this section, will still be subject to a return-to-duty test.

(III) The employee will undergo follow-up testing for alcohol or dangerous drugs for a period of up to 60 months

consisting of at least six tests in the first 12 months following the employee's return-to-duty. The number and frequency of follow-up testing shall be directed by the EAP staff. The EAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered. An employee who fails to pass a follow-up drug test or alcohol test with a result of .04 or greater has not successfully completed treatment and will be terminated.

(IV) The department will terminate the employee from employment unless he or she complies with all the requirements of subsection (d) of this section.

(viii) With the exception of employees subject to §4.34, §4.35, and §4.36 of this title (relating to Commercial Drivers, Crewmembers and Safety Sensitive Employees), the department will mandatorily refer an employee to the EAP if he or she:

(I) refuses to consent to an alcohol or drug test;
(II) fails to arrive at the testing site at the assigned time;

(III) fails to cooperate with the collection site person; or

(IV) refuses to sign the certification on the Breath Alcohol Testing form.

(ix) An employee who is mandatorily referred under clause (viii) of this subparagraph and is assessed by the EAP as needing assistance with a chemical dependency problem, will be subject to return-to-duty and follow-up testing as provided in clause (vii) of this subparagraph.

(2) Working under the influence. If a supervisor or substance control officer suspects an employee of working under the influence of alcohol, dangerous drugs, or inappropriately using inhalants based on a reasonable belief by a supervisor or substance control officer of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee, then the procedures described in subsection (c)(1)(B) of this section will be followed. If the employee denies the allegations, and the evidence is not conclusive, the supervisor or substance control officer will advise the employee that if it is subsequently discovered that he or she is working under the influence, then he or she will be subject to administrative and disciplinary actions.

(3) Impaired performance due to lawful use of drugs. When, due to the use of lawfully prescribed or over-the-counter substances, the employee is unable to perform his or her assigned duties or perform any duty in a safe manner, the employee will be subject to temporary reassignment of duties or be required to take sick leave, vacation leave, compensatory time or leave without pay if the employee has exhausted his or her accrued leave. A physician's statement will be required before an employee will be able to return to his or her regular duties.

(4) Voluntary admission of an alcohol, inhalant, or drug problem. An employee who voluntarily admits having a problem with alcohol, inhalant, or drug use will be mandatorily referred by his or her supervisor or substance control officer to the EAP and required to successfully complete treatment as described in subsection (d) of this section. Disciplinary action will not be taken against an employee because he or she voluntarily admits having a problem, provided that the admission occurs prior to a determination that the employee should be tested pursuant to §4.32, §4.34, §4.35 or §4.36 of this title (relating to All Department Employees, Commercial Drivers, Crewmembers, and Safety Sensitive Employees). The mandatorily

referred employee must successfully complete treatment and provide a letter to the substance control officer from the EAP staff or the treatment program's staff physician certifying successful completion.

(5) Conviction of criminal drug statute violations in the workplace. Employees are prohibited from violating criminal drug statutes in the workplace. If an employee fails to report his or her criminal drug statute violation within one work day upon return to work, he or she will be suspended for five working days without pay. (For FLSA exempt employees, such suspensions must be within the same work week.) This procedure will be followed within 30 days of discovery of the conviction.

(A) Employees who are convicted of criminal drug statute violations in the workplace which pertain to the sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs shall be terminated from the department.

(B) Employees who are convicted of criminal drug statute violations in the workplace which involve possession with the intent to use a dangerous drug shall be mandatorily referred by the employee's supervisor or the substance control officer to the EAP and required to successfully complete treatment, as described in subsection (d) of this section.

(6) Sale, distribution, transportation, or manufacture of dangerous drugs inside and/or outside the workplace. The illegal sale, distribution, transportation, manufacture or possession with intent to sell, distribute, transport or manufacture dangerous drugs by any employee inside or outside of the workplace is prohibited.

(A) If a final applicant for a department position has been convicted of felony charges related to the selling, distributing, transporting, or manufacturing of dangerous drugs and he or she is on probation or parole for that conviction, he or she will not be hired by the department. If an applicant is hired by the department, and it is later discovered that the employee had been convicted prior to employment with the department and is on probation or parole for one of these acts, he or she will be immediately terminated from the department.

(B) If an employee is arrested, charged, or indicted for selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, the employee or his or her designated agent shall report the arrest, charge, or indictment directly to the employee's supervisor or substance control officer within one work day upon return to work after its occurrence. Failure to report the arrest, charge or indictment will subject the employee to suspension for five working days without pay. (For FLSA exempt employees, such suspensions must be within the same work week.)

(C) If an employee is convicted of selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, he or she will be terminated from the department. The employee or his or her designated agent shall report the conviction immediately to the employee's supervisor or substance control officer within one work day upon return to work after its occurrence. If the conviction is not reported, the employee will be terminated when the department discovers the conviction.

(D) If an employee voluntarily admits to selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, he or she will be terminated from the department. An employee must sign a statement admitting his or her actions prior to termination.

(E) If an employee is reasonably suspected of selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, due to direct observation of such acts in the workplace or by other reason such as the indictment, arrest, or charge of selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace the following procedure shall be followed.

(i) The employee's supervisor will place the employee on immediate suspension with pay (administrative leave), pending appropriate investigation and confirmation by the department. If such acts are confirmed by the substance control officer, the employee will be terminated from the department.

(ii) The employee shall immediately be provided with a letter which:

(I) summarizes the facts upon which such action is taken;

(II) notifies the employee that selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace subjects the employee to termination from the department;

(III) advises the employee that he or she will have a specified period of time in which to provide a reasonable explanation to his or her supervisor or substance control officer; and

(IV) advises the employee that if his or her response indicates that he or she violated the policies and prohibitions of this title or if it is insufficient or not acceptable or if an investigation by law enforcement, the department, or other authorities confirms the suspicion, the employee will be terminated from the department.

(iii) The employee shall be terminated from the department if:

(I) the employee fails to respond within the specified period or to provide an acceptable explanation; or

(II) investigation by law enforcement or other authorities confirms the suspicion that the employee was selling, distributing, transporting, or manufacturing dangerous drugs.

(iv) If the investigation reveals that the employee was using dangerous drugs inside the workplace and not selling, distributing, transporting or manufacturing dangerous drugs inside and/or outside the workplace, the employee will be mandatorily referred by his or her supervisor or substance control officer to the EAP and required to successfully complete treatment, as described in subsection (d) of this section.

(v) If the investigation reveals that the employee was using dangerous drugs outside the workplace and not selling, distributing, transporting, or manufacturing dangerous drugs inside and/or outside the workplace, the employee will be made aware of the department's employee assistance program.

(vi) When suspicious behavior is observed in the workplace, the substance control officer shall contact the Office of General Counsel or the program staff of the Human Resources Division at the earliest possible time before turning the matter over to law enforcement authorities.

(7) Suspicious substance found. If a substance which appears to be a dangerous drug is found within an area under the effective control of an employee, actions contained in subsection (c)(6) of this section shall be followed.

(8) New employees. If an employee has a positive drug test result or an alcohol test result of .04 or greater, or refuses to take a drug or alcohol test in his or her initial six month probation period, he or she will be terminated.

(9) Recurrence of substance abuse. Upon the need to mandatorily refer an employee to the EAP for the second time for treatment under the department's substance abuse program, including mandatory referrals made under §4.34, §4.35, and §4.36 of this title, the employee will not be referred but will be terminated from the department. An employee who received and completed two mandatory referrals prior to January 1, 1999, will be terminated if the employee needs to be mandatorily referred for a third time. An employee who received and completed one mandatory referral prior to January 1, 1999, will be mandatorily referred for the second time, if necessary, and will be terminated if needs to be mandatorily referred for a third time. The following mandatory referrals will not count as one of the mandatory referrals which would result in termination:

(A) if an employee who is assessed by the EAP as not needing assistance with a chemical dependency problem on his or her first mandatory referral; or

(B) an employee who is referred for a DUI/DWI conviction under §4.33 of this title (relating to Employees Who Drive For The Department).

(10) Failure to successfully complete treatment. Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to report to the EAP or fail to successfully complete treatment. Successful completion of treatment must be certified by the EAP, in writing, to the employee's substance control officer.

(d) Mandatory referral and treatment.

(1) Mandatory referral. Except for policy violations which involve the sale, distribution, transportation or manufacture of dangerous drugs, refusing a required alcohol or drug test under §4.34, §4.35, and §4.36 of this title, or a second occurrence of substance abuse after successful completion of treatment (except as provided in subsection (c)(9) of this section), an employee who voluntarily admits to or is otherwise established to have an alcohol, inhalant or drug abuse problem shall be mandatorily referred to the EAP. Employees who are mandatorily referred to the EAP will be removed from duties as listed in subsection (b)(2)(C) of this section and reassigned to other duties, if available, until he or she is able to provide a completed fitness-for-duty form as provided in paragraph (3) of this subsection. The employee's supervisor or substance control officer will meet with the employee to make the mandatory referral. During this meeting:

(A) the supervisor or substance control officer will contact the EAP;

(B) the supervisor or substance control officer will tell the EAP counselor that a mandatory referral is being made, the type of employee, the employee's name, the reason for the mandatory referral and any other background information requested by the counselor; and

(C) the supervisor or substance control officer will have the employee talk to the EAP counselor, in private, to make an appointment.

(2) Treatment. The department will pay for the cost of EAP counseling sessions, which includes an initial assessment. Employees who are referred by EAP to an outside treatment provider or counselor are responsible for any costs incurred as a result of the referral. Referral sources may be covered by the employee's

insurance plan. An EAP counselor shall evaluate a referred employee to determine the extent of the dependence upon alcohol, inhalants, or drugs and, as may be appropriate, will refer the employee to treatment, which will include one or more of the following.

(A) Inpatient treatment program. Employees participating in an inpatient rehabilitation treatment program will not be able to work while enrolled in the program.

(B) Intensive outpatient treatment program. This program provides individual counseling, group therapy, and educational services for varying lengths of time, normally up to 10 weeks, and also includes an aftercare program. Employees participating in an outpatient program will normally be able to continue to work while participating in the program.

(C) Counseling program. This program provides education and/or counseling sessions. The EAP staff, in consultation with the counseling program staff, will prescribe the content, frequency, and duration of these sessions, as appropriate, and may include group or individual education and/or counseling sessions.

(3) Fitness-for-duty. The employee will be required to obtain a completed fitness-for-duty form prior to resuming any duties listed in subsection (b)(2)(C) of this section once he or she has completed the initial phase of treatment.

(A) The EAP counselor will refer the employee to a medical doctor or other licensed practitioner to complete a fitness-for-duty form. The supervisor or substance control officer will send a copy of the employee's job description, including a list of all driving, commercial driving, crewmember and safety sensitive duties to the EAP.

(B) The EAP counselor will provide written notification to the employee's substance control officer if the employee does not need assistance with a chemical dependency problem. In this case, a completed fitness-for-duty form will not be required.

(4) Certification of successful treatment. After successfully completing treatment, completion must be certified by the EAP, in writing, to the employee's substance control officer.

(e) Education. The department will conduct an alcohol and drug-free awareness program which will provide all employees and supervisors with training regarding the department's policy, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol, inhalant, and drug abuse in the workplace, and the available employee assistance and treatment programs.

§4.33. *Employees Who Drive For The Department.*

(a) Applicability. Employees who are authorized to drive for the department are subject to §4.32 of this title (relating to All Department Employees), as well as the requirements of this section.

(b) Final applicant.

(1) When driving is an essential or marginal function of the job, the department will only offer a position to a final applicant who has been convicted of one DUI/DWI within the last three years, from the date of application, if he or she agrees to:

(A) successfully complete treatment; and

(B) comply with the procedures described in subsection (f) of this section.

(2) The department will not hire a final applicant for a position when driving is an essential or marginal function of the job

if he or she has been convicted of two DUI/DWIs within the last three years from the date of application.

(3) The department will not hire a final applicant for a seasonal position requiring driving as an essential function if he or she has been convicted of a DUI/DWI within the last three years from the date of application.

(c) Driver list. District engineers, division directors, office directors, and applicable members of the administration will maintain a current list of all employees who are authorized to drive for the department. Each district engineer, division director, office director, applicable member of the administration, or designee will be responsible for checking each listed employee's driving record not less than once a year, and employees who drive for the department who are subject to this policy will be required to sign the DUI/DWI Policy and Driving Requirements Policy Statement of Notification.

(d) Driver's license suspension. If an employee has his or her license suspended due to Administrative License Revocation for an arrest or conviction of a DUI/DWI or due to any other alcohol or drug related arrest or conviction, the employee is required to report the suspension within one work day upon return to work to his or her supervisor.

(1) If an employee does not report the license suspension and it is subsequently discovered by the department that the employee has driven for the department with a suspended license, the employee will be terminated.

(2) If an employee does not report the license suspension and has not driven for the department with a suspended license, the employee will be taken off driving duties until the employee shows proof of a valid driver's license. The employee will also be counseled and suspended for five working days without pay. (For FLSA exempt employees, such suspensions must be within the same work week.)

(e) Occupational driver's license. An employee must have a valid driver's license to drive for the department. An occupational driver's license will be accepted if it allows the employee to perform his or her usual driving duties for the department. Otherwise, employees without a valid driver's license will be removed from all driving duties and the supervisor will assign non-driving duties, if available.

(f) Conviction of a DUI/DWI. If an employee is convicted of a DUI/DWI, the following procedures shall be followed.

(1) The employee shall notify his or her supervisor of a conviction within one work day upon return to work after receiving the conviction. If an employee does not report the conviction, and it is subsequently discovered by the department, the employee will be suspended for five working days without pay. (For FLSA exempt employees, such suspensions must be within the same work week.)

(2) The employee will be immediately provided with a letter which summarizes the following actions to be taken.

(A) The supervisor will immediately remove the employee from any duties listed in §4.32(b)(2)(C) of this title and assign other duties, if available, until he or she is able to provide a completed fitness-for-duty form as provided in §4.32(d)(3) of this title.

(B) The department will mandatorily refer the employee to the EAP and require successful completion of treatment, as described in §4.32(d) of this title. The department will terminate employees who do not report to the EAP or fail to successfully complete treatment.

(C) The employee must have a valid driver's license or an occupational driver's license that allows performance of usual driving duties before being reinstated to driving for the department.

(3) An employee who receives a letter informing him or her of these actions must acknowledge receipt by signing the letter and returning it to the supervisor.

(4) An employee who is convicted of two DUIs/DWIs within a five year period beginning on or after November 1, 1995, during his or her employment with the department, will be terminated from the department. If the conviction is appealed and overturned, the employee will be reinstated.

§4.34. Commercial Drivers.

(a) **Applicability.** An employee who is a commercial driver is subject to all of §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), as well as the requirements of this section.

(b) **Prohibitions.** A commercial driver is prohibited from:

(1) reporting to work within four hours of consuming alcohol;

(2) reporting to work or remaining at work while under the influence of alcohol or dangerous drugs;

(3) consuming or possessing alcohol while on duty or while driving a commercial motor vehicle;

(4) using alcohol within eight hours following an accident or prior to undergoing a post-accident alcohol test, whichever comes first;

(5) having a positive drug test result or an alcohol test result of .04 or greater; and

(6) refusing to submit to a required alcohol or drug test.

(c) **Testing.**

(1) **Pre-employment testing.**

(A) The department shall not hire or employ a final applicant for a position as a commercial driver unless that person passes a drug test. A current employee, who is a final applicant for a commercial driver position, including transfers and promotions, must pass a drug test unless he or she has previously been drug tested by the department during the preceding three year period, and all drug test results were negative. A current employee who fails a drug test will not be hired for that position, and will be mandatorily referred to the EAP and required to successfully complete treatment, as described in §4.32(d) of this title.

(B) The department will notify a final applicant of the results of a pre-employment drug test if the applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The department will also inform the applicant which drugs were verified as positive.

(C) The department will request information from previous or current employers on final commercial driver applicants, pursuant to the driver's written authorization, if the final applicant (including an employee who is transferred or promoted) has performed commercial driving duties during the preceding two years from the date of application. Information to be requested will include:

(i) alcohol tests with a result of .04 alcohol concentration or greater;

(ii) verified positive controlled substances test results; and

(iii) refusals to be tested.

(D) The department shall not use a driver to perform driving or safety sensitive duties as described in §4.36(a) of this title (relating to Safety Sensitive Employees) if the department believes that the driver has violated any of the prohibitions in subparagraph (C)(i-iii) of this paragraph without receiving the required treatment, as stated on the Release Form for Evaluation/Treatment Records from Substance Abuse Professionals. If the employee has not completed the required treatment, the employee will be terminated.

(2) **Post-accident testing.** A commercial driver who is directly involved in a serious accident, or in any accident in which the events and circumstances give rise to a reasonable suspicion that the employee is under the influence of alcohol or dangerous drugs at the time of the occurrence, in accordance with paragraph (3) of this subsection, is subject to post-accident alcohol and drug testing.

(A) If a commercial driver does not remain readily available for such testing, the substance control officer may record that the employee refused to submit to testing.

(B) Nothing in this section will be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(C) No commercial driver required to take a post-accident alcohol test may use alcohol for eight hours following the accident or until he or she undergoes an alcohol test, whichever occurs first.

(D) An alcohol test should be administered within two hours following the accident. If an alcohol test is not administered within two hours, the department will continue to try to test up to eight hours following the accident. The substance control officer will prepare a record stating the reasons the test was not promptly administered.

(E) A drug test should be administered as soon as possible. If a drug test is not administered within 32 hours following the accident, the substance control officer will cease attempts to administer a drug test, and prepare a record stating the reasons the test was not promptly administered.

(F) The results of a breath or blood test for the use of alcohol or a urine test for the use of dangerous drugs, conducted by federal, state, or local officials having independent authority for the test, will be considered to meet the requirements of this section, provided such tests conform to applicable federal, state or local requirements, and that the department obtains the results of the tests.

(3) **Reasonable cause testing.** Reasonable cause testing of all department employees will be conducted under §4.32(b) of this title.

(4) **Random testing.** All commercial drivers are subject to random alcohol and drug testing.

(A) A commercial driver subject to random testing for dangerous drugs and alcohol will be selected for testing on a random basis in a manner to ensure that each commercial driver has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process will be such that a commercial driver's chance of selection continues to exist throughout his or her employment in a commercial driver position.

(B) The Human Resources Division will ensure that commercial drivers are tested on a random basis at an annual rate of at least 10% but not more than 25% for alcohol testing and not less than 50% for drug testing. The percentage is based on respective employee categories in each payroll unit or equivalent work unit. The frequency of testing will also be at random, but will be sufficient to assure that the number of random tests conducted annually will be at least 10% but not more than 25% for alcohol or not less than 50% for drugs of the number of commercial drivers.

(C) Random selection of commercial drivers may be accomplished by periodically selecting one or more sections and testing all commercial drivers, provided each section remains equally subject to selection.

(d) Administrative and disciplinary actions.

(1) Violations. A commercial driver who violates subsection (b)(1)-(5) of this section will be subject to the administrative and disciplinary actions described in §4.32(c)(1)(B) of this title.

(2) Remove from duties. The supervisor or substance control officer will immediately remove a commercial driver from performing the duties listed in §4.32(b)(2)(C) of this title and assign other duties to the employee, if available, until he or she meets all of the criteria listed in §4.32(d)(3) of this title.

(3) Refusal to consent to testing. The department will terminate a commercial driver from employment if he or she:

(A) refuses to consent to an alcohol or drug test;

(B) fails to arrive at the testing site at the assigned time;

(C) fails to cooperate with the collection site person; or

(D) refuses to sign the certification on the Breath Alcohol Testing form.

(e) Mandatory referral and treatment.

(1) Mandatory referral. A mandatory referral to the EAP will be made pursuant to §4.32 (d) of this title.

(2) Treatment. The policies and procedures for EAP treatment are described in §4.32(d)(2) of this title.

(f) Education. All commercial drivers and supervisors of commercial drivers will receive training on the effects and consequences of alcohol and drug use on personal health, safety, and the work environment and the manifestations and behavioral changes that may indicate alcohol or drug use.

§4.35. Crewmembers.

(a) Applicability. An employee who is a crewmember is subject to §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department) and the prohibitions in §4.34(b) of this title (relating to Commercial Drivers), as well as the requirements of this section.

(b) Testing.

(1) Pre-employment testing. Pre-employment testing for a crewmember will be conducted pursuant to §4.34(c)(1) of this title.

(2) Post-accident testing. An alcohol test and a drug test will be administered to a crewmember who is directly involved in a serious marine accident pursuant to §4.34(c)(2) of this title. Testing should be done as soon as practicable even if it is after the specified time period.

(3) Reasonable cause testing. Testing will be conducted pursuant to §4.32(b) of this title.

(4) Random testing. All crewmembers are subject to random testing for alcohol and dangerous drugs, as described in §4.34(c)(4) of this title. Random selection of crewmembers may be accomplished by periodically selecting one or more shifts and testing all crewmembers, provided each shift remains equally subject to selection.

(e) Administrative and disciplinary actions.

(1) Violations. A crewmember who violates §4.34(b)(1)-(5) of this title will be subject to the administrative and disciplinary actions described in §4.32(c)(1)(B) of this title.

(2) Reporting and removal from duties. The substance control officer shall report the positive test result, in writing, to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI) and shall have the supervisor remove the individual from duties which directly affect the safe operation of the vessel as soon as practicable. The supervisor or substance control officer will immediately remove a crewmember from duties listed in §4.32(b)(2)(C) of this title and assign other duties, if available, until he or she meets all of the criteria listed in §4.32(d)(3) of this title.

(3) Medical review officer assessment. The employee will be required to be assessed and found by the medical review officer to be drug-free and to pose a sufficiently low risk for subsequent illegal drug use to justify his or her return to work.

(4) Refusal to consent to testing. A crewmember will be terminated if he or she engages in any of the behaviors described in §4.34(d)(3) of this title.

(d) Mandatory referral and treatment.

(1) Mandatory referral. A mandatory referral to the EAP will be made pursuant to the policies and procedures of §4.32(d) of this title.

(2) Treatment. The policies and procedures for EAP treatment are described in §4.32(d)(2) of this title.

(e) Education. Training shall be conducted for crewmembers and their supervisors. The training shall be at least 60 minutes in length and shall address the effects and consequences of drug and alcohol use on personal health, safety and the work environment; and the manifestations and behavioral changes that may indicate drug and alcohol use.

§4.36. Safety Sensitive Employees.

(a) Applicability. An employee in a safety sensitive position is subject to §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department) and the prohibitions in §4.34(b) of this title (relating to Commercial Drivers) as well as the requirements of this section. A position is considered safety sensitive for the purposes of this subsection if the employee holding the position performs one or more of the following activities or job functions at least four times within a 12 month period.

(1) The employee operates a motor vehicle along a roadway in traffic in a fashion not usual to normal traffic. This includes driving slowly along the roadway or right of way, frequently pulling in and out of traffic, making frequent turns and stops, and getting in and out of a vehicle near traffic. Vehicle operation in this unusual manner in high speed traffic produces a high risk of causing immediate, catastrophic consequences. Examples of activities that fit this description include:

- (A) inspecting roadways and bridges for repairs;
- (B) inspecting barricades, traffic control devices, and traffic control setups;
- (C) inspecting maintenance projects such as bridge/roadway repairs or sign and striping operations;
- (D) assisting stranded motorists;
- (E) inspecting materials and work being performed at construction sites when unusual driving is required;
- (F) inspecting vegetation growing along roadways;
- (G) inspecting utility placements on roadways and rights of way;
- (H) inspecting driveway placements;
- (I) inspecting restorations of state rights of way;
- (J) supervising the installation of signals;
- (K) supervising sign installation;
- (L) monitoring ramp meters;
- (M) inspecting barrier fences;
- (N) inspecting for damaged signs;
- (O) inspecting draw bridges;
- (P) inspecting employee safety at maintenance and construction sites; or
- (Q) driving trucks that are operated in support of road crews.

(2) The employee performs job duties, other than driving, on highways or rights of way, in or around traffic, such as:

- (A) repairing signals;
- (B) installing signals;
- (C) flagging traffic and assisting with traffic control;
- (D) installing reflective pavement markings;
- (E) repairing roadway surfaces and bridges;
- (F) performing water blasting;
- (G) setting up and taking down signs and barricades;
- (H) picking up litter on the right of way;
- (I) removing encroachments from state rights of way;
- (J) cleaning road signs;
- (K) replacing signs;
- (L) repairing sign illumination;
- (M) clearing debris from roadways and rights of way;
- (N) inspecting/reviewing construction contract work;
- (O) inspecting maintenance contract and operation work;
- (P) drilling foundation cores; or
- (Q) surveying crew operations.

(3) The employee uses dangerous chemicals/materials around other employees and/or the traveling public in the following manner:

- (A) performs lab tests which require the use of materials which are combustible, flammable, toxic or corrosive;
- (B) tests materials which are combustible, flammable, toxic or corrosive;
- (C) operates photoprocessing equipment used in a laboratory to process film which requires the use of materials which are combustible, flammable, toxic or corrosive;
- (D) silkscreens signs which requires the use of materials which are combustible, flammable, toxic or corrosive;
- (E) cuts or welds materials using combustible, flammable, toxic or corrosive materials; or
- (F) uses or transports a nuclear density gauge.

(4) The employee operates specialized maintenance/construction or heavy equipment in and around traffic or around one or more other employees. Examples of large/heavy equipment that fit this description include, but are not limited to hole diggers, rotary brooms, front end loaders, aerial buckets, snow plows, pony blades, epoxy machines, ladder trucks, cable lift hysters, rollers, cranes, paint machines, bulldozers, chip spreaders, rotomillers, backhoes, drilling augers, steel wheel pneumatic compacters, maintainers, wing plows, bucket trucks, drag lines, mechanical rig runners, maze meters, forklifts, and right of way mowers.

(5) The employee operates aircraft or swing bridges. The operation of aircraft or swing bridges carries with it a high risk of potential harm such that a single drug or alcohol related lapse could have immediate, irremediable, and calamitous consequences to employees, passengers, and/or the traveling public.

(6) The employee conducts or assists with underwater bridge inspections. The performance of this activity carries with it a high risk of potential harm such that a single alcohol or drug related lapse could have immediate, irremediable, and calamitous consequences to other employees or themselves.

(b) Testing.

(1) Pre-employment testing. Pre-employment testing shall be conducted pursuant to §4.34(c)(1) of this title.

(2) Post-accident testing. An alcohol test and a drug test will be administered to a safety sensitive employee who is directly involved in a serious accident under §4.34(c)(2) of this title.

(3) Reasonable cause testing. Testing will be conducted under §4.32(b) of this title.

(c) Administrative and disciplinary actions.

(1) Violations. Employees in safety sensitive positions who violate §4.34(b)(1)-(5) of this title will be subject to the administrative and disciplinary actions described in §4.32(e)(1)(B) of this title.

(2) Removal from duties. The supervisor or substance control officer will immediately remove a safety sensitive employee from duties listed in §4.32(b)(2)(C) of this title and assign other duties, if available, until he or she meets all of the requirements listed in §4.32(d)(3).

(3) Refusal to consent to testing. A safety sensitive employee will be terminated if he or she engages in any of the behaviors described in §4.34(d)(3) of this title.

(d) Mandatory referral and treatment.

(1) **Mandatory referral.** A mandatory referral to the EAP will be made pursuant to the policies and procedures of §4.32(d) of this title.

(2) **Treatment.** The policies and procedures for EAP treatment are described in §4.32(d)(2) of this title.

(e) **Education.** Training shall be conducted for employees in safety sensitive positions and their supervisors. The training requirements are described in §4.34(f) of this title.

§4.37. *Test Procedures.*

(a) **Drug and alcohol testing.** An individual who is required to undergo an alcohol or drug test, will be requested to sign a consent form and to report to a collection site, or in the case of an alcohol breath test to report to a test site to be designated by the department. All alcohol and drug tests will be conducted at department expense with the exception of the split specimen test as discussed in subsection (c) of this section.

(b) **Drug test administration.** Collection site personnel will administer drug tests according to Department of Health and Human Services (DHHS) guidelines. DHHS guidelines are summarized as follows.

(1) **Specimen collection procedures.**

(A) A chain of custody for each specimen to be chemically tested will be established and maintained from the time of specimen collection through the testing of the specimen.

(i) If a specimen is not immediately prepared for shipment, it will be safeguarded during temporary storage.

(ii) Every effort will be made to minimize the number of persons handling specimens.

(B) Specimen collection and shipping will be conducted as follows.

(i) Procedures for collecting urine specimens will allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(ii) To deter the dilution of specimens at the collection site, toilet bluing agents will be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There will be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(iii) When an individual arrives at the collection site, the collection site person will request the individual to present photo identification. If the individual's identity cannot be established, the collection site person will not proceed with the collection. If the employee requests, the collection site person will show his or her identification to the employee.

(iv) The collection site person will ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person will ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests a receipt for any personal belongings, the collection site person will provide it.

(v) The individual will be instructed to wash and dry his or her hands prior to urination.

(vi) After washing hands, the individual will remain in the presence of the collection site person and will not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(vii) The individual may provide his or her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(viii) The collection site person shall instruct the employee to provide at least 45 ml under the split sample method of collection in which 30 ml will be used as the primary specimen and 15 ml will be used as the split specimen.

(ix) If the individual is unable to provide an adequate quantity of urine, the collection site person will instruct the individual to drink up to 40 ounces of fluids, distributed reasonably through a period of up to three hours, or until the individual has provided a new urine specimen, whichever occurs first. The original insufficient specimen will be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen will be discarded, testing discontinued, and the department so notified. The medical review officer will refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test.

(x) Both the individual being tested and the collection site person shall keep the specimen in view at all times after the specimen is given, prior to the specimen being sealed and labeled. The specimen shall be sealed with a tamperproof seal over the bottle cap and down the sides of the bottle, and labeled in the presence of the employee.

(xi) The collection site person shall place an identification label securely on the bottle which contains the date, the individual's specimen number, and any other identifying information provided or required by the department. If separate from the label, the tamperproof seal shall also be applied. The individual being tested shall be present during these procedures.

(xii) The individual shall initial the identification label on the specimen bottle to certify that it is the specimen collected from that individual.

(xiii) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from that individual is in fact the specimen he or she provided.

(xiv) The collection site person will note any unusual employee behavior or appearance in the permanent record book.

(xv) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen will be obtained as soon as possible under the direct observation of a same gender collection site person.

(xvi) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this subchapter, including a properly equipped mobile facility. A designated collection site will have an enclosure where private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(xvii) If a collection site facility is dedicated solely to urine collection, the department will secure it at all times. If a facility cannot be dedicated solely to drug testing, the department will secure the portion of the facility used for testing during drug testing.

(xviii) Specimens will be shipped by an expeditious means to the laboratory.

(2) Laboratory analysis procedure.

(A) Each specimen will be analyzed in accordance with DHHS guidelines which requires testing for the following substances:

- (i) marijuana;
- (ii) cocaine;
- (iii) opiates;
- (iv) phencyclidine (PCP), and
- (v) amphetamines.

(B) DHHS guidelines presently specify the following confirmatory test cutoff levels.

Figure 1: 43 TAC 4.37(b)(2)(B)

(C) The initial test will use an immunoassay screen which meets the requirements of the Food and Drug Administration for commercial distribution.

(D) All specimens identified as positive on the initial test will be confirmed by a confirmatory test using gas chromatography/mass spectrometry (GC/MS) techniques.

(E) A specimen which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established in DHHS guidelines is reported to the medical review officer as positive.

(F) Quality assurance and quality control designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs will be in accordance with DHHS guidelines.

(3) Reporting and reviewing of drug test results.

(A) The laboratory will report all test results as required within an average of five days after the laboratory receives the specimen.

(B) The laboratory will report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive are reported positive to the medical review officer for a specific drug or drug metabolite.

(C) The medical review officer will review and interpret all test results before transmitting the results to the department. In carrying out this responsibility, the medical review officer will examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The medical review officer will review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

(D) Prior to making a final decision to verify a positive test result, the medical review officer will contact the individual directly, on a confidential basis, to discuss the test result with him or her.

(i) If, after making all reasonable efforts and documenting them, the medical review officer is unable to reach the individual directly, the medical review officer will contact the substance control officer who will direct the individual to contact the medical review officer as soon as possible or within 24 hours. If this becomes necessary, the requirement that the employee contact the medical review officer is held in confidence. If after making all reasonable efforts, the substance control officer is unable to contact the employee, the substance control officer will notify the medical review officer that he or she was unable to make contact with the employee. The substance control officer will continue to try and contact the employee until otherwise notified by the medical review officer.

(ii) The medical review officer may verify a test as positive without having communicated directly with the employee about the test if:

(I) the employee expressly declines the opportunity to discuss the test;

(II) neither the medical review officer or the substance control officer, after making all reasonable efforts, has been able to contact the employee within 14 days of the date on which the medical review officer receives the confirmed positive test result from the laboratory; or

(III) the substance control officer has successfully made and documented a contact with the employee and instructed the employee to contact the medical review officer and more than five days have passed since the date the employee was successfully contacted by the substance control officer.

(iii) If a test is verified positive as described in subparagraph (D)(ii)(II) or (III) of this paragraph, the employee may present to the medical review officer information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from being contacted by the medical review officer or substance control officer or from timely contacting the medical review officer. The medical review officer, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the medical review officer concludes that there is a legitimate explanation, the medical review officer will declare the test to be negative.

(E) In the case of an individual holding a license, certificate of registry or merchant mariners document, the department shall report the positive drug test result in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI) pursuant to 46 C.F.R. §16.201, Application.

(c) Test of split specimen. A final applicant or employee may appeal the results of a positive drug test by following the procedures listed below.

(1) Final applicants or employees must request, in writing, that the split specimen be provided to another DHHS certified laboratory for testing.

(2) The applicant or employee must make the request, in writing, to the medical review officer within 72 hours after notification of a confirmed positive test result. The same medical review officer will be used to interpret the results of the split specimen test. All the costs related to the split specimen test are at the expense of the final applicant or employee.

(3) In the event that the result of the split specimen test is negative, indicating that the positive result of the first test

was erroneous, the department will reimburse the final applicant or employee for the cost of the split specimen test.

(4) If an employee has not contacted the medical review officer within 72 hours as provided under this subsection, the employee may present to the medical review officer information documenting that serious illness, injury, inability to contact the medical review officer, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the medical review officer. If the medical review officer concludes that there is a legitimate explanation for the employee's failure to contact the medical review officer in 72 hours, the medical review officer shall direct that the analysis of the split specimen be performed.

(5) The medical review officer will report and review split specimen test results as provided in subsection (b)(3)(C) of this section.

(d) Alcohol test administration. Alcohol tests may be conducted on either blood or breath specimens. A blood or breath alcohol test level of 0.04 or greater is considered to be a positive test result for alcohol. Alcohol blood tests will be administered according to Coast Guard guidelines.

(1) Breath testing procedure. The breath alcohol technician (BAT) will administer breath alcohol tests according to Federal Highway Administration (FHWA) guidelines as follows.

(A) The BAT will complete a breath alcohol testing form for the initial breath test and for the confirmatory breath test.

(B) The BAT will conduct a breath alcohol test as follows.

(i) A BAT will administer the tests, except that a BAT qualified supervisor of the employee may not conduct the breath alcohol test.

(ii) The BAT will conduct the alcohol testing in a location that affords visual and aural privacy, sufficient to prevent unauthorized persons from seeing or hearing test results.

(iii) The BAT will require the employee to provide positive identification (through use of a photo I.D. card or identification by a department representative). If the employee requests identification, the BAT will provide it to the employee.

(iv) The BAT will explain the testing procedure to the employee.

(v) The BAT and the employee will complete Part I of the Breath Alcohol Testing Form (as prescribed by the U.S. Department of Transportation) prior to the breath test which includes the employee signing the certification. Refusal by the employee to sign this certification will be regarded as a refusal to take the test.

(vi) The BAT will open an individually sealed mouth piece in view of the employee and attach it to the Evidential Breath Testing Device (EBT) for both the initial and confirmatory tests.

(vii) The BAT will use a log book in conjunction with any EBT used for screening tests that does not meet the requirements of the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL).

(viii) The BAT will instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(ix) If an adequate amount of breath is not obtained, the BAT will again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT will immediately inform the substance control officer.

(x) If the employee attempts and fails to provide an adequate amount of breath, the BAT will so note in the "Remarks" section of the breath alcohol testing form and immediately inform the substance control officer.

(xi) If the result of the initial test is a breath alcohol concentration of less than 0.02, the BAT and employee will complete the form. No further testing is authorized.

(xii) If the result of the initial test is an alcohol concentration of 0.02 or greater, the BAT will conduct a confirmatory test within 20 minutes of the completion of the screening test. The BAT will instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch. The BAT will explain to the employee the reason for this requirement (to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT will also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. The results of the confirmatory test are final.

(xiii) If a BAT other than the one who conducted the screening test is conducting the confirmatory test, the new BAT will initiate a new Breath Alcohol Testing form.

(xiv) If the employee attempts and fails to provide an adequate amount of breath, the substance control officer will direct the employee to obtain, at their own expense, as soon as practical, an evaluation from a licensed physician to determine whether a medical condition could have precluded the employee from providing an adequate amount of breath. If such a medical condition exists, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test.

(xv) If the licensed physician is unable to make a determination whether or not an employee has a medical condition that precluded them from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath will be regarded as a refusal to take a test.

(xvi) A mobile collection facility may be used if it meets the requirements of this item (ii) of this subparagraph. In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet these requirements but the BAT will provide visual and aural privacy to the greatest extent practicable.

(xvii) No unauthorized persons will be permitted access to the testing location.

(C) A breath alcohol test will be invalid under the following circumstances:

(i) the Breath Alcohol Technician (BAT) does not observe the minimum 15-minute waiting period prior to the confirmatory test;

(ii) the BAT does not perform an air blank of the EBT before a confirmatory test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test;

(iii) the BAT does not sign the Breath Alcohol Testing form;

(iv) the BAT fails to note on the remarks section of the Breath Alcohol Testing form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result; or

(v) an EBT fails to print a confirmatory test result.

(2) Report and review of alcohol test results. The BAT will transmit all results of the initial and confirmatory tests to the substance control officer in a confidential manner.

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

Filed with the Office of the Secretary of State on November 23, 1998.

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Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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

Chapter 17. Vehicle Titles and Registration

Subchapter A. Motor Vehicle Certificates of Title

43 TAC §17.10

The Texas Department of Transportation adopts new §17.10, concerning the recording of restitution liens on motor vehicles. New §17.10 is adopted with changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9293).

EXPLANATION OF ADOPTION AMENDMENTS

House Bill 2830, 75th Legislature, 1997, amended Texas Code of Criminal Procedure, Article 42.21, to provide that a victim or attorney for the state may file a restitution lien against any interest in a motor vehicle owned by a criminal defendant in order to secure payment of restitution, fines, or costs ordered by the court. Article 42.21 was renumbered to Article 42.22, as there was an existing Article 42.21.

New §17.10 establishes that the purpose of the section is to provide procedures for a person to file a restitution lien on a motor vehicle in accordance with Transportation Code, Chapter 501, defines words and terms, and identifies persons who may file a restitution lien. The section also requires that certain documents and fees be filed with the county tax assessor-collector's office to perfect a restitution lien. The documents include evidence of motor vehicle ownership, a copy of the court order, and an affidavit containing information about the defendant, the court action, and the vehicle description.

RESPONSE TO COMMENTS

Written comments were submitted by the Texas Automobile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA) with suggested changes. The comments did not indicate whether the commentators were in favor of or against the rule.

Comment: All commentators noted that reference to the Code of Criminal Procedure, Article 42.21 was in error, and should read Article 42.22.

Response: The department agrees and has amended §17.10(a) and §17.10(d)(E) to reflect Article 42.22.

Comment: TIADA expressed concern regarding the "evidence of ownership" which must be submitted with the restitution lien application and questioned whether a non-negotiable or "Duplicate Original" title would satisfy the requirements of §17.3(c) as "other evidence of ownership."

Response: The department does not feel further clarification is needed as §17.10(d) states the restitution lien shall be perfected in accordance with Transportation Code, Chapter 501, which requires that negotiable evidence of ownership to a motor vehicle be surrendered with an application for title. Additionally, Transportation Code, §501.029 and 43 TAC §17.3(d)(2) state that a non-negotiable title may only be used as evidence of title to a motor vehicle and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien on the vehicle.

Comment: All commentators commented that it is unclear to whom the certificate of title is to be delivered or sent and what affect the filing of a restitution lien would have on an existing lien. The commentators questioned who receives the original title in cases when a restitution lien is filed and there is a superior and prior lien on the certificate of title, and when there is not a superior and prior lien.

Response: The department has determined that Code of Criminal Procedure, Article 42.22, §9, sufficiently addresses the priority of restitution liens. It states that the restitution lien is inferior to a "lien perfected on a motor vehicle as provided by Chapter 501." In accordance with Transportation Code, §501.027, the department will send the "original" certificate of title to the first lienholder as disclosed on the application, and the "duplicate original," or non-negotiable certificate of title to the recorded owner. Therefore, if a restitution lien is filed and there is a superior and prior lien on the certificate of title, the restitution lien would be recorded as the second lien, and the certificate of title would be mailed to the first lienholder. If there is not a superior and prior lien perfected, the title would be mailed to the court recorded as the first lienholder on the certificate of title. For clarity, §17.10(f) has been amended by adding "The original certificate of title shall be mailed to the first lienholder, in accordance with Transportation Code, §501.027."

Comment: TADA commented that in addition to the statement "restitution lien," the name of the court and file number should be included on the certificate of title and in the department records in order to assist potential buyers in obtaining information regarding the restitution lien.

Response: The department agrees that the court should be identified on the certificate of title. Section 17.10(d) has been amended to require the lien be perfected "in the name of the court which established the lien, in care of the court clerk." This clarifies who shall be recorded as the lienholder, and corresponds with subsection (g), in order to assist interested persons in obtaining information regarding the lien instead of merely listing that it is a restitution lien. However, due to space limitations on the certificate of title, the file number will not be required.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 501, which authorizes the department to carry out the provisions of those laws governing the titling of motor vehicles, and Texas Code of Criminal Procedure, Article 42.22, which provides for the filing of restitution liens on motor vehicles.

§17.10. Restitution Liens.

(a) Purpose. Pursuant to the Code of Criminal Procedure, Article 42.22, victim or an attorney for the state may file a lien on any interest in a motor vehicle of a person convicted of a criminal offense to secure payment of restitution or fines or costs. This section establishes the procedures to perfect the filing and the removal of the lien on any interest of the defendant in a motor vehicle whether then owned or after-acquired.

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

(1) Department - The Texas Department of Transportation.

(2) Restitution lien - A lien placed against a defendant's motor vehicle in order to recoup a judgment or fines or costs.

(3) State - The State of Texas and all its political subdivisions.

(4) Victim - A close relative of a deceased victim, guardian of a victim, or victim, as those terms are defined by the Code of Criminal Procedure, Article 56.01.

(c) Persons who may file a restitution lien. The following persons may file a restitution lien:

(1) a victim of a criminal offense to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case; and

(2) an attorney of the state to secure the amount of fines or costs entered against a defendant in a judgment in a felony criminal case.

(d) Perfection of a restitution lien. A restitution lien against any interest in a motor vehicle must be perfected in accordance with Transportation Code, Chapter 501, and in the name of the court which established the restitution lien, in care of the court clerk. The victim or the attorney representing the state must file an application for certificate of title with a county tax-assessor collector to perfect the restitution lien. The application must be on a form prescribed by the department as described in §17.3(b)(2) of this title (relating to Motor Vehicle Certificates of Title), and shall be supported by, at a minimum, the following documents:

(1) evidence of motor vehicle ownership, as described in §17.3(c), which is properly assigned to or issued in the name of the defendant;

(2) an original or certified copy of the court order or judgment establishing the restitution lien and requiring the defendant to pay restitution, fines, or costs; and

(3) an affidavit to perfect a restitution lien which must include, at a minimum:

(A) the name and birth date of the defendant whose interest in the motor vehicle is subject to the lien;

(B) the residence or principal place of business of the person named in the lien, if known;

(C) the criminal proceeding giving rise to the lien, including the name of the court, the name of the case, and the court's file number for the case;

(D) the name and address of the attorney representing the state and the name and address of the person entitled to restitution;

(E) a statement that the notice is being filed pursuant to Code of Criminal Procedure, Article 42.22;

(F) the amount of restitution, fines, and costs the defendant has been ordered to pay by the court;

(G) a statement that the amount of restitution owed at any one time may be less than the original balance and that the outstanding balance is reflected in the records of the clerk of the court hearing the criminal proceeding giving rise to the lien;

(H) the vehicle description (year, make, and vehicle identification number) of the motor vehicle for which the restitution lien is to be perfected; and

(I) the signature of the attorney representing the state or a magistrate.

(e) Fees. The applicant will be required to pay a \$5.00 restitution lien filing fee, in addition to a \$13.00 title application fee and any other applicable fees required by Transportation Code, Chapters 501, 502, and 520.

(f) Recording a restitution lien. Upon receiving a completed application for certificate of title, the required supporting documents and any applicable fees, the department or its designated agent will process and issue a certificate of title recording the restitution lien. The original certificate of title shall be mailed to the first lienholder, in accordance with Transportation Code, §501.027.

(g) Release of perfected restitution liens. The clerk of the court recorded as the lienholder will receive payments from the defendant and maintain a record of the outstanding balance of restitution, fines, or costs owed by the defendant. Upon satisfaction of the lien, the clerk of the court shall execute the release of lien as described in §17.3(h). The release of lien must be provided to the owner or owner's designee. A photocopy of the release of lien shall be forwarded to the department for filing.

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

Filed with the Office of the Secretary of State on November 23, 1998.

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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8830



Chapter 21. Right of Way
Subchapter C. Utility Accommodation
43 TAC §21.56

The Texas Department of Transportation adopts amendments to §21.56, concerning metric equivalents. Section 21.56 is adopted without changes to the proposed text as published in the September 11, 1998 issue of the Texas Register(23 TexReg 9295)and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The Omnibus Trade and Competitiveness Act of 1988 designated the metric system of measurement as the preferred system of weights and measures. In accordance with that Act, the Federal Highway Administration (FHWA) instituted guidelines which encouraged the use of metric equivalents by state highway agencies by October 1, 1996. Based on those guidelines the Texas Transportation Commission adopted 43 TAC §21.56, which states that prior to October 1, 1996, utility plans that were in English measures could be converted to metric equivalents, and after October 1, 1996, those plans must be submitted using the metric system of measurement.

Recently, the FHWA reaffirmed its position, and stated that the use of metric units of measurements is not mandatory, but is at the option of the individual states. As a result, some of the department's design plans are in English measure and some in metric units. Section 21.56 still requires all utility plans to be in metric units. To require the utility industry to use metric units on plans that are otherwise submitted in English units would impose an onerous burden. The amendments to §21.56 eliminate the mandatory provision regarding metric units and

state that plans may be converted to metric units, but does not mandate that this be done.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

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Bob Jackson

Deputy General Counsel

Texas Department of Transportation

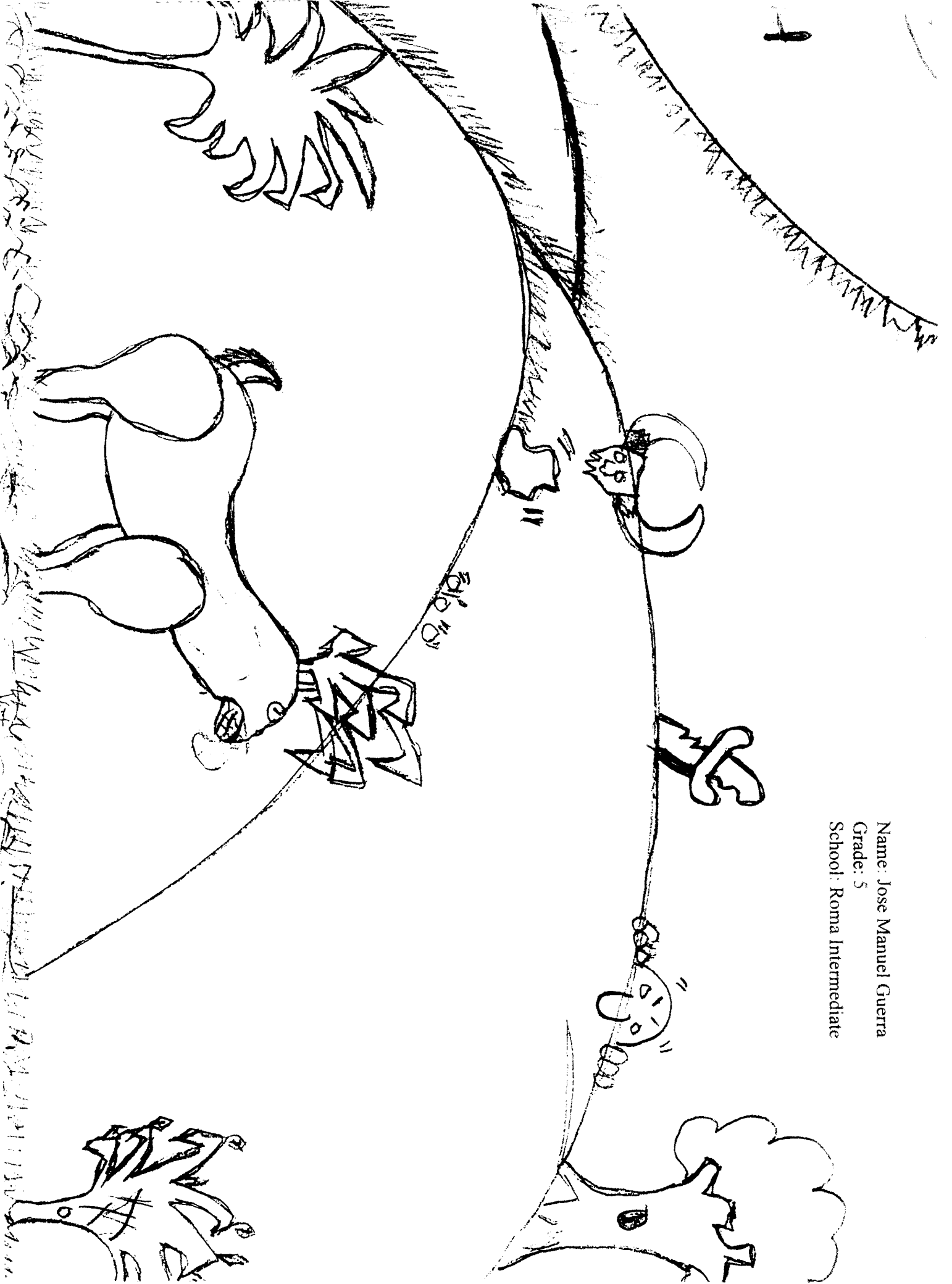
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For further information, please call: (512) 463-8630

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Name: Jose Manuel Guerra
Grade: 5
School: Roma Intermediate



TEXAS DEPARTMENT OF INSURANCE EXEMPT FILINGS

As required by the Insurance Code, Article 5.96 and 5.97, The *Texas Register* publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

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 Department of Insurance, 333 Guadalupe, Austin.

Texas Department of Insurance

Final Action on Rules

The Commissioner of Insurance, at a public hearing under Docket No. 2383 held at 10:00 a.m., November 4, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1997, 1998, and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0998-25-I) was published in the September 25, 1998 issue of the *Texas Register* (23 TexReg 9797).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 1997, 1998, and 1999 model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0998-25-I, which are incorporated by reference into Commissioner's Order No. 98-1364.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on January 15, 1999.

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

TRD-9817954

Lynda H. Neenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 24, 1998

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Name: Justin Book
Grade: 7
School: Veribest ISD

— REVIEW OF AGENCY RULES —

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Fire Protection

Title 37, Part XIII

The Texas Commission on Fire Protection will review and consider for readoption sections of Chapter 449, Head of a Fire Department, of Title 37, Part XIII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167.

Specifically, the following section of Chapter 449 shall be reviewed: §449.1 Minimum Standards for the Head of a Fire Department.

As part of the review process, the commission is proposing the repeal of §449.1 and proposing a new §449.1. The proposed repeal and new section may be found in the Proposed Rules section of the *Texas Register*.

As required by §167, the Texas Commission on Fire Protection will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Thomas R. Thompson, General Counsel, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

TRD-9817901

Thomas R. Thompson
General Counsel

Texas Commission on Fire Protection
Filed: November 23, 1998



The Texas Commission on Fire Protection will review and consider for readoption sections of Chapter 461, General Administration, of Title 37, Part XIII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167.

Specifically, the following sections of Chapter 461 shall be reviewed: §461.1 Committee Members; §461.2 Meetings; §461.3 Commission Inspection; and §461.4 Definitions.

As part of the review process, the commission is proposing amendments to §461.4. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*.

As required by §167, the Texas Commission on Fire Protection will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Thomas R. Thompson, General Counsel, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

TRD-9817902

Thomas R. Thompson
General Counsel

Texas Commission on Fire Protection
Filed: November 23, 1998



The Texas Commission on Fire Protection will review and consider for readoption sections of Chapter 463, Application Criteria, of Title 37, Part XIII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167.

Specifically, the following sections of Chapter 463 shall be reviewed: §463.1 Application Process; §463.2 Limitations on Loans, Scholarships, and Grants; §463.3 Application Form; §463.4 Competitive Needs Criteria; §463.5 Criteria for Eligibility for Loans; and §463.6 Contract Information.

As part of the review process, the commission is proposing amendments to §463.3, §463.4, and §463.6. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*.

As required by §167, the Texas Commission on Fire Protection will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Thomas R. Thompson, General Counsel, Texas

Commission on Fire Protection, P. O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

TRD-9817903

Thomas R. Thompson
General Counsel

Texas Commission on Fire Protection
Filed: November 23, 1998

The Texas Commission on Fire Protection will review and consider for re-adoption sections of Chapter 465, Equipment, Facilities, and Training Standards, of Title 37, Part XIII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167.

Specifically, the following sections of Chapter 465 shall be reviewed: §465.1 Equipment Standards; §465.2 Facility Standards; and §465.3 Education and Training Standards.

As required by §167, the Texas Commission on Fire Protection will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Thomas R. Thompson, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

TRD-9817904

Thomas R. Thompson
General Counsel

Texas Commission on Fire Protection
Filed: November 23, 1998

The Texas Commission on Fire Protection will review and consider for re-adoption sections of Chapter 495, Regulation of Nongovernmental Departments, of Title 37, Part XIII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167.

Specifically, the following sections of Chapter 495 shall be reviewed: §495.1 Application Procedures; §495.3 Notification; §495.5 Nongovernmental Fire Protection Employees; 495.201 Nongovernmental Organizations; 495.203 Nongovernmental Organization Employees, §495.205 Nongovernmental Personnel; and §495.207 Regulation and Certification.

As part of the review process, the commission is proposing the amendment of §495.1. The proposed amendment may be found in the Proposed Rules section of the *Texas Register*.

As required by §167, the Texas Commission on Fire Protection will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Thomas R. Thompson, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

TRD-9817905

Thomas R. Thompson

General Counsel

Texas Commission on Fire Protection
Filed: November 23, 1998

Department of Information Resources

Title 1, Part X

The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal, Title 1, Texas Administrative Code, Chapter 201, §201.3 (Information Resources Managers) and §201.13 (Information Resource Standards), subsection (c) (Date Standard). This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167. The review will include, at a minimum, an assessment by DIR as to whether the reasons for adopting or re-adopting these rules continue to exist.

Any questions or written comments pertaining to this rule review may be submitted to C. J. Brandt, Jr., General Counsel, P.O. Box 13564, Austin, Texas 78711, via facsimile at (512) 475-4759, or via e-mail at cj.brandt@dir.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal by the department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-9817949

C.J. Brandt, Jr.

General Counsel

Department of Information Resources

Filed: November 24, 1998

Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.69 relating to Integrated Services Digital Network (ISDN) pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167). Project Number 17709 has been assigned to the review of this section.

As part of this review process, the commission is proposing the repeal of §23.69 and is proposing new §26.142 of this title (relating to Integrated Services Digital Network (ISDN)) to replace §23.69. The proposed repeal and new section may be found in the Proposed Rules section of the *Texas Register*. As required by Section 167, the commission will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new section.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas, 78711-3326 or at voice telephone (512) 936-7308.

§23.69. Integrated Services Digital Network (ISDN).

TRD-9817791

Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: November 20, 1998

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State Securities Board

Title 7, Part VII

The State Securities Board (Agency), beginning December 1998, will review and consider for re adoption, revision, or repeal Chapter 117, Administrative Guidelines for Registration of Real Estate Programs; Chapter 119, Publicly Offered Cattle Feeding Programs; Chapter 121, Administrative Guidelines for Registration of Oil and Gas Programs; Chapter 129, Administrative Guidelines for Registration of Asset-Backed Securities; Chapter 141, Administrative Guidelines for Registration of Equipment Programs; and Chapter 143, Administrative Guidelines for Registration of Real Estate Investment Trusts, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The rules to be reviewed are located in Title 7, Part VII, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for re adopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas, 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-9817933
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: November 23, 1998

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Texas Department of Transportation

Title 43, Part I

The Texas Department of Transportation files this notice of intention to review Title 43, Texas Administrative Code, Part I, Chapter 23 (relating to Travel Information) in accordance with the General Appropriations Act of 1997, House Bill 1, Article IX, §167.

As required by §167, the department will accept comments regarding whether the reasons for adopting each of the rules in Chapter 23 continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted in writing to Bob Jackson, Deputy General Counsel, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas, 78701-2483, or at (512) 463-8630.

TRD-9817915
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: November 23, 1998

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Texas Water Development Board

Title 31, Part X

The Texas Water Development Board files this notice of intent to review Title 31, Part X, Chapter 365, Investment Rules, of the Texas Administrative Code in accordance with the General Appropriations Act, House Bill 1, Article IX, §167. The board finds that the reason for adopting the chapter continues to exist. Concurrently, the board proposes amendments to §§365.2, 365.8, 365.11, 365.12, 365.18, 365.20, and 365.21 of Chapter 365.

As required by §167, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 365 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Gail L. Allan, Director, Administration and Northern Legal Services, Texas Water Development, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to gallan@twdb.state.tx.us or by fax at 512/463-5580.

TRD-9817786
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: November 20, 1998

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The Texas Water Development Board files this notice of intent to review Title 31, Part X, Chapter 375, State Water Pollution Control Revolving Fund, of the Texas Administrative Code in accordance with the General Appropriations Act, House Bill 1, Article IX, §167. The board finds that the reason for adopting the chapter continues to exist. Concurrently, in order to revise and reorganize certain sections of Chapter 375, the board will propose repeal of the chapter and re adoption with change.

As required by §167, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 375 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Gail L. Allan, Director, Administration and Northern Legal Services, Texas Water Development, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to gallan@twdb.state.tx.us or by fax at 512/463-5580.

TRD-9817787
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: November 20, 1998

Adopted Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part III

The Texas Alcoholic Beverage Commission adopts the review of Title 16, Texas Administrative Code, Chapter 31, concerning administration as published in the September 11, 1998 edition of the *Texas Register* (23 TexReg 9439).

The commission finds that the reasons for adopting the rules contained within this chapter continues to exist.

No comments were received regarding the review of Chapter 31.

TRD-9817946

Doyme Bailey
Administrator

Texas Alcoholic Beverage Commission

Filed: November 24, 1998



The Texas Alcoholic Beverage Commission adopts the review of Title 16, Texas Administrative Code, Chapter 33, concerning licensing as published in the September 11, 1998 edition of the *Texas Register* (23 TexReg 9439).

The commission finds that the reasons for adopting the rules contained within this chapter, except for §33.2, continues to exist. §33.2 is unnecessary in light of the provisions of §§5.32, 11.32, 11.33, 61.09, 61.32 and 61.48 of the Alcoholic Beverage Code. An action proposing repeal of §33.2 will be filed by the commission and published in a future edition of the *Texas Register*.

The commission further finds that §33.11 and §33.21 require amendment to conform the rules to changes in the Alcoholic Beverage Code. Actions proposing amendments to §33.11 and §33.21 will be filed by the commission and published in a future edition of the *Texas Register*.

No comments were received regarding the review of Chapter 33.

TRD-9817947

Doyme Bailey
Administrator

Texas Alcoholic Beverage Commission

Filed: November 24, 1998



Texas Commission for the Blind

Title 40, Part IV

Pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167, the Texas Commission for the Blind adopts the review of all rules in Chapter 172 of the Texas Administrative Code pertaining to Advisory Committees and Councils. The proposed review appeared in the July 24, 1998, issue of the *Texas Register* (23 TexReg 7599).

The Texas Commission for the Blind finds that the reason for adopting the rules continues to exist. As part of this review process, no changes are proposed to the rules.

The Commission received no comments related to the rule review.

TRD-9817638

Terrell I. Murphy
Executive Director

Texas Commission for the Blind

Filed: November 16, 1998



The Texas Commission for the Blind adopts the review of all rules in Chapter 173 of the Texas Administrative Code pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The proposed review appeared in the July 24, 1998, issue of the *Texas Register* (23 TexReg 7599).

As part of this review process, the Commission is proposing changes to §§173.1-173.7 concurrently with this notice because of changes in law. The Commission finds that the reason for adopting the rules in §173.8 continues to exist and no changes are being made.

The Commission will receive comments on the proposed changes in §§173.1-173.7 during the normal rule-making process and intends to adopt them at a future date.

The Board received no comments related to the rule review.

TRD-9817639

Terrell I. Murphy
Executive Director

Texas Commission for the Blind

Filed: November 16, 1998



Texas Education Agency

Title 19, Part II

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter A, Board of Trustees Relationship, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of Title 19 of the Texas Administrative Code, Chapter 61, Subchapter A, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9799).

The TEA finds that the reason for adopting continues to exist. The TEA received the following comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist.

§61.1. Continuing Education for School Board Members.

Issue. Revisions to §61.1. Continuing Education for School Board Members.

Comment. Education Service Center (ESC) Region 17 commented that no suggestion or recommendation is offered for substantial changes to and/or modification of the current rule.

Comment. ESC Region 12 commented that the rules as written provide a comprehensive training matrix for both new and experienced members. No changes are recommended in the rule.

Comment. The Texas Association of School Boards (TASB) commented that the current rule is working well. TASB urges the re-adoption of the current rule with no changes. The current structure provides for a comprehensive needs-based continuing education program for local school board members. The orientations provide an appropriate context for governance; the team-building session provides an opportunity for examining and improving governance operations; and the needs-based continuing education offers board members the chance to acquire skills and information appropriate to their local situation. The allocation of required activities for each activity is appropriate for the nature of the activity and for the demands upon an unpaid, volunteer board. TASB stated that frequent and regular comments are received from board members

applauding the team-building requirement as a valuable addition to the continuing education rule. TASB also stated that weekly inquiries are received from board members and superintendents about available continuing education programs in their specific areas of need. The comments received from members and their superintendents suggest that local boards are using the requirements in the way the State Board of Education (SBOE) intended and are benefiting from it. The flexibility to receive training related to local needs and to receive it from a variety of providers is especially appreciated.

Comment. ESC Region 14 commented that the request to make information available to local school district trustees on the role and responsibilities of the SBOE can easily be addressed in the "Governance" section of the three-hour Orientation for New Board Members.

Agency Response. The agency agrees with this comment.

Comment. Cypress Fairbanks Independent School District (ISD) commented that the current system of continuing education for school board members has provided the foundation for effective operation of the board- superintendent leadership team.

Comment. Spring Branch ISD, Galena Park ISD, and La Marque ISD commented that the rules are fine as currently written.

Comment. Anahuac ISD commented that the rules should be reduced to the three paragraphs devoted to the orientation to the Texas Education Code (TEC), new member orientation, and a basic number of annual hour requirements.

Agency Response. The agency disagrees with this comment. Current rules require a framework for governance leadership; team-building sessions; procedures for scheduling of school board training; requirements for the availability of this training to school board candidates; public announcements of which school district trustees have met, exceeded, or are deficient in continuing education requirements; and SBOE commendations for board- superintendent teams which receive at least eight hours of the continuing education required in SBOE rule.

Comment. Spring ISD commented that the requirement that annual team-building sessions, clock hour requirements, and training be based on locally assessed needs should be deleted from the current rules.

Agency Response. The agency disagrees with this comment. Current rules require that board-superintendent teams participate in team-building activities on an annual basis. These rules also place a clock hour requirement on continuing education activities to ensure sufficient coverage and statewide uniformity in training activities. Current rules allow for continuing education to be offered which addresses locally assessed needs to address local variations in issues, concerns, and demographics.

Comment. Spring ISD commented that there is a need to clarify the conflict between requiring a school district to register to provide continuing education and exempting a school district from having to register if its training is exclusively for its own board members.

Agency Response. The agency disagrees with this comment. Current rules require that private or professional organizations, school districts, government agencies, colleges/universities, and private consultants must register with the agency to provide continuing education. School districts that supply training exclusively for their own board members are not required to register with the agency.

Comment. Spring ISD and the Texas Classroom Teachers Association (TCTA) commented that the statement "to the extent possible,

the entire board shall participate in continuing education programs together" should be deleted from the current rule.

Agency Response. The agency disagrees with these comments. Current rules state that, to the extent possible, board members should participate in continuing education as an entire team. Training activities provide opportunities for team-building and enhanced effectiveness for trustees who participate as an entire team.

Comment. Spring ISD commented that the statement in current rules that, annually, the SBOE shall commend local board-superintendent teams that receive at least eight hours of continuing education should be deleted. Very few districts can achieve this commendation.

Agency Response. The agency disagrees with this comment. Current rules provide for this commendation. A total of 88 Texas school districts were recently commended for completing at least eight hours of team-building and continuing education training as a board-superintendent team during the 1997-98 school year.

Comment. TCTA commented that §61.1(b)(1)(C) should be amended to eliminate the cap on the number of hours of training offered by the ESCs.

Agency Response. The agency disagrees with this comment. The requirement of three hours of training in §61.1(b)(1)(C) is a minimum requirement, not a cap on the total number of hours that may be offered. Local school district trustees have the flexibility to go beyond the training requirements specified in SBOE rule.

Issue. Current Training Requirements.

Comment. ESC Region 1 commented that the training is extremely valuable for new board members. It also allows the superintendent an opportunity to work hand-in-hand with board members outside of a regular board meeting. The current requirements cover the main areas which board members need to be aware of, and are not too difficult to meet. The training provides continuing "team education" to board members and superintendents. It keeps board members and superintendents focused on their roles and responsibilities. It also clarifies issues in regard to expectations of new statutes.

Comment. ESC Region 1 commented that we should continue with education for board members and superintendents at least once a year.

Agency Response. The agency agrees with these comments.

Comment. An individual commented that the minimum hours of training should be expanded and a better fit is needed between the training and the essential knowledge, skills, and abilities that school leaders must know if they are to drive our educational system toward excellence.

Agency Response. The agency disagrees with this comment. Current rules provide for local flexibility, including the option for local school boards to exceed the minimum hours of training specified in rule. The Framework for School Board Development provides a broad framework for training as well as the knowledge, skills, and abilities that school leaders need if they are to drive the educational system toward excellence in student achievement.

Issue. Scheduling of Training.

Comment. ESC Region 1, Deer Park ISD, and Aldine ISD commented that it is very difficult to schedule a meeting where all board members are in attendance. This is essential, particularly for team building.

Comment. ESC Region 1 commented that the annual team-building session should be held as early as possible during the school year.

Agency Response. The agency disagrees with these comments. Current rules provide for local flexibility with respect to when training is scheduled. All board members should participate as a team in the annual team-building session. Members who do not attend this meeting are reported as deficient in completing annual training requirements.

Comment. Spring ISD commented that language in 19 TAC §61.1(b) should be changed to "a team-building session with the local board and the superintendent within three months after there is a change in the board members or the superintendent."

Agency Response. The agency disagrees with this comment. Current rules require an annual team-building session with the board and superintendent. These sessions have been helpful in enhancing board-superintendent effectiveness and the working relationships of school boards and superintendents.

Issue. Presenters at School Board Training Sessions.

Comment. ESC Region 1 commented that presenters should be well-qualified and sensitive to local issues.

Agency Response. The agency agrees with this comment. Current rules provide for local flexibility with respect to selection of presenters for continuing education sessions.

Comment. TCTA commented that providers of continuing education programs for board members may create concerns if these providers are also interest groups with agendas to promote and with which school boards might have an ongoing legal or contractual relationship.

Agency Response. The agency disagrees with this comment. Choice of providers is best left to local control. Local school boards have the flexibility to select training providers based on locally-assessed needs. Providers are required by SBOE rule to register with the TEA.

Issue. Local School District Orientation.

Comment. ESC Region 4 commented that the local district orientation required of each new school board member should be completed prior to the date of election. The role of a board member as it relates to board governance should be added to and emphasized in the orientation.

Comment. An individual commented that all school board candidates should have at least three hours of district orientation between the filing and election dates.

Agency Response. The agency disagrees with these comments. Current rules allow prospective board members to participate in the local orientation prior to election. Candidates who take advantage of this opportunity may be more informed as a result. The requirements for eligibility to run for the position of member of the local board of trustees are set by state law. Any change in these requirements is a matter of legislative authority.

Issue. Orientation to the TEC.

Comment. ESC Region 4 commented that the Orientation to the TEC and Update to the TEC sessions have been informative and helpful to local school district trustees.

Comment. ESC Region 4 commented that the basic Orientation to the TEC should be completed no later than 45 days after an election.

Agency Response. The agency disagrees with this comment. Current rules require that the basic orientation to the TEC occur within the first year of service. This allows sufficient time to schedule all local school district trustees for orientation training by their respective regional ESCs.

Comment. Spring ISD commented that the requirement in current rule for a three-hour orientation to the TEC should be changed to read "of sufficient length to familiarize board members with the code."

Agency Response. The agency disagrees with this comment. Current rules provide for a uniform training session on the TEC to be delivered through the state's ESCs.

Issue. Board-Superintendent Team-Building Sessions.

Comment. ESC Region 4 commented that the board-superintendent team-building sessions have been helpful in enhancing the effectiveness of the working relationship of school boards and superintendents.

Comment. ESC Region 4 commented that the board-superintendent team-building sessions provide the most important opportunities to assess and enhance the effectiveness of the board-superintendent team. This training should be based on a framework that is more precisely defined and used as a standard of accountability. At a minimum, statements of knowledge and skills should be defined and clearly and consistently communicated across the state as the core and heart of governance leadership. This training will have its greatest impact if provided through and/or coordinated by the ESCs. This training needs and deserves even greater visibility, emphasis, and support.

Agency Response. The agency disagrees with this comment. The SBOE adopted the Framework for School Board Development in March 1996. This document outlines the vision, structure, accountability, advocacy, and unity needed to provide local programs and services that will promote excellence in academic achievement for all students. The framework was developed with extensive input from school board members, administrators, and teachers. Any changes should be developed through a similar process. The state's 20 ESCs use the current framework to develop individual training modules for each element in the framework.

Comment. An individual commented that the required three hours of team-building training has led to packaged, "turn-key" programs that have little or no relevance to any one district's needs. The foundation for team-building should be models of effective, reform-minded boards. Facilitators need at least eight hours to address the unique needs of each team, building communication and leadership skills.

Agency Response. The agency disagrees with this comment. Current rules provide the flexibility for each local board of trustees to participate in a team-building session facilitated either through their ESC or another registered provider. School districts have the authority to select a facilitator for team-building sessions who will address their locally-assessed needs. Current rules state that team-building should be of a length deemed appropriate by each local board of trustees, but generally at least three hours.

Comment. TCTA commented that local school boards should be required to participate in a team-building session with the district-level site-based decision-making committee in addition to the one with the superintendent.

Agency Response. The agency disagrees with this comment. Local school districts have the flexibility in current rule to add continuing education activities based on locally-assessed needs such as team-building activities between the district-level site-based decision-making committee and the local school board.

Issue. Continuing Education Requirements.

Comment. Aldine ISD commented that the continuing education for school board members is informative and beneficial for board rela-

tionships. The continuing education has created a team environment that has led to goal setting and understanding of problem resolution in the district.

Comment. Cypress-Fairbanks ISD commented that many school districts have the capacity to provide the school law requirement and more than 50% of the other continuing education requirements. Perhaps some flexibility could be provided for larger districts with more capabilities for training.

Agency Response. The agency disagrees with this comment. Current rules require that at least 50% of the required continuing education be provided by persons not employed or affiliated with the board member's local school district. This requirement ensures that local school board members are provided with continuing education which reflects expertise not only within the district but also from external experts.

Comment. Waller ISD commented that it appears that new board members must have a minimum of 22 hours of continuing education in the first year and 11 hours each year thereafter. This should be noted somewhere.

Agency Response. The current rules require a total of 16 hours of continuing education, plus the local district orientation and update, for new school district trustees. Experienced trustees are required to attend eight hours of continuing education plus any updates needed on the TEC due to changes in legislation. This information is available on a chart distributed by the agency to ESC school board trainers.

Comment. TCTA commented that anyone should be allowed to attend any of the continuing education programs available for school board members, not just the ESC training.

Agency Response. The agency disagrees with this comment. Local school districts have the flexibility in current rule to allow anyone to attend local continuing education sessions.

Issue. Continuing Education Based on Board Training Framework.

Comment. ESC Region 4 commented that the most effective and helpful training sessions have been those held in local districts which are tailored to meet local needs.

Comment. ESC Region 4 commented that the most helpful sessions have been those held in local districts with regional participation that did not exceed 15 participants.

Comment. ESC Region 4 commented that additional continuing education course offerings are available but rarely, if ever, requested by local school boards. ESC Region 4 has 12 programs available but none have been requested.

Agency Response. Current rules provide for maximum local flexibility in the provision of school board training, with respect to the number of participants per session and which ESC continuing education course offerings are utilized by local school district trustees.

Comment. ESC Region 4 commented that current continuing education requirements lack rigor and substance. There is not much indication that attendance at continuing education sessions results in the fulfillment of assessed needs.

Comment. ESC Region 4 commented that the requirement in 19 TAC §61.1(b)(3)(C) for a school board president to receive continuing education related to leadership duties should be tightened, formalized, and presented by the ESCs. This would provide consistency and continuity in defining this role across the state and would add importance to the board president's role locally as the leader who is

responsible for describing the roles, expectations, and accountability of board members.

Comment. ESC Region 4 commented that there is little accountability for the improvement of board member performance in the current continuing education program requirements.

Agency Response. The agency disagrees with the comments on amending the continuing education program requirements. Current rules state that continuing education should be conducted in fulfillment of assessed needs and based on the board's framework for governance leadership. School districts have the latitude to select training providers that will meet the assessed needs of each local board. The state's 20 ESCs work on a collaborative basis to provide a statewide network of school board training and meet throughout the year to share strategies and solutions. This network has most recently been working on a strategic plan for school board training in order to provide additional direction to their training activities. Current rules also provide that annually, at the meeting at which the call for election of board members is normally scheduled, the current president of each local board of trustees shall announce the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in the required continuing education. The local school board president shall cause the minutes of the local board to reflect the information and shall make this information available to the local media. Additionally, the SBOE commends on an annual basis those local board- superintendent teams that receive at least eight hours of continuing education specified in 19 TAC §61.1(b)(2) and (b)(3) as an entire board-superintendent team.

Comment. TCTA commented that the rules should require as part of the training that board members are instructed on the framework for governance. The statement in §61.1(b)(3) that the training should be based on the framework is not strong enough. The framework should be included in the first segment of training which is given by the ESCs.

Agency Response. The agency disagrees with this comment. All local school district trustees are provided with training on the Framework for School Board Development as required in current SBOE rule. The TEA mails this framework to every school district board of trustees president and superintendent on an annual basis. Current rules require that continuing education be based on fulfillment of locally-assessed needs and based on the framework.

Issue. Training Modules.

Comment. ESC Region 4 commented that the TEA should consider modules of training that would be required by all board members across the state. Continuing education courses could provide a curriculum or course of study that has substance. The greatest possible impact would occur if the ESCs provided this training. If other providers were used, the same essential elements would be required and presented.

Agency Response. The agency disagrees with this comment. The state's 20 ESCs have developed extensive training modules for use in school board training. These materials include separate modules for the elements of the Framework for School Board Development (Vision, Structure, Accountability, Advocacy, and Unity) and on practicing team skills. These materials have provided a consistency and continuity in the training currently provided through the state's 20 ESCs.

Current Training Activities.

Comment. ESC Region 14 commented that current board training is going well statewide. This comment included a chart from ESC Region 14 on current statewide training activities.

Agency Response. The agency agrees with this comment.

Issue. Local School Board Elections.

Comment. ESC Region 14 commented that some school districts do not hold school board elections every year. ESC Region 14 also noted that if school board members are elected in November of one year, they may experience difficulty in receiving their update on the TEC by the September of the following year. An additional difficulty may be experienced if school board members are elected in May of one year and need to complete 16 hours of training in the 10 months until the following February call for election.

Agency Response. The agency disagrees with this comment. Current rules provide local flexibility for the orientation to the TEC to occur within the first year of service. The current rules also require 10 hours of continuing education in fulfillment of assessed needs in the first year of service. The current rules additionally state that local announcements of the names of each school district trustee who has completed, exceeded, or is deficient in meeting the state's continuing education requirements shall occur at the meeting at which the call for election of board members is normally scheduled, in order to allow for local variations in school board election schedules.

Issue. Sanctions for School District Trustees Who Do Not Attend Continuing Education Sessions.

Comment. An individual commented that there should be sanctions for local school boards that do not participate in the continuing education sessions required in rule. This training is the ESC's one opportunity to work with local school district trustees on their roles and responsibilities.

Comment. An individual commented that some local boards don't want to hear what the ESCs have to say, so they hire external consultants for school board training who will tell them what they want to hear. Consultants can register to become school board trainers who do not know the state education code or accountability system. Districts also go to education associations rather than the ESCs to get a different interpretation on school board training issues if they want one.

Comment. An individual commented that the requirement in current rule for the name of each local board member who has met, exceeded, or is deficient in the required continuing education hours be announced at the meeting at which the call for election of board members is normally scheduled is not being followed in several districts. In some regions, only one-fourth of all districts are following this procedure.

Comment. An individual commented that the issue of sanctions for local school district trustees who do not attend continuing education sessions may best be addressed through legislation.

Comment. An individual commented that the rules should raise the level of accountability for training facilitators, gatekeeper-superintendents, and board presidents. The board president and superintendent should be held jointly accountable for assuring that the board fulfills its requirements for continuing education based on assessed needs.

Agency Response. The agency agrees that the subject of accountability and sanctions is an issue that is best addressed through legislation rather than SBOE rule. Current rules require school board training on the TEC and relevant legal obligations, including special emphasis

on statutory provisions related to governing Texas school districts, to be delivered solely by the state's ESCs. Other service providers may register to provide continuing education based on local needs.

Comment. Somerset ISD, La Porte ISD, and Dickinson ISD commented regarding the lack of repercussions for school board members who do not participate in the continuing education sessions required in current rule.

Agency Response. The agency agrees with these comments, but recommends that the issue of sanctions is best addressed through legislation rather than SBOE rule. Current rules require that the name of each local board member who has met, exceeded, or is deficient in the required continuing education hours be announced at the meeting at which the call for election of board members is normally scheduled.

Issue. Commendations for Board-Superintendent Teams.

Comment. An individual commented about the accuracy of school district reporting with respect to their eligibility to receive a commendation for participating in at least eight hours of continuing education as an entire board-superintendent team.

Agency Response. The agency will emphasize the importance of accuracy in reporting continuing education hours in its future communications to school district superintendents and board presidents.

Issue. Travel to ESCs for Continuing Education Sessions.

Comment. An individual commented that many local school district trustees must make multiple trips to their ESCs for continuing education sessions.

Agency Response. The agency disagrees with this comment. Current rules do not require that all continuing education sessions occur on site at the ESCs. This issue will be referred for consideration by the state's ESC board training network.

Issue. Evaluation of Superintendent.

Comment. Cleveland ISD commented regarding board members who have not received the required evaluation training prior to evaluation of the superintendent.

Agency Response. The agency supports the current rules, as the issue of training of local school district trustees for evaluating the superintendent is addressed in rules under the authority of the commissioner of education, rather than the SBOE.

§61.2. Nomination of Trustees for Military Reservation School Districts.

Issue. Revisions to §61.2, Nomination of Trustees for Military Reservation School Districts.

Comment. The commanding officer of Fort Sam Houston recommended readopting current rules to ensure continuity and fairness in the process for nominating trustees for military reservation schools.

Comment. The commanding officer of Lackland Air Force Base commented that the code, as written, is suitable and that no changes are needed.

Comment. The Air Education and Training Command Department of the United States Air Force commented that the Air Force enjoys a wonderful working relationship with the Randolph Field ISD. Their experience is that the school board operates with the best interest of the Randolph Air Force Base community. The good results are due partly to the direct result of the flexibility and ease of operating under the guidelines of 19 TAC §61.2 and the rules authorized by the TEC. The current law and SBOE rules have provided this installation with the opportunity to recommend qualified, competent members as

trustees for the Randolph Field ISD. The process works very well and the code should be readopted.

No changes are being proposed to the rules as a result of the review.

TRD-9817899

Cris Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: November 23, 1998

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 161, Advisory Committees, Subchapter AA, Commissioner's Rules, pursuant to the 1998-99 General Appropriations Act, §167. The TEA proposed the review of 19 TAC Chapter 161, Subchapter AA, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9800).

The TEA finds that the reason for adopting continues to exist. The TEA received no comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist. As part of the review, the TEA is proposing an amendment to 19 TAC §161.1003, which may be found in the Proposed Rules section of this issue.

TRD-9818004

Cris Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: November 30, 1998

Texas Motor Vehicle Board, Texas Department of Transportation

Title 16, Part VI

The Texas Motor Vehicle Board of the Texas Department of Transportation readopts 16 TAC Chapter 101, Practice and Procedure, Rules of Practice and Procedure, relating to agency operations, rule-making and adjudicative proceeding, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. Notice of the proposed review was published in the September 18, 1998 issue of the *Texas Register* (23 TexReg 9583). The Board finds that the reasons for adopting Chapter 101, Rules of Practice and Procedure, continue to exist.

No comments were received related to the rule review requirement as to whether the reasons for adopting the rules continue to exist. As a result of the review process, the Board will propose amendments to §§101.1-101.7, 101.9-101.13, 101.15-101.16, relating to General Rules of agency operation; amendments to §§101.22-101.25, 101.27-101.28, relating to Rulemaking and amendments to §§101.41-101.47, 101.49, 101.51-101.52, 101.55, 101.57-101.64, relating to Adjudicative Proceedings and Hearings. The Board will also propose simultaneous repeal and adoption of new §101.14, and repeal of §§101.21, 101.26, and 101.65.

The proposals will be published in this issue of the *Texas Register* in the Proposed Rules section in accordance with the Administrative Procedure Act.

These rules are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

TRD-9817853

Brett Bray

Director, Motor Vehicle Division

Texas Motor Vehicle Board, Texas Department of Transportation

Filed: November 20, 1998

Texas Department of Transportation

Title 43, Part I

The Texas Department of Transportation readopts, without changes, Title 43, TAC, Part I, Chapter 31 (relating to Public Transportation). This review was conducted in accordance with the General Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed review was published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10505). No comments were received regarding the re-adoption of this chapter. The Commission has reviewed the rules in Chapter 31, and determined that the reasons for adopting those rules continue to exist.

TRD-9817916

Richard D. Monroe

General Counsel

Texas Department of Transportation

Filed: November 23, 1998

Texas Water Development Board

Title 31, Part X

Pursuant to the notice of proposed rule review published in the *Texas Register* (23 TexReg 10505), October 9, 1998, the Texas Water Development Board (board) has reviewed and considered for re-adoption, revision or repeal 31 TAC Chapter 353, Introductory Provisions, in accordance with the Appropriations Act, §167.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule reviews.

As a result of the board's review, the board determined that the rules are still necessary because they provide procedures governing general policies applicable to the board and readopts the sections except as noted. The board finds that §§353.1, 353.7, 353.8, 353.11, 353.13, 353.15, 353.21-353.26, 353.41-353.43, 353.59, 353.71 and 353.72 of the rules are not necessary and concurrently proposes repeal. The board is also concurrently proposing amendments to §§353.2-353.4, 353.6, 353.9, 353.10, 353.51, 353.52, 353.55-353.58, 353.60, 353.80-353.83 and 353.85.

TRD-9817784

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: November 20, 1998

Pursuant to the notice of proposed rule review published in the *Texas Register* (23 TexReg 10505), October 9, 1998, the Texas Water Development Board (board) has reviewed and considered for re-adoption, revision or repeal 31 TAC Chapter 355, Research and Planning Fund, Subchapters A and B, in accordance with the Appropriations Act, Section 167. Subchapter C, containing §§355.90-

355.100, was not considered for review because it was adopted in its entirety, after September 1, 1997.

The board considered, among other things, whether the reasons for adoption of these rules continues to exist. No comments were received on the proposed rule reviews.

As a result of the board's review, the board determined that the rules are still necessary because they provide procedures governing the board's use of research and planning funds to provide money for water research, flood control planning, and regional planning for

water resources facilities. The board readopts the sections except as noted. The board also concurrently proposes amendments to §§355.1-355.5, 355.8-355.10, and 355.70-355.73 of Chapter 355.

TRD-9817785

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: November 20, 1998

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

VENTILATION AND PRESSURE RELATIONSHIP REQUIREMENTS¹

Area designation	Pressure relationship to adjacent areas ²	Minimum changes of outdoor air per hour ³	Minimum total air changes per hour ⁴	All air exhausted directly to outdoors ⁵	Recirculated by means of room units ⁶
Operating room	P	3	15	---	No
Examination, treatment and pre-op rooms	V	---	6	---	---
Post-anesthesia recovery	P	2	6	---	No
Medication room	P	---	4	---	---
Pharmacy	P	---	4	---	---
Radiology	E	---	6	---	---
Darkroom	N	---	10	Yes	---
Soiled workroom or soiled holding	N	---	10	Yes	No
Clean workroom or clean holding	P	---	4	---	---
Toilet room	N	---	10	Yes	No
Bathroom	N	---	10	Yes	No
Janitor's closet	N	---	10	Yes	No
Sterilizer equipment room	N	---	10	Yes	No
Linen and trash chute room	N	---	10	Yes	No
Laboratory	N	---	6	---	---
Soiled linen sorting and storage	N	---	10	Yes	No
Clean linen storage	V	---	2	---	---
Anesthesia storage	V	---	8	Yes	No
Decontamination room	N	---	6	Yes	No
Equipment storage	V	---	2	---	---

**Notes applicable to Table 1:
"Ventilation and Pressure Relationship Requirements"**

¹ The ventilation rates in this table cover ventilation for comfort, as well as for asepsis and odor control in areas of acute care that directly affect patient care and are determined based on healthcare facilities being predominantly "No Smoking" facilities. Where smoking may be allowed, ventilation rates will need adjustment. Areas where specific ventilation rates are not given in the table shall be ventilated in accordance with American Society of Heating Refrigeration and Air-conditioning Engineers Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, and American Society of Heating Refrigeration and Air-conditioning Engineers, Handbook of Applications, 1991 edition. Specialty procedure rooms shall have additional ventilation provisions for air quality control as may be appropriate. Occupational Safety and Health Administration (OSHA) standards and/or National Institute for Occupational Safety and Health (NIOSH) criteria require special ventilation requirements or employee health and safety within health care facilities.

² Design of the ventilation system shall provide air movement which is generally from clean to less clean areas. Required pressure relationship of the different space with respect to adjacent areas is indicated by the following:

- P = positive pressure relationship with respect to adjacent areas
- N = negative pressure relationship with respect to adjacent areas
- E = equal pressure relationship with respect to adjacent areas
- V = pressure relationship with respect to adjacent areas may vary

If any form of variable air volume or load shedding system is used for energy conservation, it must not compromise the minimum air changes required by the table.

³ To satisfy exhaust needs, replacement air from the outside is necessary. Table 1 does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be as required by good engineering practice. Minimum outside air quantities shall remain constant while the system is in operation.

⁴ Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the number of air changes indicated is reestablished any time the space is being utilized. Adjustments shall include provisions so that the pressure relationship shall remain the same when the number of air changes is reduced. Areas not indicated as requiring either a positive or negative pressure relationship with adjacent areas may have ventilation systems shut down when space is unoccupied and ventilation is not other wise needed, if the maximum infiltration or exfiltration permitted in Note 2 is not exceeded and if adjacent pressure balancing relationships are not compromised.

⁵ Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may require special consideration for air exhaust to the outside.

⁶ Recirculating room Heating, Ventilating, and Air Conditioning (HVAC) units refers to those local units that are used primarily for heating and cooling of air, and not disinfection of air. Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." Gravity-type heating or cooling units such as radiators or convectors shall not be used in operating rooms and other special care areas.

FILTER EFFICIENCIES FOR VENTILATING AND AIR CONDITIONING SYSTEMS

Area Designation	Minimum number of filter beds	Filter efficiencies (%)*	
		Filter bed No. 1	Filter bed No. 2
Operating, recovery, and treatment rooms	2	30	90
Laboratories	1	80	---
All other areas	1	30	---

* The filter efficiency ratings are based on American Society of Heating Refrigeration and Air Conditioning Engineers, Standard 52-92.

STATION OUTLETS FOR OXYGEN, VACUUM (SUCTION), AND MEDICAL AIR SYSTEMS

Location	Number of outlets*		
	Oxygen	Vacuum	Medical Air
Operating room	2	3	1
Treatment room	1	1	--
Recovery room	1	3	--
Decontamination room	--	1	1

*Number of outlets required for each recovery bed location or treatment unit.

FLAME SPREAD AND SMOKE PRODUCTION LIMITATIONS FOR INTERIOR FINISHES

	Flame Spread Rating	Smoke Production Rating
Walls and Ceilings		
Exitways, storage rooms, and areas of unusual hazard	25 or less ASTM STD E84	450 or less ¹ NFPA 255
All other Areas	75 or less ASTM STD E84	450 or less NFPA 255
Floors ²	Minimum of 0.45 watts/cm ² (NFPA 253, Floor Radiant Panel Test)	

¹ Average of flaming and non flaming values.

² See §135.52(c)(4) and §135.52(c)(5) of this title (relating to State Handicapped requirements and Federal Americans with Dissabilities Act or requirements relative to carpeting in areas that may be subject to use by handicapped individuals. Such areas include offices and waiting spaces as well as corridors that might be used by handicapped employees, visitors, or staff.

Figure: 25 TAC, §265.185(e)(1)

Maximum Load Limit for New Pools.	Shallow Instructional or beginning or wading areas	Deep Area (not including the diving area)	Diving Area (per each diving board)
Pools With Minimum Useable Deck Areas (see §265.186(5)(A)-(F))	15 square feet per user	24 square feet per user	300 square feet
Pools With Useable Deck Area At Least Equal To Water Surface Area	12 square feet per user	18 square feet per user	300 square feet
Pools With Useable Deck Area At Least Twice the Water Surface Area	10 square feet per user	12 square feet per user	300 square feet

Figure: 25 TAC, §265.185(f)

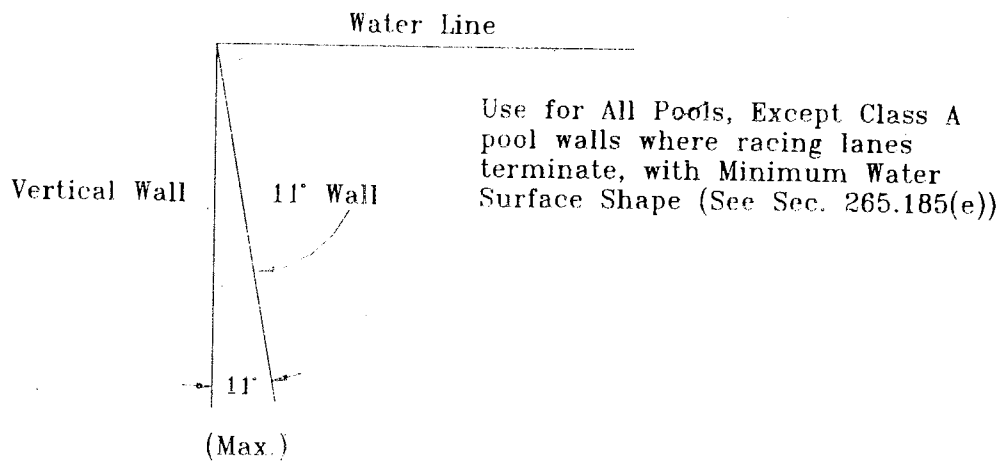
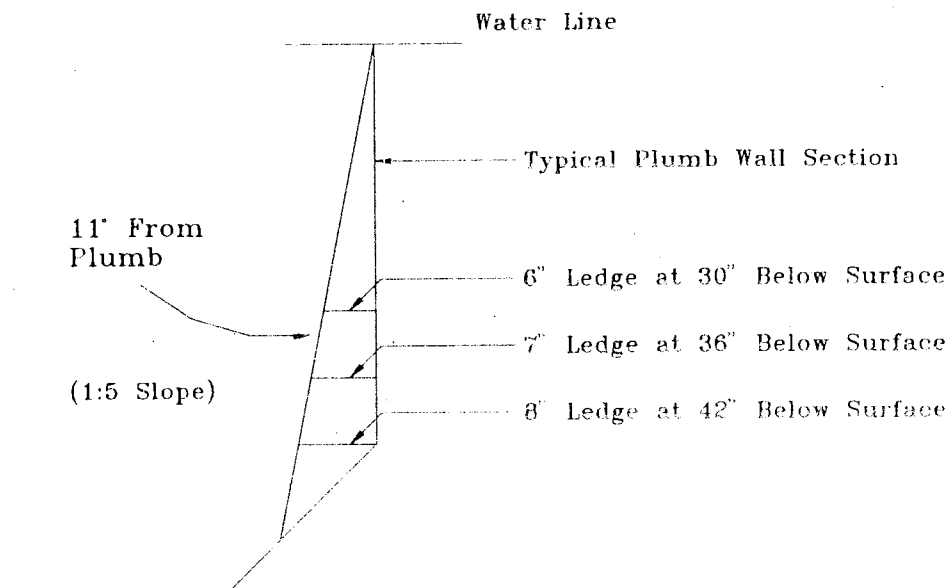


Figure: 25 TAC, §265.185(k)(3)



Pool Dimensions

Note: With multiple board installations, minimum pool widths as well as L5 shall be increased accordingly.

Maximum Diving Board Height Over Water	3/4 Meter	One Meter	Three Meter
Pool Type	VI-VII	VIII	IX
Maximum Diving Board Length	12'	16'	16'
Minimum Diving Board Overhang	4'	5'	6'
D1 (Minimum)	8'-6"	11'-0"	12'-0"
D2 (Minimum)	9'-0"	10'-10"	11'-10"
D3	5'	5'	5'
L1	4'-0"	5'-0"	5'-0"
L2 (Minimum)	12'-0"	16'-5"	19'-6"
L3 (Minimum)	12'-0"	17'-6"	20'-6"
L4 (Minimum)	28'-0"	38'-11"	45'-0"
L5 (Minimum) (Single Board Only)	8'-0"	10'-0"	13'-0"
H (Minimum)	16'	16'	16'
From Plummet to pool wall at side	9'	10'	11'-6"
From Plummet to adjacent plummet	10'	10'	10'

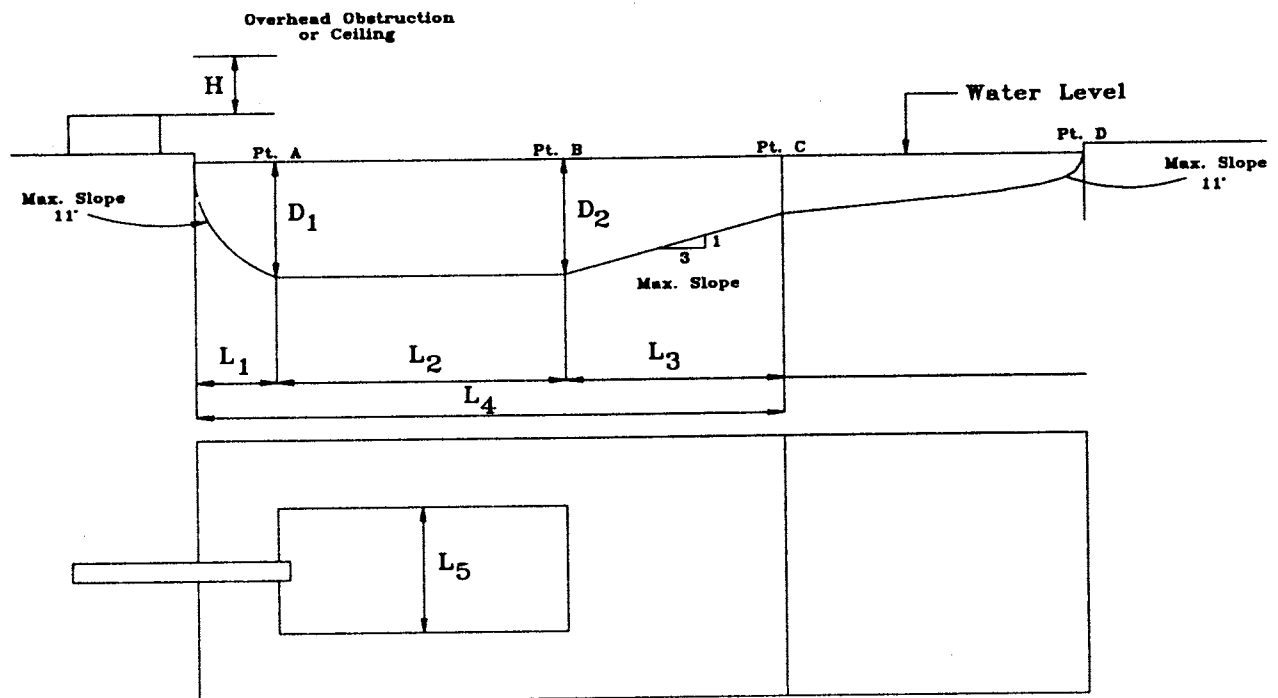


Figure: 25 TAC, §265.187(c).

Piping	Color-Code
Potable Water Lines -----	Dark Blue
Recirculation	
Filtered -----	Aqua
Skimmer or gutter return -----	Olive Green
Main Drain -----	Black
Chemical Lines	
Alum -----	Orange
Chlorine (Gas & Solution) -----	Yellow
Soda Ash -----	White
Acid -----	Pink
Waste Lines	
Backwash Waste -----	Dark Brown
Sewer (Sanitary or other) -----	Dark Gray
Deck Drains -----	Light Brown
Other	
Compressed Air -----	Dark Green
Gas -----	Green

Figure: 25 TAC, §265.201(f)(1)

Fixture Schedule	Males	Females
Water Closets	1/75	1/50
Urinals	1/75	-
Lavatories	1/100	1/100
Showers	1/50	1/50
Baby Changing Table	1	1
Drinking Fountain - Minimum of 1 to be located in swimming pool area.		

1. Disinfectant Levels	Minimum	Ideal	Maximum
Free Chlorine, ppm - pools	1.0	2.0 - 3.0	8.0 ¹
Free Chlorine, ppm - spas ²	2.0	3.0 - 5.0	8.0 ¹
Combined chlorine, ppm ³	None	None	0.2
Bromine, ppm - pools	2.5 ⁴	2.5 - 6.0 ⁴	12.0 ^{1,4}
Bromine, ppm - spas ²	4.5 ⁴	5.5 - 7.5 ⁴	12.0 ^{1,4}
<p>¹ Refer to label for product maximum level. ² Shock at the end of the daily period ³ High combined chlorine results in reduced chemical efficacy. Take remedial action to establish break point chlorination see §265.204(b)(6). Other signs of combined chlorine: -Sharp chlorine odor -Eye irritation -Algae growth ⁴ These bromine residuals are determined with the use of a bromine test kit or if a DPD test kit is used the numerical colorimetric results are multiplied by 2.25 to obtain ppm of bromine, or as per the manufacturers directions.</p>			
2. pH Levels	Minimum	Ideal	Maximum
pH	Not less than 7.0	7.4 - 7.6	7.8
<p>Too Low</p> <ul style="list-style-type: none"> -Rapid dissipation of disinfectant -Plaster and concrete etching -Eye discomfort -Corrosion of metal 		<p>If pH is: Too High</p> <ul style="list-style-type: none"> -Low chlorine efficiency -Scale formation -Cloudy water -Eye discomfort 	
3. Water Clarity	Minimum	Ideal	Maximum
Water turbidity	Bottom and main drain shall be clearly visible at the deepest part of the pool or Spa (see §265.203(c)).	NA	N/A
<p>If water is turbid:</p> <ul style="list-style-type: none"> -Disinfectant level may be low -Filtration system may be inoperative or turnover rate is inadequate. -Improper chemical balance see subparagraph (B) of this section. -Consult remedial practices see subparagraph (E) of this section. -Inadequate cured paint. 			

4. Spa Temperature	Minimum	Ideal	Maximum
Temperature, °F - spas	N/A	102°F or less	104°F (40° Centigrade)
If temperature is: <u>Too Low</u> -User discomfort		If temperature is: <u>Too High</u> -Health hazard or user discomfort -Excessive fuel requirement -Increased evaporation -Increased scaling potential -Increased use of disinfectants	

5. Stabilizer (if used)	Minimum	Ideal	Maximum
Cyanuric acid, ppm	None*	10.0 - 40.0	100.0
If stabilizer is: <u>Too Low</u> -Chlorine residual rapidly destroyed by sunlight.		If stabilizer is: <u>Too High</u> -May exceed local health department regulations. -May reduce chlorine efficacy. -May increase water turbidity. -May affect ORP controllers. -May increase algae growth if over 100 ppm.	
*Note: Stabilizer shall not be used in indoor pools and spas or brominated pools or brominated spas.			

Figure: 25 TAC, §265.204(b)

1. Chemical Values	Minimum	Ideal	Maximum
Total alkalinity ¹ (buffering), ppm as CaCO ₃	60.0	80.0 - 100.0 ² 100.0- 120.0 ³	180.0
Total dissolved solids, ppm ⁴	300.0	1000.0 - 2000.0 ⁵	3000.0 ⁶
Calcium hardness, ppm, as CaCO ₃ ⁷	150.0	200.0 - 400.0	500.0 - 1000
Heavy metals	None	None	None

¹ If total alkalinity is too low this may result in pH bounce and it will tend to be corrosive. If total alkalinity is too high this may result in cloudy water, increased scaling potential and pH may be too high.

² For the following sanitizers: calcium hypochlorite, lithium hypochlorite, and sodium hypochlorite.

³ For the following sanitizers: sodium dichlor, chlorine gas, and bromine compounds.

⁴ These values offered as guidelines rather than absolute values to indicate concern for accumulation of impurities in the course of operation. Excessive high TDS may lead to hazy water, corrosion of fixtures, etc., and can be reduced by partial draining with addition of fresh water.

⁵ High initial TDS may indicate poor water quality due to corrosive mineral salts, humus, or organic matter.

⁶ Increasing TDS indicates build up of impurities to be controlled by partial drain/refill with fresh water.

⁷ Operation of pools at maximum hardness will depend on alkalinity (buffering) requirements of the sanitizer used. Minimum alkalinity and lower pH shall be used with maximum hardness (Over 500 ppm).

2. Biological Values	Minimum	Ideal	Maximum
Algae	None	None	None

If algae are observed:

- shock treat pool. See §265.204(b)(6).
- Supplement with brushing and vacuuming
- Maintain adequate disinfectant residual.
- Use approved algaecide according to label directions.
- Maintain stabilizer level below maximum.

3. Biological Values	Minimum	Ideal	Maximum
Bacteria	None	None	None
If bacteria count exceeds local health department requirements: -Superchlorinate and follow proper maintenance procedures. -Maintain proper disinfectant residual.			
4. Pool Temperature	Minimum	Ideal	Maximum
Temperature, °F - pools	N/A	78° - 82°F	98°F
If temperature is: <u>Too Low</u> -User discomfort		If temperature is: <u>Too High</u> -Excessive fuel requirement -Increased evaporation -User discomfort -Increased scaling potential -Increased use of disinfectants	
5. Oxidation Reduction Potential	Minimum	Ideal	Maximum
Oxidation Reduction Potential (ORP)	650MV		
When chlorine or bromine is used as the primary disinfectant, ORP can be used as supplemental measurement of proper sanitizer activity. The use of ORP testing does not eliminate or supersede the need for testing the sanitizer level with standard test kits, as ORP reading may be affected by a number of factors including (1) pH, (2) probe film, (3) cyanuric acid, and (4) other. Follow manufacturer's recommendations.			
6. Remedial Practices	Minimum	Ideal	Maximum
Super-chlorination frequency - pools ^{1,2}	Monthly	Every Other Week	Weekly, when the temperature is over 85°F
Super-chlorination frequency - spas ²	Daily	Daily	N/A
Clarifying/ Floccing frequency	N/A	As needed	N/A
Algaecides	N/A	As needed	N/A
¹ Some high use pools may need superchlorination three times a week or more as a preventative measure or when combined chlorine is over 0.2 ppm or when eye irritation is noted. ² Use ten times combined chlorine level. Hold this level for 1-4 hours to clarify the water and remove combined chlorine, and to kill any algae present, when no users are present and as required to maintain clear water and the required halogen residual. Peroxy sulfates are not considered biocidal but may reduce organic contaminants.			

Figure: 25 TAC §289.205(j)(3)(B)

TABLE I

BASE ADMINISTRATIVE PENALTIES

Table IA - Base Amounts

Type of User	Amount
All licensees, registrants, or certified industrial radiographers	\$ 5,000
Other persons not licensed, registered, or certified	\$10,000

Table IB - Percentage of Base Amounts Based on Severity Level of Violation

Severity Level	Percent of Amount Listed In Table IA
I -----	100
II -----	80
III -----	50
IV -----	15
V -----	5

Figure: 25 TAC §289.230(c)(46)

$$OD = \log_{10} \frac{I_0}{I_t}$$

where I_0 = light intensity incident on the film and
 I_t = light transmitted through the film.

Figure: 25 TAC §289.230(1)(5)(C)(ii)

TABLE I

Focal Spot Tolerance Limit

<u>Nominal Focal Spot Size (mm)</u>	<u>Maximum Measured Dimensions</u>	
	<u>Width (mm)</u>	<u>Length (mm)</u>
0.10	0.15	0.15
0.15	0.23	0.23
0.20	0.30	0.30
0.30	0.45	0.65
0.40	0.60	0.85
0.60	0.90	1.30

Figure: 25 TAC §289.230(1)(5)(D)

TABLE II

X-ray Tube Voltage (kilovolt peak) and Minimum HVL

<u>Designed Operating Range (kV)</u>	<u>Measured Operating Voltage (kV)</u>	<u>Minimum HVL (mm of aluminum)</u>
Below 50	20	0.20
	25	0.25
	30	0.30

<u>Specific Subsection</u>	<u>Name of Record</u>	<u>Time Interval for Record Keeping</u>
(k)(2)	Quality Assurance Records	2 years
	Films associated with Quality Assurance	1 year
(f)(1)(A)	Interpreting Physician Qualifications	Until termination of certification or 2 years after physician leaves facility
(f)(1)(C)	Interpreting Physician Continuing Education and Experience	6 years
(f)(2)(A)	Medical Radiologic Technologist Qualifications	Until termination of certification or 2 years after technologist leaves facility
(f)(2)(C)	Medical Radiologic Technologist Continuing Education and Experience	6 years
(f)(3)(A)	Medical Physicist Qualifications	6 years
(f)(3)(C)	Medical Physicist Continuing Education and Experience	2 years
(g)(15)	FDA Variances	Until termination of certification or equipment is replaced
(l)(9)	Physicist Mammography Survey	7 years
(l)(10)	Physicist Mammography Equipment Evaluation	2 years
(m)(2)	Medical Outcomes Audit	2 years
(s)(4)	Records of Receipts, Transfer, and Disposal	Until termination of certification

<u>Specific Subsection</u>	<u>Name of Record</u>	<u>Time Interval for Record Keeping</u>
(s)(7)	Records of Calibrations, Maintenance, and Modifications Performed on Mammographic Machines	2 years
(cc)(5)	Certification of Inspection	Until termination of certification
(cc)(6)	Notice of Failure	Until termination of certification
(cc)(10)	Patient Notification	Until termination of certification
(mm)(2)	Complaints	2 years

<u>Specific Subsection</u>	<u>Name of Record</u>	<u>Time Interval Required for Record Keeping</u>
(e)	Receipt, Transfer, and Disposal	Until disposal is authorized by the agency
(f)(2)	Survey Instrument Calibrations	2 years
(g)	Quarterly Inventory	2 years
(h)	Utilization Logs	Until disposal is authorized by the agency
(i)	Inspection and Maintenance	2 years
(j)	Permanent Radiographic Installations	Until disposal is authorized by the agency
(m)(1)(A) and (2)(A) and (n)	Training and Certification Records	Until disposal is authorized by the agency
(q)	Personnel Monitoring	Until disposal is authorized by the agency
	Estimates of Exposure	Until disposal is authorized by the agency
	Direct-Reading Dosimeter Readings	2 years or until disposal is authorized by the agency if dosimeters were used to determine external radiation dose
	Pocket Dosimeter Calibrations	2 years
	Alarming Ratemeter Calibrations	2 years
(u)(4) and (v)(7)	Internal Audit Program	2 years

<u>Specific Subsection</u>	<u>Name of Record</u>	<u>Time Interval Required for Record Keeping</u>
(u)(4)(F) and (v)(7)(F)	Annual Refresher Training	2 years
(u)(5) and (v)(8)	Radiation Surveys	2 years or until disposal is authorized by the agency if a survey was used to determine an individual's exposure
(u)(6)(B)	Annual Evaluation of Enclosed X-Ray Systems	2 years
(u)(6)(C)(i)	Operating Instructions In Cabinet X-ray Systems	Until disposal is authorized by the agency
(u)(6)(C)(ii)	Tests of X-Ray Interlocks	Until disposal is authorized by the agency
(u)(6)(C)(iii)	Evaluation of Certified Cabinet X-Ray Systems	2 years
(v)(5)	Leak Tests	2 years
(v)(9)(B)	Annual Evaluation of Enclosed Sealed Source Systems	2 years
(v)(9)(C)	Test of Sealed Source Interlocks	Until disposal is authorized by the agency
(w)(10)	Records at Temporary Job Sites	During temporary job site operations

Figure: 25 TAC §289.259(m)

Part of Body	<u>Column I*</u> Dose in Rem	<u>Column II*</u> Dose in Rem
Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	0.005	0.5
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter (cm ²)	0.075	7.5
Other organs	0.015	1.5

* Dose limit is the dose above background from the product.

Figure: 25 TAC §289.259(w)

	AVERAGE ^{b,c,f}	MAXIMUM ^{b,d,f}	REMOVABLE ^{b,c,c,f}
NORM ^a	5,000 dpm/100 cm ²	15,000 dpm/100 cm ²	1,000 dpm/100 cm ²

^a Surfaces contaminated with alpha and beta emitting naturally occurring radionuclides may be surveyed with a detector that responds to both types of radiation. The same method may be employed when evaluating wipe samples for removable contamination.

^b As used in this table, dpm (disintegrations per minute) means the rate of emission by naturally occurring radioactive material as determined by using a ratemeter or scaler and detector appropriate for the type and energy of emissions being monitored. The detector shall be capable of responding to alpha, beta and/or gamma radiations.

^c Measurements of average contamination level should not be averaged over more than 1 m². For objects of less surface area, the average should be derived for each object.

^d The maximum contamination level applies to an area of not more than 100 cm².

^e The amount of removable radioactive material per 100 cm² of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.

^f All surveys and efficiency determinations shall be made with the detector's active surface no greater than one centimeter from the surface being surveyed, wipe being analyzed, or source being used. A scaler must be used when evaluating wipe samples and count times must be sufficient to detect 10% of the applicable limit with 95% confidence that the activity would be detected.

FIGURE 1: 43 TAC 4.37(b) (2) (B)

DRUG	CONFIRMATORY TEST LEVEL (ng/ml)
Marijuana metabolite (Delta-9-tetrahydrocannabinol-9-carboxylic acid)	15
Cocaine metabolite (Benzoylecgonine)	150
Opiate metabolite (25 ng/ml if immunoassay specific for free morphine)	300
Phencyclidine	25
Amphetamines (including methamphetamines)	500

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> Project is on the Interstate Highway System 	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State
<ul style="list-style-type: none"> Project is on the State Highway System (except Farm to Market System, Urban Road System, PASS or Phase 1 Trunk System Corridor) 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> Project is on the Urban Road (UR) System 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> Project is on the Principal Arterial Street System (PASS)(except for existing US, SH & FM system routes) 	100% State -or- 80% Federal 20% State #1	100% State -or- 80% Federal 20% State #1	50% State 50% Local -or- 80% Federal 10% State 10% Local #1
<ul style="list-style-type: none"> Project is not on the State Highway System and is not in the Urban Street Program 	100% Local -or- 80% Federal 20% Local #1	80% Federal 20% Local #1, #2	100% Local -or- 80% Federal 20% Local #1
<ul style="list-style-type: none"> Project is not on the State Highway System and is: <ul style="list-style-type: none"> within urbanized area > 50,000 and in Urban Street Program 	100% Local	80% State 20% Local #3	100% Local

FIGURE 1: 43 TAC \$15.55 (C)

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> Project is on the FM system: New FM Route 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% Local
<ul style="list-style-type: none"> Existing FM route 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> Project is on a Phase I Trunk System Corridor 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State
<ul style="list-style-type: none"> State Park Road Program 	100% State	100% State	100% State
<ul style="list-style-type: none"> On State System Bridge Program 	100% State -or- 80% Federal 20% State	80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
<ul style="list-style-type: none"> Off State System Bridge Program 	80% Federal 10% State 10% Local	80% Federal 10% State 10% Local	100% Local
<ul style="list-style-type: none"> On State System Safety Program 	100% State -or- 90% Federal 10% State	90% Federal 10% State	100% State -or- 90% Federal 10% State
<ul style="list-style-type: none"> Off State System Safety Program 	90% Federal	90% Federal	90% Federal

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> If included in the Railroad Signal Safety Program 	10% Local 90% Federal 10% State	10% Local 90% Federal 10% State	10% Local 90% Federal 10% State
<ul style="list-style-type: none"> Transportation Enhancement Projects #4 	80% Federal 20% Local	80% Federal 20% Local	80% Federal 20% Local
<ul style="list-style-type: none"> Traffic signal is: <ul style="list-style-type: none"> on the State Highway System, and population < 50,000 or <ul style="list-style-type: none"> Traffic signal is: <ul style="list-style-type: none"> on a freeway, on the State Highway System 	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State	100% State -or- 80% Federal 20% State -or- 90% Federal 10% State -or- 90% State 10% Local
<ul style="list-style-type: none"> Traffic signal is: <ul style="list-style-type: none"> on the State Highway System, and population > 50,000 or <ul style="list-style-type: none"> Traffic signal is: <ul style="list-style-type: none"> off the State Highway System 	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local	100% Local -or- 80% Federal 20% Local -or- 90% Federal 10% Local
<ul style="list-style-type: none"> Continuous Lighting Systems on the State Highway System #7 	100% State -or- 80% Federal 20% State -or- 100% Local -or- 50% State 50% Local -or- 40% Federal 10% State 50% Local	100% State #5 -or- 80% Federal #5 20% State #5 -or- 100% Local #5 -or- 50% State #6 50% Local #6 -or- 40% Federal #6 10% State #6 50% Local #6	100% State #5 -or- 80% Federal #5 20% State #5 -or- 100% Local #5 -or- 50% State #6 50% Local #6 -or- 40% Federal #6 10% State #6 50% Local #6

FIGURE 1: 43 TAC \$15.55(c)

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
<ul style="list-style-type: none"> Safety Lighting on the State Highway System #7 	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State

All participation ratios shown depict the minimum local participation for eligible costs.

NOTES:

- #1 If any of the following conditions apply:
 - a) the project is selected for NHS funding;
 - b) the MPO (within an urbanized area > 200,000 population) elects to use Federal STP(MM) or CMAQ funds;
 - c) the MPO (within urbanized area ≤ 200,000 population), in consultation with the district, elects to use Federal STP(UM) Funds; or
 - d) the district, in consultation with the local governments (within urban area with population between 5,000 and 50,000), elects to use Federal STP(UM) Funds.
- #2 The cost for all new storm sewer, curb and gutter, driveways, and sidewalks is included as part of project.
- #3 The City will provide for storm sewers, curb and gutter, sidewalks, driveways, and environmental mitigation.
- #4 Federal participation is limited to the amount authorized by the Commission, not to exceed 80% of the eligible project costs.
- #5 The local government assumes the entire cost of the subsequent operation and maintenance.
- #6 Maintenance costs to be shared 50% State, 50% Local.
- #7 See 43 TAC \$25.11 for additional information regarding continuous and safety lighting systems.

[Figure 1: 43 TAC §21.150(d)(2)]

$$C = A - B \times \frac{D}{365}$$

where:

"C" = the amount of the credit due;

"A" = the amount of the fee paid;

"B" = the amount of fee required under subsection (g); and

"D" = the number of days after August 31, 1991, until date
of permit termination.

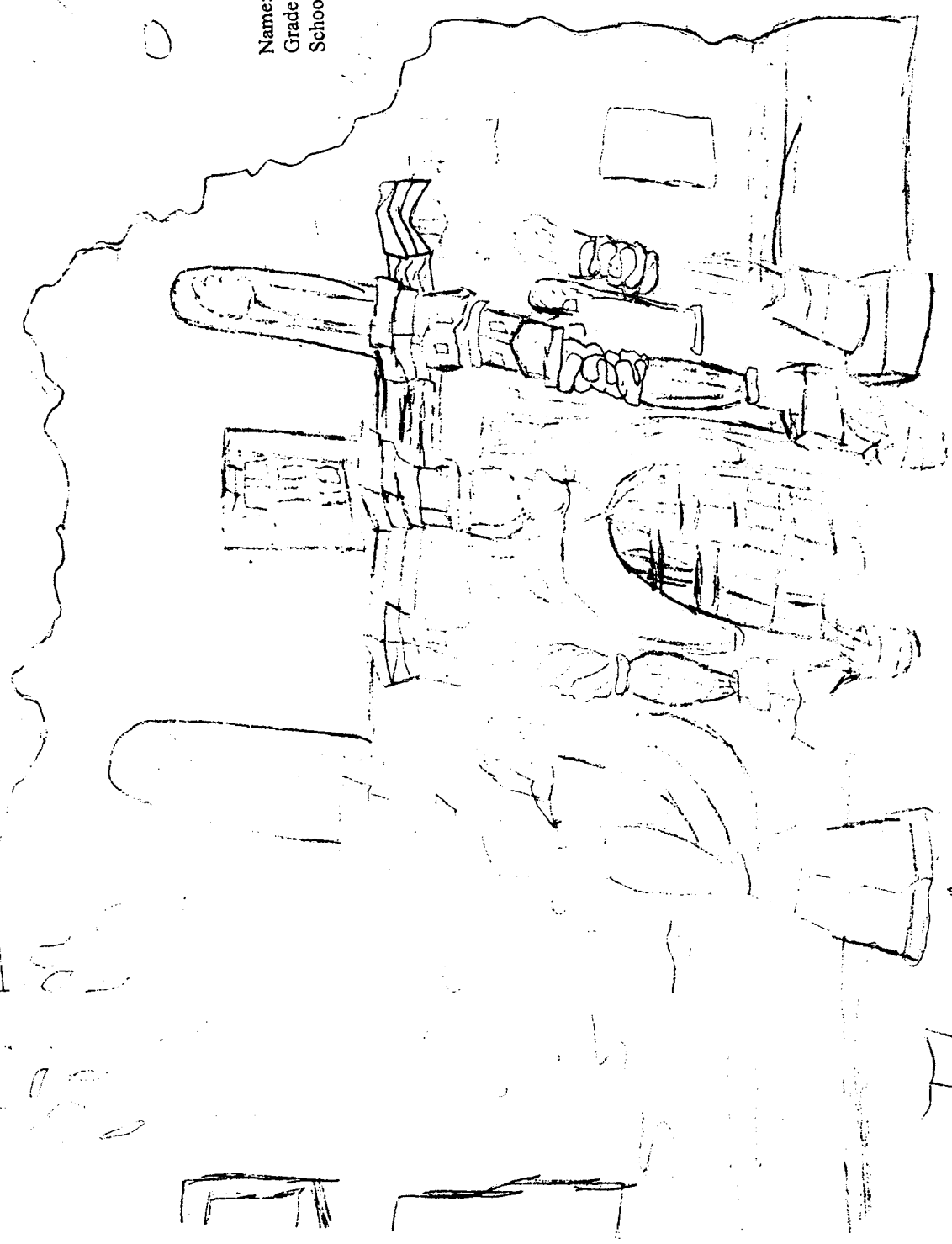
Figure 1: 43 TAC §21.157

Wind Load Pressure in Pounds per Square Foot

Height, in feet above ground, as measured above the average level of the ground adjacent to the structure	Pressure, pounds per square foot
0-5	0
6-30	20
31-50	25
51-99	35
100-199	45
200-299	50
300-399	55
400-500	60
501-800	70
Over 800	77

0000000000

Name: Joseph Jamroz
Grade: 6
School: Chillicothe Elementary



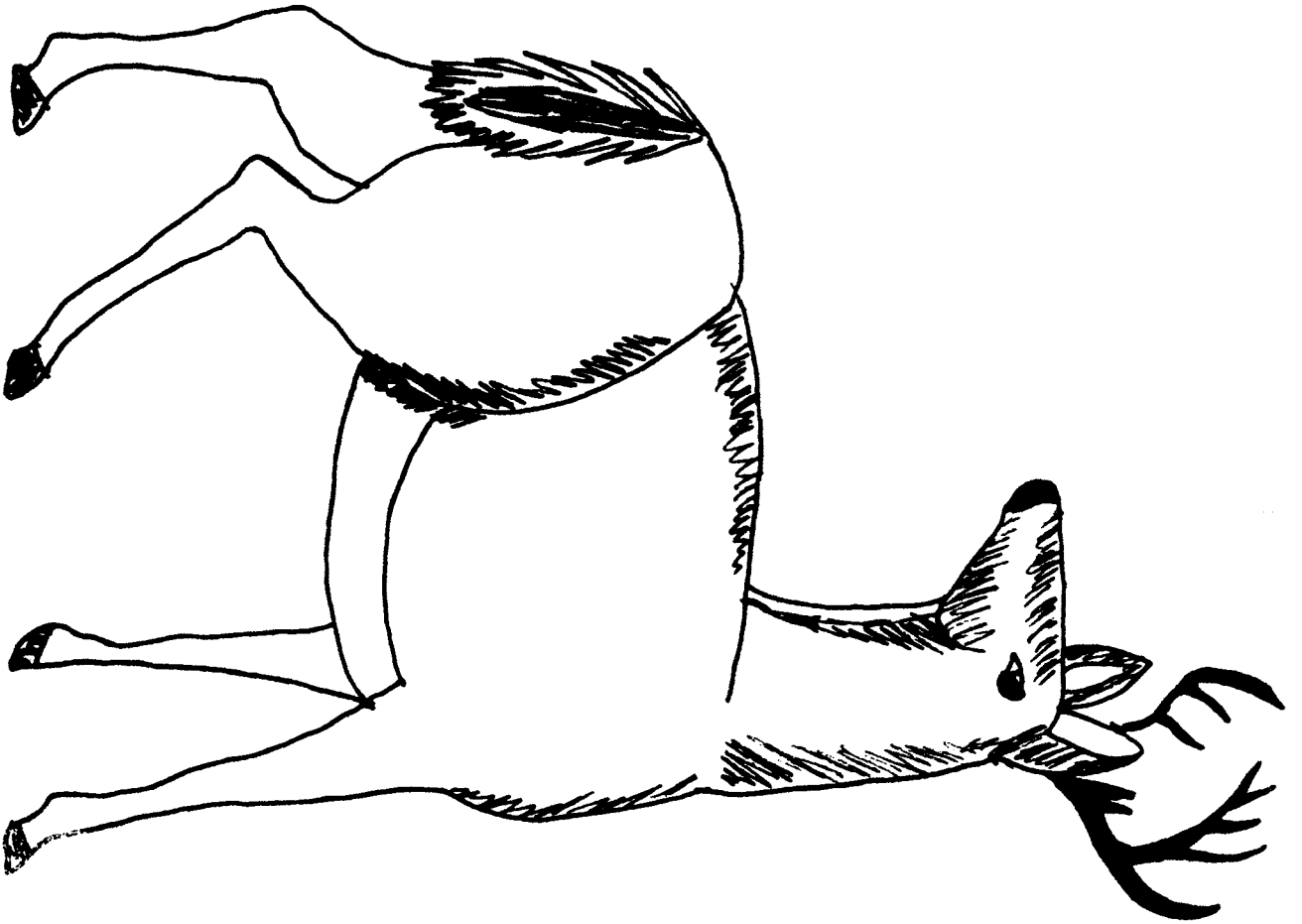
The Alliance of the People



Name: San Juanita Espita
Grade: 6
School: Gillett Intermediate

Name: Jens Langsjoen
Grade:
School: Bullard High School





Name: Sabrina Singleton

Grade: 9

School: Bullard High School

— OPEN MEETINGS —

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin. Notices are available online at <http://www.sos.state.tx.us/texreg>.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Open Meeting Notices Moving to Internet

Beginning with the November 20, 1998, issue of the *Texas Register*, the text for notices of open meetings that are filed with the Secretary of State will be published only in the electronic *Texas Register* available through the Secretary of State web site.

<http://www.sos.state.tx.us/texreg>

In addition to making the meeting notices available through the internet, readers may telephone 463-5561 in Austin or (800) 226-7199 to request copies of specific meeting notices.

The internet site will permit readers to search for meetings scheduled by specific state agencies, search for meetings by date, and soon, search the text of meeting agendas.

The new internet publication will contain the full text of meeting notices from agencies that file their notices electronically.

The new internet publication will make meeting notices readily available to the public quickly--within a few minutes of filing when an agency submits the notice via the internet. Notices filed by state agencies via diskette or e-mail will be published on the internet within one business day.

The print version of the *Texas Register* will continue to publish a notice each week to remind readers that all meeting notices are available in the electronic *Texas Register*.

In the print *Texas Register* the open meeting notices typically appear after the meetings occur. This happens because the Texas open meetings law, Texas Government Code, Chapter 551, requires that the meeting notices for a state agency be posted on the Secretary of State bulletin board for a minimum of seven days before the meeting date.

In addition to this requirement in the open meetings law, the Texas Government Code, Chapter 2002, directs the Secretary of State to publish meeting notices in the *Texas Register*.

Because the *Texas Register* is published once each week, a meeting notice that is posted seven days before the meeting--*in compliance with the open meetings law*--is not printed in the *Texas Register* until after the date of the meeting. To publish notice in the *Texas Register* before the date of a meeting, a state agency would have to file notice of a meeting with the Secretary of State earlier than the law requires.

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.

Children's Trust Fund of Texas Council

Request for Curricula

The Children's Trust Fund of Texas Council (CTF) announces the solicitation of curricula for parent education and children's life skills/personal safety and awareness programs.

CTF was established in 1985 by the Texas Legislature to help prevent the tragedy of child abuse and neglect by providing funds to assist community-based prevention programs in all areas of the state. CTF provides funding assistance to organizations seeking to prevent child abuse and neglect through programs that strengthen parents, children, and families.

The Children's Trust Fund of Texas provides funding and technical assistance to communities and organizations seeking to prevent child abuse and neglect through primary and secondary prevention programs.

Primary prevention - Services and activities available to the community at large or to families to prevent child abuse and neglect before it ever occurs. The key aspects of primary prevention are that it:

- * is offered to all members of a population and is voluntary;
- * attempts to influence societal forces that impact parents and children;
- * seeks to promote positive family functioning rather than just to prevent problems.

Examples of primary prevention programs include, but are not limited to, parent education and prenatal education and/or support classes, education programs for children in schools teaching life skills, and public awareness campaigns in the media.

Secondary prevention - Taking measures after certain warning signals have appeared to prevent child abuse and neglect before it occurs. The major components of secondary prevention are that it:

- * is offered to a pre-defined group of "at-risk" individuals and is voluntary;
- * is more problem-focused than primary prevention;
- * seeks to prevent future parenting problems by focusing on the particular stresses of identified parents or caretakers.

Examples of secondary prevention programs include, but are not limited to, support programs for adolescent parents, infants or children with developmental problems and programs for families with identifiable stressors.

Approved curricula will be included in future CTF Requests for Proposals (RFP). Applicants for CTF grants will be able to choose from the approved curricula list. If your curricula is approved, you will be required to sign a written agreement between yourself (curricula owner) and CTF.

Deadline: Deadline for the submission of curricula is January 22, 1999 at 5:00 pm.

Eligibility Criteria: Respondents are required to provide the following information. Forms are available upon request. For curriculum consideration, submit the following information:

1. Three (3) copies of the entire curriculum including supporting documents (e.g., facilitator's guide, implementation manual, instruction manual, handouts, etc.). All but one copy will be returned upon request.
2. Name of curriculum ownership, contact person, address, phone number, fax, and e-mail address if available, and hours of availability for inquiries. If applicant is not curriculum owner, describe authorized capacity for sponsorship (e.g., certified affiliated).
3. A summary description of the curriculum and format (e.g., group-based, home-based, length of sessions, etc.) Discuss how the curriculum addresses the prevention of child abuse and neglect.

Parent education curricula should focus on parenting skills, behaviors, and attitudes. Please note: academically-based parent involvement programs (e.g., literacy development) are not considered child abuse prevention programs.

Children's life skills/personal safety and awareness curricula focus on teaching children the variety of skills necessary to cope with the stresses of growth and development and increase personal safety. These skills include, but are not limited to being able to: think independently, make choices, solve problems effectively, communicate clearly, develop and maintain high self-esteem and prevent injurious events.

4. A description of the target population for whom the curriculum is intended (e.g., audience, age, language group, education/literacy level, race/ethnicity, etc.).

5. A description of curriculum costs for implementation of the program to approximately 50 families (which includes cost of materials and any additional costs).

6. Availability and costs for training and technical assistance services to support curriculum use and program implementation. Provide names of trainers in Texas. If none, a trainer in Texas will be required to be certified within one year of approved date.

Note: CTF requires all curriculum owners to provide training and technical assistance to grantees at the start up of their programs and as necessary throughout implementation.

7. Background information on the sponsoring institution/agency.

8. History of curriculum implementation (years in existence, where it has been implemented and with which populations, replication of curriculum, etc.).

9. Recommended number of staff and staff qualifications needed for curriculum implementation.

10. Evaluation methodology (include copies of testing instruments)

NOTE: The evaluation must specifically measure changes in knowledge and skills. Also include any additional information on changes in attitudes and long term behavior. A participant satisfaction questionnaire alone is not sufficient.

11. Copies and descriptions of data collection instruments and copies of research and validation reports and field studies (which include in-

dication of changes in behavior and/or knowledge regarding prevention of child abuse and neglect, reliability and sensibility to change).

12. Languages in which curriculum is available and literacy level of curriculum. Specify extent to which materials are available in other languages (e.g., facilitator's guide, participant handouts and materials, videotapes, etc.). Include future plans, if you have them, to translate into other languages within one year of approval.

Potential applicants will be notified no later than March 15, 1999. Approved curricula will be included among the available options for CTF program grant applicants for future Request for Proposals to be released by CTF.

For questions or to request a submission form: Please contact Karen Patterson, Program Manager, at the Children's Trust Fund of Texas, 1884 Highway 71 West, Cedar Creek, TX 78612-3412; (512) 303-5061 (M-F, 8:30am-5:30pm).

TRD-9817930

Janie D. Fields, MPA

Executive Director

Children's Trust Fund of Texas Council

Filed: November 23, 1998

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Comptroller of Public Accounts

Local Sales Tax Rate Changes

COMPTROLLER OF PUBLIC ACCOUNTS

LOCAL SALES TAX RATE CHANGES EFFECTIVE JANUARY 1, 1999

The 1% local sales and use tax will become effective January 1, 1999 in the city listed below.

<u>City Name</u>	<u>Local Code</u>	<u>Local Rate</u>	<u>Total Rate</u>
Stagecoach (Montgomery Co.)	2170148	.010000	.072500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development will become effective January 1, 1999 in the cities listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Bishop (Nueces Co.)	2178042	.015000	.082500
Trenton (Fannin Co.)	2074010	.015000	.082500

An additional 1% sales and use tax for improving and promoting economic and industrial development will become effective January 1, 1999 in the city listed below.

<u>City Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Midlothian (Ellis Co.)	2070050	.020000	.082500

A 1/2% special purpose district sales and use tax will become effective January 1, 1999 in the special purpose district listed below.

<u>SPD Name</u>	<u>Local Code</u>	<u>New Rate</u>	<u>Total Rate</u>
Balcones Heights Crime Control District	5015502	.005000	See Note

NOTE: The boundaries of the Balcones Heights Crime Control District are the same boundaries as the City of Balcones Heights. The total rate in the City of Balcones Heights will be .082500.

TRD-9817863
Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Filed: November 120, 1998

◆ ◆ ◆
Office of Consumer Credit Commissioner
Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/30/98 - 12/06/98 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/30/98 - 12/06/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9817969

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 24, 1998

Texas Department of Criminal Justice

Notice to Bidders

The Texas Youth Commission through the Texas Department of Criminal Justice invites bids to perform Site Utilities Work at the West Texas State School, Pyote, Texas.

The successful bidder will be required to show evidence within ten days after notification from the owner:

a) Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

b) Contractor must be bondable and insurable at the levels required.

The work, in general, consists of: a) replacing water distribution system; b) replacing HVAC units at the Education Building and Gatehouse; c) installing additional site lighting; d) installing water softening system in the Cafeteria, Laundry and Mechanical Rooms; and e) drainage improvements. More specifically: replace and remove approximately 10,000 lf of deteriorated water distribution system piping with a new eight inch water distribution line and various sizes of lateral lines throughout the facility; water taps, isolation valves, building lateral lines, building shut-off valves, valve boxes, new fire hydrants and appurtenances necessary for a complete system. Some asbestos pipe abatement or encapsulation will be required depending on location. All existing lines will be abandoned in place or removed depending on location and possible interference with the new work. Remove four existing HVAC units in the Gatehouse and 15 existing units in the Education Building, including electrical service to the units and other appurtenances; installation of new units and new ductwork as necessary; new electrical service; new controls and wiring; restoration of disturbed finish surfaces. The new units will be interconnected with the existing fire alarm system and other controls. Install overhead pole lighting at street locations, pole lamp lighting along sidewalks complete with underground electrical service to each light; new disconnects, fuses, service entrances to the nearest building and other appurtenances as required. Install a water softening system in the Cafeteria, Laundry and Mechanical Rooms in each building. It includes isolation valves, taps and all appurtenances required for a complete installation. Install fill to divert water in buildings to a swale which will hold the water for a period of time

until evaporation, or in other instances, to drain water to an off site location; remove existing soils and relocate to other needed areas and sod to prevent new soil from washing off.

All bids must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Payment and performance bond in the amount of 100% of the contract amount will be required within 10 calendar days upon award of the contract. The owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid documents can be obtained from: Jay Edwards, Parkhill, Smith & Cooper, Inc., 801 South Fillmore, Suite 300, Amarillo, Texas 79101, (806) 376-8600; fax: (806) 376-8700.

A pre-bid conference will be held at 1pm on January 7, 1999, at the West Texas State School. Bids will be publicly opened at 2pm on January 14, 1999, in the Blue Room of the Facilities Division Located in the Warehouse building of the Texas Department of Criminal Justice Administrative complex (former Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Contractors shall be required to pay at least the minimum wage rates prescribed in the specifications.

TRD-9817900

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: November 23, 1998

Deep East Texas Council of Governments

Request for Proposals

The Deep East Texas Council of Governments (DETCOG) is soliciting proposals for 9-1-1 Public Safety Answering Point ANI/ALI customer premise equipment. The proposal shall consist of complete 9-1-1 ANI/ALI call taker equipment and controllers, installation, training and maintenance service for fourteen agencies within the Deep East Texas region.

Request for Proposal packages may be obtained by contacting Everett D. Alfred, 9-1-1 Program Director, Deep East Texas Council of Governments, 274 East Lamar, Jasper, Texas 75951 (409) 384-5704. Proposal packages will not be faxed or e-mailed.

The proposals received will be reviewed by the DETCOG 9-1-1 Evaluation Committee for contract award on the basis of: (1) the firm's system proposed which will best satisfy the successful development and implementation of an Enhanced 9-1-1 Emergency Communications System, (2) firm's level of experience and financial stability, (3) price quoted for the system presented and (4) the firm's prior implementation performance, personnel experience, training programs offered and service record with similar projects.

All proposals must be received no later than 12:00 noon, Central Standard Time, January 4, 1999. Proposals received after the specified date and time will not be considered. Proposals will be opened at 9:00 a.m., Central Standard Time, January 5, 1999 to insure only that conformance to all requirements outlined in the Proposal Contents section of the Request for Proposal have been met. Up to a thirty day period for review of proposals submitted will follow.

Melinda Grimes 409-384-5704

TRD-9817744

Walter G. Diggles
DETCOG Executive Director
Deep East Texas Council of Governments
Filed: November 19, 1998

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Request for Proposal

The Deep East Texas council of Governments, by authority of the Deep East Texas Local Workforce Development Board, is accepting proposals to operate training programs under Title IIB of the Job Training Partnership Act. The purpose of this Title IIB RFP is to solicit projects to: Improve the long-term employability of youth; enhance the educational, occupational, and citizenship skills of youth; increase the employment and earnings of youth; reduce welfare dependency; and assist youth in addressing problems that impair the ability of youth to make successful transitions from school to work, apprenticeship, the military, or post-secondary education and training. All participants must meet Job Training Partnership Act eligibility requirements.

Training must be provided by Texas Education Agency/Texas Higher Education Coordinating Board approved institutions operating within the twelve county Deep East Texas areas.

Proposals will be evaluated in terms of the following criteria: service and method of implementation; past performance; project management; local match; cost of service and training staff/individuals served; and other resources. The Deep East Texas Local Workforce Development Board will make the final selections.

In order to ensure that all respondents are provided sufficient substance in completing proposals, a Bidders conference will be held on Wednesday, December 9, 1998, at 10:00 a.m. in Room 102 of Lufkin City Hall, 300 E. Shepherd, Lufkin, Texas. Attendance at the Bidders Conference is not required, but is strongly encouraged as technical assistance will be limited to that given at the Bidders Conference.

All proposals must be prepared according to the instructions in the Request for Proposal which can be obtained by contacting: Phyllis Burnett, Deep East Texas Council of Governments, P. O. Box 1423, Lufkin, Texas 75902; or 118 S. First Street, Lufkin, Texas 75901; or call (409) 634-2247. The deadline for accepting proposals is 5:00 p.m., Friday, January 22, 1999.

TRD-9817793
Betty J. Brown
Workforce Director
Deep East Texas Council of Governments
Filed: November 20, 1998

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East Texas Council of Governments

Notice of Request for Proposals for Youth Special Model Projects and Dropout Recovery Projects

The East Texas Workforce Development Area is soliciting proposals for the operation of Special Model Projects for Youth and Dropout recovery Projects for a period beginning February 4, 1999, and ending September 30, 1999. Provision of these services will involve a cost reimbursement subcontract with the East Texas Council of Governments, which serves as the Grant Recipient and Administrative Unit for the East Texas Workforce Development Board.

The purpose of this Request for Proposals is to identify operators of Youth Special Model Projects and Dropout Recovery Projects funded through Title II-C of the Job Training Partnership Act. Activities specified through Title II-C of the Job Training Partnership Act will be allowable for Special Model Projects so long as these promote performance standard attainment for the Workforce Development Area. Dropout Recovery projects will provide classroom instruction for the completion of a high school diploma for at-risk youth who are classified as dropouts. Proposals must serve individuals who reside in the following counties of the East Texas Workforce Development Area: Anderson, Harrison, Henderson, Marion, Panola, Rains and Van Zandt. It is anticipated that a total of \$84,562 will be available for Special Model Projects and/or Dropout Recovery Projects

The Person to be Contacted Regarding Submission of a Proposal

Persons or Organizations wanting to receive a Request for Proposal should request by letter or by fax. Requests should be addressed to Gary Allen, Section Chief - Planning, Occupational Training Programs, East Texas Council of Governments (ETCOG), 3800 Stone Road, Kilgore, Texas 75662. The fax number for ETCOG is (903) 983-1440. RFP's will not be released prior to November 18, 1998. Questions concerning the Request for Proposal process should be addressed to Wendell Holcombe, East Texas Council of Governments at (903) 984-8641.

Closing Date for Receipt of Proposals

The anticipated deadline for receipt of proposals shall be January 7, 1999.

The Procedure by Which Subcontracts will be Awarded

Proposals will be numerically rated by a team of independent reviewers and will be considered by the East Texas Workforce Development Board. The decision of the Workforce Development Board will be considered by the East Texas Chief Elected Officials Board of Directors. The East Texas Council of Governments Executive Committee will consider the final selection of successful proposer(s) and will authorize subcontract(s) for services.

TRD-9817718
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: November 19, 1998

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Texas Education Agency

Request for Applications Concerning 1998-2001 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) number 701-99-002 from public school districts on behalf of an individual school campus. The campus must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions by entering into a partnership with representatives of all of the following entities: school staff; parents of students; community and business leaders; school district officers; a nonprofit, community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards;

and the TEA. A separate application specific to the applying campus must be submitted for each campus for which the district is applying. Any campus that has been selected or is operating either a 1997-1999 or a 1998-2000 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement grant is not eligible to apply for or to receive a 1998-2001 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement grant.

Description. The purpose of this initiative is to assist eligible individual public school campuses in implementing practices and procedures consistent with deregulation and school restructuring to improve student achievement and in identifying and training parents and community leaders who will hold the school and the school district accountable for achieving high academic standards. Grants must be used for training and development of school staff, parents, and community and business leaders in order that they understand and implement the: (1) academic standards and practices necessary for high academic achievement; (2) appropriate strategies to deregulate and restructure the school to improve student achievement; and (3) effective strategies to organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards. No more than 20% of the total grant funds may be used to implement the academic standards and practices necessary for high academic achievement. No more than 25% of the total grant funds may be used to implement strategies developed by partners that are designed to enrich and extend student learning experiences outside of the regular school day. Grantees must demonstrate: (1) the development and implementation of a comprehensive plan to engage in ongoing development and training of teachers, parents, and community leaders to: (a) understand academic standards; (b) develop effective strategies to improve academic performance; and (c) organize a large constituency of parents and community leaders to hold the school and school district accountable for achieving high academic standards; (2) ongoing progress in achieving higher academic performance; and (3) ongoing progress in identifying, training, and organizing parents and community leaders who will hold the school and the school district accountable for achieving high academic standards.

Dates of Project. The Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program will be implemented during the 1999-2000 and 2000-2001 school years. Applicants should plan for a starting date of no earlier than May 3, 1999, and an ending date of no later than April 30, 2001.

Project Amount. Funding will be provided for approximately 30 projects. Each project will receive a maximum of \$45,000.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest ranking applications campuses whose total percent of identified students from low-income families is 60% or higher or campuses whose total percent of students passing all tests taken on the school year 1997-1998 Texas Assessment of Academic Skills (TAAS) was below the state average. Campuses meeting the "low income" or TAAS criterion will be identified by the TEA with data from the Public Education Information Management System (PEIMS) and the Academic Excellence Indicator System (AEIS).

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is

approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA number 701-99-002 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in the request.

Further Information. For clarifying information about the RFA, contact Kathleen Burke, Texas Education Agency, (512) 463-8306.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Wednesday, February 17, 1999, to be considered.

TRD-9817977

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: November 25, 1998

Employees Retirement System of Texas

Request for Applications-Health Maintenance Organizations

In accordance with §4 of Article 3.50-2, Texas Insurance Code, as amended, the Employees Retirement System of Texas (ERS) is issuing a Request for Application (RFA) from qualified Health Maintenance Organizations (HMOs) to provide services in certain application areas under the Texas Employees Uniform Group Insurance Program (UGIP) during Fiscal Year 2000, beginning September 1, 1999 through August 31, 2000. The locations in Texas for which applications may be made are included in the RFA. HMOs must provide the level of benefits as required in the RFA and meet other requirements.

Health maintenance organizations wishing to respond to this request must: (1) be certified by the Texas Department of Insurance, (2) have been providing managed care services in the service area for which the application is made at least by March 1, 1998, and (3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, to provide adequate health care to UGIP participants. The contract is a separate document from the application and must be taken separately from the ERS' website. The contract must be signed and returned with the HMO's response.

The RFA will be available in mid-December from the ERS' website. To access the RFA from the website, interested HMOs must either fax their request on their company letterhead to the attention of Kim Johnson at (512) 867-3380, or send their request via email to kjohnson@ers.state.tx.us to receive their access code. An email request must include the name of the vendor, street address, phone number, fax number, and email address (if applicable).

The deadline for receipt of three complete copies is 5:00 p.m. on February 1, 1999.

The ERS reserves the right to reject any application submitted when it is determined that such action would be in the best interest of the UGIP. The ERS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

The ERS will base its evaluation and selection of HMOs within the Application Area on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with the RFA, operating requirements, cost impact on the

UGIP, coverage of the Application Area counties, provider networks, quality of networks, administrative capabilities, and prior experience contracting with the ERS.

This application does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the UGIP.

TRD-9817807

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Filed: November 20, 1998

General Services Commission

Notice of Request for Proposals-Energy Education Outreach Program

In accordance with the Texas Government Code, Section 2305.064 as amended by the 75th Texas Legislature (1997), the State Energy Conservation Office ("SECO") of the General Services Commission (the "GSC") invites proposals for implementing energy conservation education programs in Texas schools. Proposals are requested from qualified public-private partnerships, non-profit agencies, individuals, firms and institutions of higher education (the "Contractors"). For purposes of this Request for Proposals (the "RFP"), energy education includes energy conservation and renewable energy technologies and practices.

The GSC SECO administers and delivers a variety of energy efficiency programs which significantly impact energy cost and consumption in the institutional, industrial, transportation, and residential sectors. More specifically, these programs provide: (1) technical resources to institutionalize energy efficiency, (2) financial assistance in completing energy retrofits, and (3) educational materials to make the public aware of the necessity for an energy efficient society. The GSC SECO has received funding from federal grants and oil over-charge court settlements. These monies have funded a myriad of energy-related programs focusing on energy efficiency.

The Energy Education Outreach for Texas Schools Program (the "Program") has been designed to provide energy education for elementary and middle schools through the Watt Watchers Program and for high schools through the Program. Through this Program students form energy patrols, track school energy consumption, and conduct a variety of other hands-on energy activities to teach their fellow students and, ultimately, the community about energy resources, energy issues and conservation.

The Contractors will promote and facilitate the implementation of this Program on school campuses around the state. The goal of this proposal request is to make these services available to all school districts in the state.

Copies of the RFP: To receive an information package containing the requirements and procedures regarding this RFP, contact Glenda Baldwin, Program Administrator, General Services Commission, State Energy Conservation Office, P. O. Box 13047, Austin, Texas 78711-3047, Phone (512) 463-1731, Facsimile (512) 305-8855.

Pre-Proposal Conference: All potential proposers are encouraged to attend a pre-proposal conference to be held on Wednesday, December

16, 1998, from 10:00 a.m. until 12:00 p.m., Conference Room 212, General Services Commission, State Energy Conservation Office, located in the Rusk State Office Building at 208 E. 10th Street, Austin, Texas. The purpose of the meeting is to answer any questions regarding this RFP, the required format, the selection criteria, or the evaluation process. It is not mandatory to attend the pre-proposal conference.

Written Questions: All questions concerning this RFP that arise after the preproposal conference must be submitted in writing to Glenda Baldwin, State Energy Conservation Office, P. O. Box 13047, Austin, Texas 78711-3047 or transmitted to facsimile number (512) 305-8855 by 12:00 p.m. on Tuesday, December 22, 1998.

Closing Date: Proposals must be postmarked or received by GSC SECO no later than 12:00 p.m. (Central Standard Time) on Wednesday, January 6, 1999. Proposals received after that time and proposals submitted by facsimile will not be accepted. Copies of proposals are to be sent to Glenda Baldwin, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047. Hand deliveries of copies of proposals are to be delivered to the Attention of Glenda Baldwin, General Services Commission, State Energy Conservation Office, Thomas Jefferson Rusk Building, Suite 206, 208 East 10th, Austin, Texas 78701.

Selection Criteria: Proposals will be evaluated based on the following criteria:

- (1). Proposer's demonstrated experience. Describe experience in developing, marketing and implementing student-involved energy education projects and programs. (30 percent);
- (2). Knowledge of Subject Matter. Detail knowledge of energy conservation, energy resources and energy issues. (20 percent);
- (3). Understanding the Scope of Work and Work Plan. Effectively describe the course of action to be taken in implementing the programs (20 percent);
- (4). Qualifications and Time Commitment. Describe qualifications and time commitment of the individuals assigned to provide the services. (20 percent);
- (5). Proposed Budget and Ability to Complete Project Deliverables in a Timely Manner. Present a budget that is reasonable in relation to the job requirements. The sources of dollar-for-dollar or in-kind match contributions should be included along with letters of support, if available. (10 percent).

Equal Opportunity: Any contract resulting from this RFP shall contain provisions prescribed by the GSC SECO prohibiting discrimination in employment.

TRD-9817864

Judy Ponder

General Counsel

General Services Commission

Filed: November 23, 1998

Texas Department of Health

Notice of Amendment Number Five to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North

of State Highway 176, 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number five results in the following changes to the license: (1) modifies condition 22 to specify that the licensee shall process waste in accordance with new or revised procedures listed in the last condition of the license; (2) modifies condition 22.D.2 to specify that the procedure also pertains to incident related material and to reference revision one to the procedure; (3) adds revision one to the procedure for processing KO61 and incident related material to authorize the processing of cesium-137-contaminated KO61 and incident related material in the mixing pits on the hazardous waste side of the stabilization building; (4) modifies condition 25.B to increase the time limit from receipt of radioactive waste to either placement into interim storage or transfer to an authorized recipient from 180 to 365 days; (5) adds condition 26.B to specify that waste from an authorized federal agency shall not be commingled with waste from another generator; (6) adds condition 32.B to clarify which form is to be used when employing the procedure specified in radiation safety procedure RS-3.3.62; and (7) modifies condition 34 to add references to revision one of the procedures titled "Processing of Mixed Waste," "Receipt and Storage of Radioactive and Mixed Waste," and "KO61 and Incident Related Material Stabilization Process," and to add the new procedure titled "Survey Sample Analysis and Activity Calculation."

The department has determined that the amendment of the license, Title 25 of the Texas Administrative Code (TAC) Chapter 289, *Texas Regulations for Control of Radiation* (TRCR), and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of the TRCR; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code §401.114 and as set out in TRCR Part 13.5. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.114, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 Texas Administrative Code §1.21. et seq.) and the TRCR.

A copy of the license amendment and all material submitted is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas.

Information relative to the amendment may be obtained by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

TRD-9817955
Susan K. Staeg
General Counsel
Texas Department of Health
Filed: November 24, 1998

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Notice of Amendment Number Six to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176, 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number six modifies condition 22.D(2) to require that the door to the stabilization building be closed only during processing.

The department has determined that the amendment of the license, Title 25 of the Texas Administrative Code (TAC) Chapter 289, *Texas Regulations for Control of Radiation* (TRCR), and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of the TRCR; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code §401.114 and as set out in TRCR Part 13.5. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.114, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 Texas Administrative Code §1.21. et seq.) and the TRCR.

A copy of the license amendment and all material submitted is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas.

Information relative to the amendment may be obtained by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

TRD-9817956

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 24, 1998

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Notice of Intent to Suspend the Industrial Radiographer Identification Card of Darrell Paul Thrash

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against Darrell Paul Thrash, Longview, Texas Industrial Radiographer Identification Card audit number 09602. The department intends to suspend the industrial radiographer identification card, and order the industrial radiographer to cease and desist using, operating, or conducting training in the use of any sources of radiation in Texas.

This notice affords the opportunity to the industrial radiographer for a hearing to show cause why the industrial radiographer identification card should not be suspended. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Should no request for a public hearing be timely filed, the industrial radiographer identification card will be suspended at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9817957

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 24, 1998

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Notice of Public Hearing

The Texas Department of Health (department) will hold a public hearing to receive comments on the proposed 1999 plan for funding the ninth year of the Ryan White Comprehensive Acquired Immunodeficiency Syndrome Resource Emergency (CARE) Act Title II activities in Texas.

The hearing will be held Thursday, December 17, 1997, at 10:00 a.m. until 12:00 p.m., in the Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street, Austin, Texas. To request an accommodation under the Americans with Disabilities Act, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights, Texas Department of Health, at (512) 458-7627 or TDD (512) 458-7708, at least four days prior to the meeting.

Copies of the proposed plan will be mailed to all department-wide Ryan White Title I, II, IIIb, and IV grantees, consortia chairs, and Title II subcontractors prior to the public hearing. Interested persons

can obtain a copy of the plan by contacting Ms. Laura Ramos at (512) 490-2525 or the E-mail address LRamos@std.tdh.state.tx.us.

Written comments should be addressed to Mr. Casey S. Blass, Director, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted through December 31, 1998.

TRD-9817788

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 20, 1998

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Notice of Public Presentation on Medicaid Managed Care in the Dallas Service Area

The Texas Department of Health (department) will hold a public presentation to update interested and affected persons on the implementation of Medicaid Managed Care in the Dallas Service Area. Implementation is scheduled to begin on July 1, 1999. The presentation will include an update on the Texas Health Network option and the Primary Care Case Management model, to be implemented in the Dallas area. The Dallas Service Area will include: Dallas, Collin, Hunt, Rockwall, Ellis, Navarro, and Kaufman counties.

The public presentation will be held on Thursday, December 17, 1998, from 4:00 p.m. to 6:00 p.m., in the auditorium of the Dallas Public Library, 1515 Young Street, Dallas, Texas.

For further information, or to arrange for an interpreter for the deaf or hearing impaired, contact Jim McElroy at (512) 794-5141, Texas Department of Health, Bureau of Managed Care, 11044 Research Boulevard, Building D, Suite 214, Austin, Texas.

TRD-9817871

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 23, 1998

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Notice of Public Presentation on Medicaid Managed Care in the Hill Country Service Area

The Texas Department of Health (department) will hold a public presentation to update interested persons on the implementation of Medicaid Managed Care in the Hill Country Service Area. Implementation is scheduled to begin on September 1, 1999. The presentation will include an update on the managed care model to be implemented in the Hill Country Service Area. The Hill Country Service area includes: Fredericksburg, Gillespie, Kerr, Bandera, Real, Edwards, Kimble, Mason, Llano, and San Saba counties.

The public presentation will be held on Wednesday, December 16, 1998, from 5:30 p.m. to 7:30 p.m., at the Fredericksburg Middle School Cafeteria, 110 West Travis, Fredericksburg, Texas.

For further information, or to arrange for an interpreter for the deaf or hearing impaired, contact Jim McElroy at (512) 794-5141, Texas Department of Health, Bureau of Managed Care, 11044 Research Boulevard, Building D, Suite 214, Austin, Texas.

TRD-9817872

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 23, 1998

Health and Human Services Commission

Public Hearing Notice

The Health and Human Services Commission (HHSC) and the Texas Department of Human Services (TDHS) will conduct a joint public hearing to receive public comment on proposed payment rates for the following Medicaid programs and services operated by TDHS: nursing facilities, swing beds, hospice-nursing facilities, and *Bienvivir* waiver. The joint hearing will be held in compliance with 1 T.A.C. §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on December 18, 1998, at 10:00 a.m. in Room 103 of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (first floor, West Tower). Written comments regarding payment rates set by the Health and Human Services Commission may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be delivered by U.S. mail or express delivery to the attention of Ms. Barbara Tejero, Texas Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711. Hand deliveries will be accepted at 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile to Ms. Tejero at (512) 424-6586. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates on or after December 4, 1998 by contacting Ms. Debbie Price, TDHS, MC W-425, P. O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Debbie Price of the Texas Department of Human Services at MC W-425, P. O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by December 11, 1998, so that appropriate arrangements can be made.

TRD-9817983

Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: November 25, 1998

Texas Department of Housing and Community Affairs

Notice of An Amendment to the 1998 State of Texas Consolidated Action Plan

The Texas Department of Housing and Community Affairs (the Department) announces an amendment to the 1998 State of Texas Consolidated Action Plan; specifically the 1998 Action Plan which covers the allocation and distribution of Community Development Block Grant funds by the Texas Community Development Program.

The amendment will make the purchase of construction equipment an eligible activity for assistance from the Texas Community Development Program Small Towns Environment Program (STEP) when the purchase of such equipment is approved by the Department. Requests from grantees for approval to purchase construction equipment for STEP activities will be reviewed by the Department on a case-by-case basis. However, approval from the Department to purchase construction equipment will generally be limited to situations where the purchase of the equipment is more cost effective when compared

to the cost that would be incurred through a lease arrangement for the same equipment. The 1998 State of Texas Consolidated Action Plan, Community Development Block Grant 1998 Action Plan is being amended as follows:

Under Part I, titled "Program Year 1998 General Program Information", Section C., titled "Ineligible Activities", is changed to the following:

C. Ineligible Activities

In general, any type of activity not described or referred to in Section 105(a) of the federal Housing and Community Development Act of 1974, as amended, is ineligible. Specific activities ineligible under the Texas Community Development Program are:

1. construction of buildings and facilities used for the general conduct of government (e.g. city halls, courthouses, etc.);
2. new housing construction, except as last resort housing under 49 CFR Part 24 or affordable housing through eligible subrecipients in accordance with 24 CFR 570.204;
3. the financing of political activities;
4. purchases of construction equipment (except in limited circumstances under the STEP Program);
5. income payments, such as housing allowances; and
6. most operation and maintenance expenses.

Written comments concerning this amendment will be accepted for thirty days from the date of publication and should be submitted to Anne Paddock (apaddock@tdhca.state.tx.us), Deputy General Counsel, Texas Department of Housing and Community Affairs, 507 Sabine, P.O. Box 13941, Austin, Texas 78711-3941.

TRD-9817892

Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: November 23, 1998

Texas Department of Human Services

Notice of Public Hearing

The Texas Health and Human Services Commission, the Texas Department of Human Services, and the Texas Commission for the Blind (TCB) will conduct a public hearing to receive public comment on the proposed payment rate for the TCB Case Management for Children who are Blind or Visually Impaired. The hearing will be held in compliance with 1 T.A.C. §335.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The hearing will be held on December 22, 1998, at 9:00 a.m. in Room 651 of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (Sixth Floor, West Tower). Written comments regarding payment rates set by the Health and Human Services Commission may be submitted in lieu of testimony until 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Kathy Hall and either mail them to the address noted below, deliver them to the receptionist in the lobby in the John H. Winters Human Services Building, or fax them to (512) 438-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate on or after December 8, 1998, by contacting Kathy Hall, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3702.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kathy Hall (512) 438-3702 by December 15, 1998, so that appropriate arrangements can be made.

TRD-9817974
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: November 25, 1998

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to be admitted to Texas by ANESTHESIOLOGISTS' PROFESSIONAL ASSURANCE COMPANY, a foreign property and casualty company. The home office is in Miami, Florida.

Application to change the name of AMERICAN SURETY LIFE INSURANCE COMPANY to TEXAS BURIAL LIFE INSURANCE COMPANY, a domestic life company. The home office is located in San Antonio, Texas.

Application for incorporation in the State of Texas has been submitted by TMPA LEGAL, INC., a domestic non-profit company organized under chapter 23 of the Texas Insurance Code. The home office is located in Austin, Texas.

Application to change the name of FHP OF NEW MEXICO, INC. to PRESBYTERIAN HEALTH PLAN, INC., a foreign HMO. The home office is located in Albuquerque, New Mexico.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701.

TRD-9817967
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 24, 1998

Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2389 on December 17, 1998 at 10:00 a.m. in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (Association) filing of proposed adjustments to the limits of liability for the Association's policies of windstorm and hail insurance.

This notice is made pursuant to the Texas Insurance Code, Art. 21.49 § 8D (g) which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the Association's proposed adjustments to the limits of liability for its policies of windstorm and hail insurance. This proceeding is exempt for the contested case procedures in Article 1.33B of the Texas Insurance Code.

To request copies of the petition please contact Angie Arizpe at (512)322-4147 (refer to Reference No. P-0998-27).

TRD-9817742
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 19, 1998

Notice of 1998 Texas Title Insurance Biennial Hearing DOCKET NOS. 2393 and 2394

Notice is hereby given that a hearing will be held before the Commissioner of Insurance. The hearing will consist of a rulemaking phase and a ratemaking phase. The rulemaking phase, under Docket No. 2393, will be for the consideration of rules, forms, and endorsements, and related matters not having rate implications. The ratemaking phase, under Docket No. 2394, will be for the consideration of fixing the premium rate and other matters with rate implications. The hearing for the rulemaking phase will begin at 9:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, on February 3, 1999, and continue thereafter at dates, times, and places designated by the commissioner until conclusion. The hearing for the ratemaking phase will begin at 9:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, on February 16, 1999, and continue thereafter at dates, times, and places designated by the commissioner until conclusion. The commissioner will conduct both phases of the hearing; provided, however, that the ratemaking phase of the hearing shall be conducted by the State Office of Administrative Hearings in accordance with Article 1.33B, Texas Insurance Code at the direction of the commissioner or at the written request of any person seeking admission as a party to the ratemaking phase of the hearing. The commissioner shall certify which matters have rate implications to be considered in the rate making phase of the hearing.

Authority, Jurisdiction, Statutes and Rules Involved

The Commissioner of Insurance has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, Articles 1.02, 1.04, 9.01, 9.02, 9.07, and 9.21, and pursuant to the Texas Administrative Code, Title 28, Section 9.1. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Gov't Code, Ch. 2001).

Matters to be Considered

The commissioner will consider testimony presented and information filed by title insurers, title agents, the Office of Public Insurance Counsel and other interested parties relating to the following issues:

Docket 2393

Form and Rulemaking Phase

Item 98-1- Submission by Texas Land Title Association to amend the Facultative Reinsurance Agreement (Form T-18.1).

Item 98-2- Submission by Texas Land Title Association to repeal the existing Tertiary Facultative Reinsurance Agreement (Form T-21) and substitute a new Tertiary Facultative Reinsurance Agreement (Form T-21.1)

Item 98-3- Submission by Texas Land Title Association to adopt a new Tertiary Facultative Reinsurance Agreement - Type II (Form T-21.2).

Item 98-4- Submission by Texas Department of Insurance to amend Procedural Rule P-10 - Facultative Reinsurance, consistent with proposed new and revised reinsurance forms.

Item 98-5- Submission by Title Underwriters of Texas, Inc. to adopt and/or amend procedural rule(s) for the issuance of a Homeowner's Policy of Title Insurance (Form T-___).

Item 98-6- Submission by Title Underwriters of Texas, Inc. to adopt an Owner's Information Sheet for Homeowner's Policy of Title Insurance (Form T-___) and to adopt a Homeowner's Policy of Title Insurance for a One-To-Four Family Residence (Form T-___).

Item 98-7- Submission by Title Underwriters of Texas, Inc. to adopt a Homeowner's Policy of Title Insurance Endorsement (Form T-___).

Item 98-8- Submission by Texas Department of Insurance to adopt new Procedural Rule P-48, to update the dates used in title insurance forms promulgated by the Commissioner of Insurance.

Item 98-9- Submission by Texas Department of Insurance to amend Procedural Rule P-28, Continuing Education Requirements to be consistent with rules previously adopted for staggered renewal dates of title agent, direct operation and escrow officer licenses.

Item 98-10- Submission by Texas Department of Insurance to amend The Administrative Rules in Section VI of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas to reflect completion of staggering renewal dates for title agent, direct operation and escrow officer licenses.

Item 98-11- Submission by Texas Department of Insurance to adopt new Procedural Rule P-49 to set a standard for title insurance companies to follow in reporting delinquent audit reports and to create a clear record of the solvency of all title agents and direct operations licensed to do business in the State of Texas.

Item 98-12- Submission by Texas Department of Insurance as requested by the U.S. Department of Justice to repeal in its entirety the Form T-11, Policy of Title Insurance (USA) and to adopt instead proposed Form T-11, United States of America Policy of Title Insurance.

Item 98-13- Submission by Texas Department of Insurance to amend Rule P-33, necessary to make this rule consistent with the proposed Form T-11, United States of America Policy of Title Insurance.

Item 98-14- Submission by Texas Department of Insurance to adopt Form T-63, Texas Escrow Accounting Addendum Special Disbursement Disclosure.

Item 98-15- Submission by Texas Department of Insurance to amend Form T-19, Company Report of Agents Audit Report.

Item 98-16- Submission by Texas Department of Insurance to amend Procedural Rule P-20 and various forms as they apply to "subsequent taxes and assessments" in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 98-17- Submission by Texas Department of Insurance to amend Procedural Rule P-31 setting a standard for title insurance companies to follow in reporting the named individuals and the office location at which home office issued policies may actually be signed.

Item 98-18- Submission by Texas Department of Insurance to repeal Procedural Rule P-32 that expired by its own provisions on December 31, 1995.

Item 98-19- Submission by Texas Department of Insurance to amend the Limited Pre-Foreclosure Policy (Form-40) to correct a typographical error.

Item 98-20- Submission by Texas Department of Insurance to amend Procedural Rule P-22 to permit the person furnishing services to retain their portion of the title premium in lieu of remitting the entire portion of the premium to the company.

Complete copies of the agenda items, as amended, may be obtained from the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104.

Docket 2394

Rate-making Phase

Item 98-1- Submission by Texas Land Title Association to adopt a Schedule of Basic Premium Rates for Title Insurance for the calendar year 1998, and in so doing consider the expense and loss experience of the industry so as to establish a rate which is reasonable to the public and nonconfiscatory to title insurance companies and title insurance agents.

Item 98-22- Submission by Texas Land Title Association to amend Procedural Rule P-23 and adopt a formula for division of premiums between title insurance agents and companies for the calendar year 1998.

Item 98-23- Submission by Texas Land Title Association to amend Rate Rule R-28 Premium For Equity Loan Mortgage Endorsement (T-42) and Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1).

Item 98-24- Submission by Title Underwriters of Texas, Inc. to adopt a Rate Rule for the Premium for Homeowner's Policy of Title Insurance (T-___).

Item 98-25- Submission by Texas Department of Insurance to amend Rate Rule R-17 Policy Forms for Use by United States Government.

Item 98-26- Submission by Texas Department of Insurance to amend Rate Rule R-8 to accommodate a new lending practice, involving the refinance of an existing loan into two or more new loans.

Item 98-27- Submission by Texas Department of Insurance to correct typographical errors in current Texas Title Insurance Premium Rates.

Item 98-28- Rate-making implications of Item 98-16, Submission by Texas Department of Insurance to amend Procedural Rule P-20 and various forms as they apply to "subsequent taxes and assessments" in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

In the Rate-making Phase the parties shall consider and provide evidence on all relevant and necessary points, including but not limited to:

1. The impact of changing property values and sales prices from 1981 through 1997 on title premium revenues, independent of changes in title premium rates.
2. The impact of changing numbers of title insurance transactions from 1981 through 1997 on title premium revenues and expenses, independent of title premium rates, with reference to the separate experience of underwriters, affiliated agents, independent agents and direct agent operations and with reference to changes in different types of transactions (original, refinance, residential, commercial).
3. The annual growth in total title agent and title underwriter expenses from 1981 through 1997 generally and in comparison to: premium growth; relevant measures of inflation, such as the consumer price index or one or more of its sub-indices; or any other relevant measure. Reference the separate experience of underwriters, affiliated agents, independent agents and direct agent operations.

4. Factors and forces causing title agent and title underwriter expenses to grow at annual rates greater than, equal to or less than relevant annual rates of inflation from 1981 through 1997, with reference to the separate experience of underwriters, affiliated agents, independent agents and direct agent operations.

5. The historical and projected future impact of increasing automation on title insurance premiums, expenses, losses and profitability, with reference to the separate experience of underwriters, affiliated agents, independent agents and direct agent operations.

6. The historical and projected future impact of title insurer and title agent mergers, acquisitions, failures and start-ups on title insurance premiums, expenses, losses and profitability.

7. The changes in number of market participants by type of market and type of participants (underwriters, affiliate agents, independent agents and direct agent operations), from 1981 through 1997 in the aggregate and by county, including analysis of the causes and impacts of changes in the numbers over time.

8. The impact of the phenomenon known as reverse competition, generally described as competition which has the effect of raising rather than lowering prices to consumers because competitive efforts on the part of insurers and agents are directed towards the "producers" of business (realtors, real estate developers, lenders, attorneys, etc.) rather than the ultimate consumers of title insurance. Reference structural market incentives for increases in the number of market participants independent of changes in the value of services provided to consumers, excessive promotional and other acquisition expenses, and rebates.

9. The continuing relevance of the 1986 report of the title insurance advisory group.

10. The degree to which expenses are fixed or variable in relation to premium volume with reference to type or size of entity (underwriters, affiliated agents, independent agents and direct agent operations) and the type of transaction (original, refinance, residential, commercial).

11. Alternative ratemaking methodologies which consider the impact of changes in property values, the number of transactions and any other relevant factors on premium, expenses, losses and profitability. For example, consider the projection of future expenses and premium separately with specific adjustments for expense inflation, number of transactions and change in property values.

12. Alternative methodologies for limiting overall expenses so as to effectively disallow the portion of reported title industry expenses reasonably associated with the impact of reverse competition.

13. Alternative projections of losses, including simple linear and exponential trends and models which incorporate additional independent variables.

14. Alternative title insurance profit models.

15. Alternative methodologies for determining an appropriate split of title premium between title agents and underwriters.

16. The impact of the premium split, changed or not, on future title premiums, with reference to any variations in impact depending upon the ratemaking methodology employed.

17. The reasonableness of including or excluding, in the determination of an appropriate split of title premium between title agents and underwriters, the amount of expenses disallowed in determining the overall rate level.

18. The appropriateness of different agent/underwriter revenue split percentages with reference to the revenue and revenue requirements

of large versus small volume title agents and of urban versus rural title agents.

19. The comparison of the cost to consumers for title insurance in Texas to the cost to consumers for title insurance in other states. In this comparison, costs for the title search, abstracting and examination prior to closing; the closing or settlement fee; and any post closing certification or abstract costs should be considered.

20. The impact which recurring excesses of tax certificate and recording fees collected over tax certificate and recording fees paid should have on the allocation of equity and/or expenses.

21. The impact which profits earned performing escrow functions or handling tax certificates and recording fees should have in establishing profit margins for agents.

22. The parties should present sufficient credible evidence upon which the Commissioner may base rates for the Texas Residential Limited Coverage Junior Mortgagee Policy (T-44); the Texas Residential Limited Coverage Junior Mortgagee Policy Down Date Endorsement (T-45); the Texas Residential Limited Coverage Junior Mortgagee Policy Variable Rate Endorsement (T-46); and the Texas Residential Limited Coverage Junior Mortgagee Policy Additional Coverage Endorsement. All parties are strongly encouraged to present independent and alternative rate proposals.

Commissioner's Policies

The commissioner's policies regarding the setting of rates for title insurance provided for under Art. 9.07, Texas Insurance Code are set out below. This policy statement, however, is not intended to limit the type of evidence a party may offer at the hearing. The pertinent commissioner's policies are as follows:

It is the commissioner's policy to consider all relevant evidence and issues in making a determination of rates. To ensure a complete record, the commissioner shall:

(a) take official notice of Commissioner's Order 98-0620 dated May 27, 1998; entitled "In the Matter of the 1996 Texas Title Insurance Biennial Rate Hearing Docket Number 2279."

(b) ensure that exhibits accompanying testimony from the parties' witnesses, including their underlying work papers, are submitted and are made available in both paper and electronic format. The format should be 3.5 inch high density diskette in a DOS or Windows spreadsheet or other format readable by a machine running DOS or Windows. Parameters, assumptions and references to underlying data should be identifiable in the electronic exhibits.

(c) take official notice of the 1986 report of the title insurance advisory group.

Motions for Admission as a Party to Ratemaking Phase

Anyone who wishes to participate in the hearing as a party for the ratemaking phase must file a motion for admission as a party by 5:00 p.m. on December 14, 1998.

Pre-Hearing Conference

An initial pre-hearing conference will be held before the General Counsel of the Department at 1:00 p.m. on January 5, 1999, in room 102 of the first floor of the William P. Hobby, Jr. State Office Building, 333 Guadalupe St., Austin, Texas 78701. The pre-hearing conference will be held for the following purposes:

(1) ruling on the motions for admission of parties; and,

(2) such other matters as may aid in the simplification of the proceedings.

Subsequent pre-hearing conferences will be scheduled as necessary to rule on other matters as may aid in the simplification of the proceedings.

Conduct of the Hearing

Each page of any exhibit offered in evidence at a hearing before the Commissioner of Insurance, including prefiled testimony, must be numbered consecutively at the center of the bottom margin, be on 8 1/2" by 11" paper, and must be three-hole-punched along the left margin. The front page of each exhibit should indicate that the exhibit would be part of the record of a public hearing before the Commissioner of Insurance and should identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit should also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance

Subject of Hearing:

Docket No. xxxx

Date: _____

Party: _____

Exhibit # _____

Description of Exhibit _____

All deadlines in this notice are subject to change at the Commissioner's discretion to the extent permitted by statute and rule.

TRD-9817743

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: November 19, 1998



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Mark Hatcher, (doing business under the assumed name of Cordata), a domestic third party administrator. The home office is Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9817936

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: November 23, 1998



Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding DIAMOND SHAMROCK REFINING AND MARKETING COMPANY, Docket Number 1998-0252-AIR-E; Account Numbers EE-0801-B, EE-0849-T, EE-0934-E,

EE-0935-C, EE-0943-D, EE-0944-B, EE-0945-W, EE-0946-U, and EE-0983-O; Enforcement ID Nos. 12171, 12163, 12167, 12168, 12166, 12161, 12170, 12162, and 12164 on November 17, 1998, assessing \$17,100 in administrative penalties with \$3,420 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRISP WELDING SERVICE, INCORPORATED, Docket Number 1998-0267-AIR-E; Account Number WN-0179-Q; Enforcement ID Number 12359 on November 17, 1998, assessing \$6,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP OPERATING PARTNERS, L.P., Docket Number 1998-0546-AIR-E; Account Number EE-1608-N; Enforcement ID Number 10219 on November 17, 1998, assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHWEST CONVENIENCE STORES, INCORPORATED, Docket Number 1998-0522-AIR-E; Account Number EE-1007-W; Enforcement ID Number 12347 on November 17, 1998, assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacy Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEDINA ELECTRIC COOPERATIVE, INC., Docket Number 1998-0466-AIR-E; Account Number FJ-0012-P; Enforcement ID Number 12462 on November 17, 1998, assessing \$12,500 in administrative penalties with \$2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAX SMITH DBA CALVERT CONCRETE, Docket Number 1998-0681-AIR-E; Account Number WK-0238-M; Enforcement ID Number 12541 on November 17, 1998, assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE HERTZ CORPORATION, Docket Number 1998-0525-AIR-E; Account Number EE-1145-J on November 17, 1998, assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-

899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRICE CONSTRUCTION, INCORPORATED, Docket Number 1998-0292-AIR-E; Account Number 92-1169-G; Enforcement ID Number 15 on November 17, 1998, assessing \$11,700 in administrative penalties with \$2,340 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENGINEERED CARBONS, INCORPORATED, Docket Number 1998-0179-AIR-E; Account Number OCC-0020-R; Enforcement ID Number 774 on November 17, 1998, assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOUSTON CHEMICAL DISTRIBUTORS, L.L.C., Docket Number 1998-0277-AIR-E; Account Number GB-0122-E; Enforcement ID Number 10689 on November 17, 1998, assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JET-ERA ENTERPRISES, NC., Docket Number 1997-0998-MWD-E; TNRCC Water Quality Permit No. 11578-001; Enforcement ID Number 8525 on November 17, 1998, assessing \$17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Jang, Staff Attorney at (512) 239-2269 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TOBY FLOYD, Docket Number 1997-0988-AGR-E; No TNRCC Permit; Enforcement ID Number 12049 on November 17, 1998, assessing \$6,805 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Pupilampu, Staff Attorney at (512) 239-0677 or Claudia Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JIM WURZ DOING BUSINESS AS BUILDERS DEPOT AND JIM WURZ, INDIVIDUALLY, Docket Number 1997-1080-OSI-E; No Registration Number; Enforcement ID Number 11943 on November 17, 1998, assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Hernandez, Staff Attorney at (512) 239-0612 or Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MARK ECHOLS DBA JUST M.E. SPRINKLERS, Docket Number 1997-0427-LII-E; No TNRCC

License; Enforcement ID Number 2481 on November 17, 1998, assessing \$4,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Pupilampu, Staff Attorney at (512) 239-0677 or Mike Hess, Enforcement Coordinator at (512) 239-1436, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHARLES TUCKER DBA C & R MUFFLER, Docket Number 1998-0254-AIR-E; Account Number DB-4842-J; Enforcement ID Number 12349 on November 17, 1998, assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9817968

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: November 24, 1998

◆ ◆ ◆
Applications for Industrial Hazardous Waste Permits/Compliance Plans and Underground Injection Control Permits

Attached are Notices of Applications issued during the period of November 10, 1998, thru November 17, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 45 days (unless otherwise noted) after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application (new permit, amendment, renewal) and permit number.

KERR-MCGEE CHEMICAL CORPORATION, 155 Buchanan Road, Texarkana, Texas 75501, has applied for Renewal of Permit Number HW-50076 and Renewal of Compliance Plan Number CP-50076. The permit renewal will authorize the continued operation of post-closure care activities at six hydraulically connected surface impoundments which are closed. The compliance plan renewal requires corrective action with ground-water monitoring at the Hazardous Waste Man-

agement Area 4 and RCRA Facility Investigation, Corrective Measure Study and Corrective Measure Implementation at 4 Solid Waste Management Units. The facility is located at the above address on a 500-acre tract of land in Bowie County, Texas.

BURLINGTON NORTHERN AND SANTA FE RAILWAY (BNSF) COMPANY (Somerville, Tx. Facility) 920 Southeast Quincy Street, Topeka, Kansas 66612, has applied for Renewal/Major Amendment of Permit Number HW-50090 and Renewal/Major Amendment of Compliance Plan Number CP-50090. The permit/compliance plan renewal will authorize the continued operation of post-closure care and the remediation of contaminated groundwater. The facility is located on 200 acres in Burleson County and lies partially within the city limits of Somerville, Texas adjacent to Highway 36 and Burleson County Road 423.

LUBRIZOL CORPORATION, P.O. Box 158, 41 Tidal Road, Deer Park, Harris County, Texas 77536 has applied for Renewal/Major Amendment/Class 1 modification/Class 2 modification of Permit Number HW-50077 and Renewal/Major Amendment of Compliance Plan Number CP-50077. The permit/compliance plan renewal will authorize the continued operation of one existing tank (Permit Unit Number 2) for the storage of 9,000 gallons of industrial hazardous waste and continuance of the corrective action program and monitoring the concentrations of hazardous constituents in the groundwater.

ASARCO Incorporated, P.O. Box 30200, Amarillo, TX 79120-0200, has filed an Application for renewal/amendment of a Class I Underground Injection Control Permit Number WDW-273. The applicant requests authorization for the continued operation of a hazardous injection well for the disposal of onsite, treated waste streams. The facility is located 8 miles northeast of Amarillo on Highway 136 in Potter County (45 days after notice of the draft permit).

TRD-9817964

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: November 24, 1998



Applications for Waste Disposal/Discharge Permits

Attached are Notices of Applications for waste disposal/discharge permits issued during the period of November 4, 1998 to November 17, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerk's Office-MC105, P.O. Box 13087, Austin,

Texas 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located; type of facility, location of the facility; type of application (new permit, amendment, or renewal) and permit number.

WOODCREEK UTILITIES, INC., P.O. Box 1027, Wimberley, Texas 78676; The wastewater treatment facilities and disposal site will be located approximately 1200 feet south southeast of the intersection of Farm-to-Market Road 2325 and Jacob's Well Road, approximately 4 miles north of the community of Wimberley in Hays County, Texas; New Permit, Proposed Permit Number 13989-001.

CITY OF DUMAS, P.O. Box 438, Dumas, Texas 79029; The wastewater treatment facilities and disposal sites are located approximately 1.0 mile east of U.S. Highway 287, south of the City of Dumas on East 20th Street in Moore County, Texas; Major amendment to Permit Number 10161-001.

LAKEWAY MUNICIPAL UTILITY DISTRICT, 1097 Lohmans Crossing Road, Austin, Texas 78734; The wastewater treatment facilities and disposal site are located approximately 2.0 miles northwest of the intersection of Ranch Road 620 and Lohmans Crossing Road in Travis County, Texas; New permit, Proposed Permit Number 11495-006.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT, 3322 Ranch Road 620 South, Austin, Texas 78734; The wastewater treatment facility and disposal site are located west of Ranch Road 620, approximately 2 miles north-northwest of the intersection of Ranch Road 620 and State Highway 71 in Travis County, Texas; Renewal of Permit Number 12920-001

ANCHOR WEST, INC., P.O. Box 608, Pecos, Texas 79772; The facility and disposal area are located at 200 E. Palmer, south of Interstate Highway 20, in the City of Pecos, Reeves County, Texas; Major amendment of Permit Number 02667.

CITY OF TAHOKA, P.O. Box 300, Tahoka, Texas 79373; The wastewater treatment facilities and disposal site are located approximately .75 mile south of the intersection of U.S. Highway 87 and U.S. Highway 380; approximately .25 mile east of U.S. Highway 87 in the City of Tahoka in Lynn County, Texas; Renewal of Permit Number 10298-001.

TRD-9817965

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: November 24, 1998



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Order. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with

respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 2, 1999. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Default Order is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 2, 1999. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorney is available to discuss the Default Order and/or the comment procedure at the listed phone number, however, comments on the Default Order should be submitted to the TNRCC in writing.

(1) COMPANY: Mel Diaz dba Mel's Paint and Body Shop; DOCKET NUMBER: 98-0175-AIR-E; TNRCC ID NUMBER: CP-0413-B; LOCATION: Princeton, Collin County, Texas; TYPE OF FACILITY: automobile paint and body shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Clean Air Act, §382.0518(a) and §382.085(b) by operating a source of air emissions without first satisfying the conditions of a standard exemption or obtaining a permit; 30 TAC §115.426(a)(1)(A) and Texas Clean Air Act, §382.085(b) by failing to maintain current Material Safety Data Sheets (MSDS) of all volatile organic compounds containing materials in use at the Shop such that they were available for review by the TNRCC investigator; 30 TAC §115.426(a)(1)(B) and Texas Clean Air Act, §382.085(b) by failing to maintain daily records of material usage rates such that they were available for review by the TNRCC investigator; PENALTY: \$6,250; STAFF ATTORNEY: Cecily Small Gooch, Litigation Division, MC R-4, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

TRD-9817979

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: November 25, 1998

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code, §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day

before the date on which the public comment period closes, which in this case is January 2, 1999. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AOs if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AOs is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 2, 1999. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone number, however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) COMPANY: James Higgins and John Higgins dba Bulldog Environmental; DOCKET NUMBER: 98-0149-MSW-E; TNRCC ID NUMBER: No TNRCC Permit; LOCATION: Montgomery, Montgomery County, Texas; TYPE OF FACILITY: solid waste processing facility; RULES VIOLATED: 30 TAC §330.4 by storing and processing municipal solid waste without TNRCC authorization; PENALTY: 5,000; STAFF ATTORNEY: William Pumplamp, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: MRK Investment Corp. formerly dba El Primero Training Center; DOCKET NUMBER: 97-1003-PWS-E; TNRCC ID NUMBER: 2400024; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.105(a) by exceeding the maximum contaminant levels for bacteriological contaminants; 30 TAC §290.106(a) by failing to collect monthly bacteriological samples; 30 TAC §290.106(b) by failing to collect repeat samples within 24 hours of being notified of positive results; 30 TAC §290.46(f)(1)(A) by failing to operate disinfection equipment that maintain a minimum free chlorine residual of 0.2 milligram per liter; 30 TAC §290.46(f)(2) by failing to test disinfectant residuals by using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator; 30 TAC §290.46(f)(2)(B) by failing to test the disinfectant residual in the distribution system at least once every seven days; PENALTY: \$3,175; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(3) COMPANY: Larry Tinkle; DOCKET NUMBER: 98-0256-MSW-E; TNRCC ID NUMBER: 33300; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: municipal and industrial solid waste; RULES VIOLATED: 30 TAC §330.4(b) by failing to obtain a permit to operate a solid waste facility for the purpose of disposing brush and land clearing debris; 30 TAC §335.2 by failing to obtain a permit to operate a solid waste facility for the purpose of disposing of Class 2 industrial solid waste; 30 TAC §335.4(1) and Texas Water Code, §26.121 by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposing of industrial waste in the sand pit so as to cause the discharge or imminent threat of discharge of industrial solid waste with the runoff from the industrial solid waste into or adjacent to

the waters in the state without obtaining specific authorization for such discharge from the commission; PENALTY: \$7,500; STAFF ATTORNEY: Lisa Z. Hernandez, Litigation Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Katherine Mann dba Airport Business Park; DOCKET NUMBER: 97-0548-PWS-E; TNRCC ID NUMBER: 1700367; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.120(b)(2) by failing to submit a lead/copper sample site selection form; 30 TAC §290.120(c) by failing to collect lead/copper samples; 30 TAC §290.51 and the Texas Water Code, §341.041 by failing to pay the public health service fee; PENALTY: \$313; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Frank Webb dba Lago Vista Water System; DOCKET NUMBER: 97-0677-PWS-E; TNRCC ID NUMBER: 0940029; LOCATION: Luling, Guadalupe County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.120(c)(5) and the Texas Water Code, §341.031 by failing to submit to the commission water samples from the Facility for lead/copper analysis for the following sampling periods: January 1, 1995 through June 30, 1995 and July 1, 1995 through December 1, 1995; Texas Health and Safety Code, §341.041 by failing to pay the Public Health Service fee for account number 90940029 for the following periods and amounts: for the year 1995 a total of \$99.91, for the year 1996 a total of \$92.81, and for the year 1997 a total of \$92.81; PENALTY: \$630; STAFF ATTORNEY: Kara Salmanson, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(6) COMPANY: Graeme Reed dba Suburban Mobile Home Park Number 2; DOCKET NUMBER: 97-0877-PWS-E; TNRCC ID NUMBER: 1010760; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.46(e) by failing to operate the Facility under the direct supervision of a certified water works operator; 30 TAC §290.41(c)(3)(B) by failing to extend the well casing to a point 18 inches above the elevation of the finished floor of the pump house or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block; 30 TAC §290.41(c)(1)(F) by failing to protect the system's facilities by a 150-foot radius sanitary control easement prohibiting all septic tanks within 50 feet of the well and open-jointed drain fields within a 150-foot radius of each well; 30 TAC §290.45(b)(1)(E) by failing to provide a well capacity of 1.0 gallon per minute per connection; 30 TAC §290.106(a)(2) and Texas Health and Safety Code, §341.033(d) by failing to collect bacteriological samples for the months of July 1996 and June 1997; PENALTY: \$2,570; STAFF ATTORNEY: Bill Jang, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston Texas 77023-1486 (713) 767-3500.

(7) COMPANY: Doug Steiner dba Leisure Time Sprinkler Company; DOCKET NUMBER: 97-0428-LII-E; TNRCC ID NUMBER: LI0003923; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape irrigation installation; RULES VIOLATED: 30 TAC §344.308(f)(4) by failing to provide the direct burial wire splices' mechanical connectors, used in the Irrigation System, with a container surrounded by a waterproof sealant; PENALTY: \$325; STAFF ATTORNEY: Bill Jang, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042 (210) 490-3096.

TRD-9817980

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: November 25, 1998

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Notice of Opportunity to Comment on Shutdown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Orders. Texas Water Code, §26.3475 authorizes the TNRCC to order the shutdown of any Underground Storage Tank system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the Underground Storage Tank system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of an underground storage tank facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1993, cathodic protection violations documented at the facility. Pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is January 2, 1999. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or considerations that indicate that the consent to the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required to be published if those changes are made in response to written comments.

Copies of the proposed Shutdown Orders are available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400, and at the applicable Regional Office listed as follows. Written comments about any Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087, and must be received by 5:00 p.m. on January 2, 1999. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Orders and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Orders should be submitted to the TNRCC in writing.

(1) COMPANY: Momin Texaco Facility; DOCKET NUMBER: 98-1428-PST-E; TNRCC ID NUMBER: 0028161; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks; RULES VIOLATED: 30 TAC §334.51(b)(2)(A) by failing to equip fill pipe with a tight-fill fitting; 30 TAC §334.51(b)(2)(B) by failing to install spill containment equipment; 30 TAC §334.50(b)(2) by failing to perform tightness tests on the piping associated with the underground storage tank systems or to monitor piping for releases monthly; 30 TAC §334.50(b)(2)(A)(i) by failing to equip pressurized piping with an automatic line detector; 30 TAC §334.50(b)(2)(A)(i)(III) by failing to perform annual performance tests on the line leak detector; 30 TAC §334.50(b)(1)(B)(i) by failing to conduct tank tightness tests at least once each year when

utilizing a combination of tank tightness testing and inventory control as a release detection method; 30 TAC §334.50(d)(1)(B)(iii)(I) by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day; 30 TAC §334.50(d)(1)(B)(ii) by failing to reconcile inventory records on a monthly basis; PENALTY: \$0; STAFF ATTORNEY: William Pupilamp, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Brownies #8; DOCKET NUMBER: 98-1429-PST-E; TNRCC ID NUMBER: 0024890; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) by failing to provide proper release detection for the underground storage tank systems at the Facility; 30 TAC §334.50(b)(2) by failing to perform tightness tests on the piping associated with the underground storage tank systems or to monitor piping for releases monthly; 30 TAC §334.50(b)(2)(A)(i)(III) by failing to perform annual performance tests on the line leak detector; 30 TAC §334.50(d)(1)(B)(ii) by failing to reconcile inventory records on a monthly basis; 30 TAC §334.51(b)(2)(C) by failing to provide proper overfill prevention equipment for the underground storage tank systems; PENALTY: \$0; STAFF ATTORNEY: William Pupilamp, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: B&H Aircraft Sales dba Brauntex Aviation, Bayliss Hariss, owner; DOCKET NUMBER: 98-1427-PST-E; TNRCC ID NUMBER: 0016332; LOCATION: New Braunfels, Guadalupe County, Texas; TYPE OF FACILITY: airplane fueling facility with underground storage tanks; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) by failing to reconcile inventory records on a monthly basis; 30 TAC §334.50(b)(2)(A)(ii)(I) by failing to perform a piping tightness test on the piping associated with the underground storage tank systems at least once each year; 30 TAC §334.50(b)(2)(A)(i)(III) by failing to test the leak line detector at least once per year for performance and operational reliability; PENALTY: \$0; STAFF ATTORNEY: Hodgson Eckel, Litigation Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas, 78232, (210) 490-3096.

(4) COMPANY: Triple H Mart #4; DOCKET NUMBER: 96-1418-PST-E; TNRCC ID NUMBER: 0029376; LOCATION: Donna, Hidalgo County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks; RULES VIOLATED: 30 TAC §334.51(b)(2)(B) by failing to equip all underground storage tank systems at the Facility with proper spill containment equipment; 30 TAC §334.51(b)(2)(C) by failing to equip all underground storage tank systems at the Facility with proper overfill prevention equipment; PENALTY: \$0; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-5059, (956) 425-6010.

(5) COMPANY: Triple H Mart #9; DOCKET NUMBER: 98-1426-PST-E; TNRCC ID NUMBER: 0029378; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks; RULES VIOLATED: 30 TAC §334.51(b)(2)(B) by failing to equip all underground storage tank systems at the Facility with proper spill containment equipment; 30 TAC §334.51(b)(2)(C) by failing to equip all underground storage tank systems at the Facility with proper overfill prevention equipment; PENALTY: \$0; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-5059, (956) 425-6010.

(6) COMPANY: J and L Drive-In, Incorporated; DOCKET NUMBER: 98-1424-PST-E; TNRCC ID NUMBER: 0030781; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks; RULES VIOLATED: 30 TAC §334.50(b)(1)(B)(i) by failing to conduct tank tightness tests at least once each year when utilizing a combination of tank tightness testing and inventory control as a release detection method; 30 TAC §334.50(d)(1)(B) by failing to conduct inventory control procedures in accordance with applicable underground storage tank requirements; PENALTY: \$0; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-5059, (956) 425-6010.

(7) COMPANY: BJK Car Care; Phillip Wood, owner; DOCKET NUMBER: 98-1430-PST-E; TNRCC ID NUMBER: 0013973; LOCATION: Cedar Hill, Dallas County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks; RULES VIOLATED: 30 TAC §334.50(a)(1) by failing to provide release detection for all underground storage tank systems at the Facility; and 30 TAC §334.51(b)(2)(C) by failing to have overfill prevention equipment for all underground storage tank systems at the Facility; PENALTY: \$0; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010, (817) 469-6750.

TRD-9817981

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: November 25, 1998

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Notice of Public Hearing (Longview FAR)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to the SIP concerning the Northeast Texas Flexible Attainment Region (FAR).

This proposal contains Agreed Orders adopted by the commission in September 1996, and would make certain local ozone precursor emission reductions federally enforceable. Four affected companies in the Northeast Texas region (Norit Americas, Inc.; La Gloria Oil and Gas Company; Eastman Chemical Company, Texas Eastman Division; and ARCO Permian, a unit of Atlantic Richfield Company) voluntarily agreed to be subject to the implementation of enforceable emission reduction measures pursuant to Part A, Sections 2-5 of the Northeast Texas FAR Memorandum of Agreement.

A public hearing on the proposal will be held in Longview on January 7, 1999, at 7:00 p.m. in the Longview City Hall Council Chambers, located at 300 West Cotton Street. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments should be mailed to Ms. Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments

must be received by 5:00 p.m., January 7, 1999, and should reference Rule Log Number 96175-SIP-AI. For further information on the proposed revisions, please contact Brian Foster, Air Policy and Regulations Division, at (512) 239-1930. Copies of the proposed SIP can be obtained via the commission's Web Site at www.tnrcc.state.tx.us/oprd/rules/propadop.html, or by calling Ms. Evans at (512) 239-1970.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9817907

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: November 23, 1998



Notice of Request for Nominations

The Texas Natural Resource Conservation Commission (TNRCC) is requesting nominations for five individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) for the following positions:

1. An elected official from a county with any population size (un-expired term ends August 31, 1999).
2. A general public representative (un-expired term ends August 31, 1999).
3. A planning region representative (un-expired term ends August 31, 2003).
4. A public solid waste district or authority representative (un-expired term ends August 31, 2003).
5. An elected official from a county with population less than 150,000 (un-expired term ends August 31, 2003).

The Council was created by the 69th Legislature (1983). Members represent various interests; i.e., city and county solid waste agencies, public solid waste district or authority, a commercial solid waste landfill operator, planning regions, an environmentalist, city and county officials, a financial advisor, a professional engineer, a solid waste professional, a composting/recycling manager and general public representatives.

Upon request from the TNRCC Commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas. Appointments will be made by the TNRCC Commissioners.

A minimum of four Council meetings are held each year. The meetings usually last one full day and are held in Austin, Texas. Members are not reimbursed for expenses incurred to attend meetings and do not receive financial compensation.

To Nominate an Individual: ensure the individual is qualified for the position which he/she is being considered and submit a biographical summary with work experience.

The Nominee Should: submit a letter indicating his/her agreement to serve, if appointed.

Address: mail nominations and nominee letters to: Gary W. Trim, Program Administrator, Permits Division, TNRCC, P.O. Box 13087, MC 124, Austin, Texas 78711-3087 or faxed to (512) 239-6717.

Deadline: written nominations and letters from nominees must be received by the TNRCC by 5:00 p.m., on January 4, 1999.

Questions regarding the Council can be directed to Gary W. Trim, at phone number (512) 239-6708, faxed to (512) 239-6717 or E-mail address: gtrim@tnrcc.state.tx.us.

TRD-9817978

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: November 25, 1998



Provisionally-Issued Temporary Permits to Appropriate State Water during the period of November 25, 1998

Listed below are permits issued during the period of November 25, 1998:

Application Number TA-8029 by Hunter Industries, Inc. for diversion of 3 acre-feet in a one year period for industrial (roadway construction) use. Water may be diverted from Brushy Creek, Brazos River Basin, approximately 20 miles southeast of Georgetown, Williamson County, Texas at the crossing of FARM-TO-MARKET ROAD 973 and Brushy Creek.

Application Number TA-8030 by T.L. James and Company, Inc. for diversion of 9 acre-feet in a one year period for industrial (road construction) use. Water may be diverted from the Little Brazos River, Brazos River Basin, approximately 8.5 miles west of Bryan, Brazos County, Texas at the crossing of FARM-TO-MARKET ROAD 1687 and the Little Brazos River.

Application Number TA-8031 by S.F.W. Construction, Inc. for diversion of 1 acre-feet in a one year period for industrial (bridge construction) use. Water may be diverted from the Lampasas River, Brazos River Basin, approximately 25 miles west of Belton, Bell County, Texas near the intersection of CONTACT RECREATION 539 and FARM-TO-MARKET ROAD 2670.

Application Number TA-8032 by Phelps Drilling Company for diversion of 1 acre-feet in a one year period for mining (water well drilling) use. Water may be diverted from the Guadalupe River, Guadalupe River Basin, at the three following diversion points: (1) approximately 10 miles west of Kerrville, Texas at the crossing of Highway 39 and the Guadalupe River, (2) approximately 10 miles southeast of Kerrville, Texas at the crossing of FARM-TO-MARKET ROAD 1350 and the Guadalupe River and (3) approximately 4 miles west of Kerrville, Texas near Highway 27 and the Guadalupe River.

Application Number TA-8033 by Kendall County for diversion of 10 acre-feet in a one year period for industrial (road maintenance) use. Water may be diverted from Grape Creek, Colorado River Basin, approximately 24 miles northwest of Boerne, Kendall County, Texas at three diversion points along Grape Creek Road and Grape Creek.

Application Number TA-8035 by Dean Word Company, Ltd. for diversion of 3 acre-feet in a one year period for industrial (highway construction) use. Water may be diverted from the Fivemile Creek, Guadalupe River Basin, approximately 5 miles south of Cuero, Dewitt County, Texas at the crossing of US 183 and Fivemile Creek.

Application Number TA-8036 by Glenn-Wade Contractors for diversion of 10 acre-feet in a one year period for industrial (highway construction) use. Water may be diverted from Saline Branch, Trinity River Basin, approximately 18 miles east of Fairfield, Freestone County, Texas at the crossing of US 84 and Saline Branch.

Application Number TA-8037 by Big Creek Construction, Ltd. for diversion of 5 acre-feet in a one year period for industrial (equipment construction) use. Water may be diverted from an unnamed tributary of Sybert Branch, Brazos River Basin, approximately 1.5 miles south of Rogers, Bell County, Texas at the crossing of FARM-TO-MARKET ROAD 437 and the unnamed tributary of Sybert Branch.

Application Number TA-8038 by Young Contractors, Inc. for diversion of 10 acre-feet in a one year period for industrial (highway construction) use. Water may be diverted from Carters Creek, Brazos River Basin, approximately 3.5 miles east of Bryan, Brazos County, Texas at the crossing of FARM-TO-MARKET ROAD 158 and Carters Creek.

Application Number TA-8039 by Texas Utilities Pipeline Services, Inc. for diversion of 1 acre-feet in a one year period for mining (boring) use. Water may be diverted from the Trinity River, Trinity River Basin, approximately 22 miles southwest of Crockett, Houston County, Texas at the Texas Utilities Pipeline Services right of way on the Trinity River.

Application Number TA-8040 by TI Energy Services, Inc. for diversion of 1 acre-feet in a six month period for hydrostatic pipeline testing purposes. Water may be diverted from Taylor Bayou, San Jacinto-Brazos Coastal Basin, approximately 22 miles southeast of Houston, Harris County, Texas near the crossing of Port Road and Taylor Bayou.

Application Number TA-8041 by Hunter Industries, Inc. for diversion of 3 acre-feet in a one year period for industrial (road and bridge construction) use. Water may be diverted from New Year Creek, Brazos River Basin, approximately 2 miles northeast of Brenham, Washington County, Texas at the crossing of STATE HIGHWAY 105 and New Year Creek.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174 (section). Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-8817963

Donna Castaneda
Acting Chief Clerk

Texas Natural Resource Conservation Commission
Filed: November 24, 1998

Permian Basin Workforce Development Board

Request for Proposal

The Permian Basin Workforce Development Board is seeking Request for Proposals (RFP) for Independent Monitoring. By this RFP the Board plans to engage a firm/individual to carry out aspects of a program for meeting fiscal and program compliance monitoring responsibilities during Fiscal Year 1999 (July 1, 1998-June 30, 1999). The firm/individual will work with the Board and its service providers to monitor and review activities against contractual requirements and relevant federal and state statutes and regulations.

For more information or for an RFP packet please contact: Permian Basin Workforce Development Board, P.O. Box 61947, Midland, Texas, 79711, or call 915/563-5239 or Fax 915/561-8785.

TRD-9817852

Wille Taylor

Executive Director

Permian Basin Workforce Development Board

Filed: November 20, 1998

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 23, 1998, Optel (Texas) Telecom, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60041. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of Optel (Texas) Telecom, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 20132.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at PO Box 13326, Austin, Texas 78711-3326 no later than December 9, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20132.

TRD-9817973

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: November 25, 1998

Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November

16, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of CSW/ICG Choicecom, L.P. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 20097.

The Application: CSW/ICG Choicecom's intraLATA equal access implementation plan will adopt a two-PIC methodology which will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. The company proposes an implementation date of no later than February 8, 1999.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before December 14, 1998. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20097.

TRD-9817840
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 20, 1998

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 19, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Transwire Operations, LLC for a Service Provider Certificate of Operating Authority, Docket Number 20120 before the Public Utility Commission of Texas.

Applicant intends to provide competitive facilities-based and resold local exchange, interexchange carrier access, and intrastate interexchange toll telecommunications services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than December 9, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9817938
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 1998

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 20, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Express TeleCommunications for a Service Provider Certificate of Operating Authority, Docket Number 20121 before the Public Utility Commission of Texas.

Applicant intends to provide resold local switched services. This includes, but may not be limited to, monthly, recurring, flat rate local exchange service, extended metro service, foreign exchange service, custom calling services, Caller ID and any other services which are available for resale from the underlying incumbent local exchange carrier(s).

Applicant's requested SPCOA geographic area includes the areas of Texas currently served by Southwestern Bell Telephone Company and GTE Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than December 9, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9817939
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 1998

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Notice of Contract for Resources Acquired Outside of Solicitation

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a power purchase agreement, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §34.152(b) (Vernon 1998).

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc., for Approval of Certain Power Purchase Provisions. Docket Control Number 20080.

The Application: Brazos Electric Power Cooperative, Inc., a generating and transmission cooperative, requests the commission approve its contract for resources with Southern Company Energy Marketing, L.P. Brazos Electric Power Cooperative, Inc., asserts that approval of the application will result in lower costs and reduced risk to Brazos Electric Power Cooperative, Inc.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than December 10, 1998, the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9817691
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 1998

Public Utility Commission of Texas
Filed: November 20, 1998

◆ ◆ ◆
Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 to provide SONET OC-48 Diversity Ring to SKYTEL.

Tariff Title and Number: GTE-Southwest, Inc.'s (GTE-SW) Notice of Intent to File a Customer-Specific Contract to Provide SONET OC-48 Diversity Ring to SKYTEL Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20112.

The Application: GTE-SW intends to file an application on or around November 30, 1998 to provide SONET OC-48 Diversity Ring to SKYTEL Communications. This service is comprised of high speed, SONET-based services which provide connectivity between a customer-dedicated location and at least one telephone company service wire center. GTE-SW proposes to offer this service in the Plano, Texas exchange.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9817841

Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas

ed: November 20, 1998

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after November 26, 1998, an application for approval of promotional rates pursuant to P.U.C. Substantive Rule §23.28.

Tariff Title and Number: Application of Lufkin-Conroe Telephone Exchange, Inc. for Approval of Promotional Rates Pursuant to P.U.C. Substantive Rule §23.28. Tariff Control Number 20096.

The Application: Lufkin-Conroe Telephone Exchange, Inc. (Lufkin-Conroe) seeks approval to offer promotional rates for a new package of custom calling features. The custom calling feature packages will be composed of existing services offered individually in Lufkin-Conroe's General Exchange Tariff. These features (all of which are discretionary or competitive services) will be offered in bundled packages at a discounted total price in relation to the total price of individually purchased features.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 20096.

RD-9817839

Rhonda Dempsey
Rules Coordinator

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Public Notices of Amendment to Interconnection Agreement

On November 17, 1998, Southwestern Bell Telephone Company and Primeco Personal Communications, L.P., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20104. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20104. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20104.

TRD-9817951
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 1998

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On November 18, 1998, Southwestern Bell Telephone Company and Allegiance Telecom of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20113. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20113. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at

(512) 936-7136. All correspondence should refer to Docket Number 20113.

TRD-9817953
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 1998

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Public Notices of Interconnection Agreement

On November 23, 1998, Southwestern Bell Telephone Company and Bauce Communications of Beaumont, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20133. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20133. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas

78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20133.

TRD-9817970
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 1998

Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20134.

TRD-9817971
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 1998

On November 23, 1998, Southwestern Bell Telephone Company and Ernest Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20134. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20134. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 14, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of

On November 23, 1998, Lufkin-Conroe Telephone Exchange, Inc. and State Discount Telephone, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20131. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20131. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 17, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20131.

TRD-9817972
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 1998

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On November 16, 1998, Southwestern Bell Telephone Company and State Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20100. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20100. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 17, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20100.

TRD-9817950
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 1998

◆ ◆ ◆
On November 17, 1998, Southwestern Bell Telephone Company and Jato Communications Corp., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20106. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20106. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 14, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 0106.

TRD-9817952

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: November 24, 1998

Texas Department of Transportation

Public Notice

Public Notice: The Texas Department of Transportation is authorized by Texas Civil Statutes, Article 6144e to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. 43 TAC §23.10 describes the policies governing advertising in

department travel literature, lists acceptable and unacceptable subjects for advertising in department travel literature, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A), the department invites any entity or individual interested in advertising in department travel literature to request to be added to the department's mailing list. Written requests may be mailed to Recognition Communications, Inc., 9794 Forest Lane, Suite 634, Dallas, Texas 75243. Requests may also be made by telephone to 1-800-969-9896 or sent by fax to 1-800-839(TEX)-7344.

The department is now accepting advertising for the 2000 edition of the Texas State Travel Guide, scheduled to be printed and available in January 2000. All individuals on the mailing list will be contacted by mail sent out on January 4, 1999, and will have an opportunity to request a media kit containing the rate card information, order form, and a sample of the Texas State Travel Guide. On and after February 4, 1999, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 4, 1999, will not be accepted.

All insertion orders will be stamped with the date as they are received. Orders for premium space will be accepted only by mail postmarked on or after February 4, 1999. Advertisers must indicate ranked preference on all premium positions desired. If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 19, 1999. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The publication deadline for accepting advertising space is September 24, 1999, and the deadline for accepting materials is October 19, 1999.

The Texas State Travel Guide is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas lakes, state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The rate card information for potential advertisers is included in this notice.

Texas State Travel Guide

Year 2000 Rate Base: 1,200,000
Space Closing: September 24, 1999
Materials Due: October 19, 1999
First Distribution: January, 2000

Advertising Rates

ROP:	Gross	Net*
Full Page	\$29,294	\$24,900
Half (1/2) Page	17,530	14,900
One/Fourth (1/4) Page	10,235	8,700
One/Sixth (1/6) Page	7,882	6,700
Premium Positions:		
Cover 2 (Inside Front)	\$43,882	\$37,300
Cover 3 (Inside Back)	41,177	35,000
Cover 4 (Back)	50,118	42,600
Spread	73,177	62,200

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white).

Payment: Cash with order or net 30 from invoice date.
All orders must be paid in full by October 19, 1999.

TRD-9817958
Bob Jackson
Deputy General Counsel
Texas Department of Transportation

Filed: November 24, 1998

◆ ◆ ◆
Texas Water Development Board
Request for Proposals

The Texas Water Development Board (TWDB) requests proposals from qualified environmental consultants for provision of the services necessary to assist TWDB in the preparation of an Environmental Baseline Data Report and a Regional Environmental Information Document (EID) which will develop a regional environmental review system for water supply and wastewater (sewerage) projects proposed by municipalities and public utilities in Cameron, Hidalgo, and Starr Counties, Texas.

BACKGROUND

TWDB provides financial assistance for the planning, design, and construction of such projects and improvements to existing systems through the administration of several loan and grant programs. Many of the projects are for low-income residential subdivisions with inadequate water supply and sewerage facilities, commonly known as "colonias" in the Lower Rio Grande Valley. These projects are candidates for funding through the state Economically Distressed Areas Program (EDAP) and Environmental Protection Agency Colonia Wastewater Treatment Assistance Program (CWTAP) administered by the TWDB, and for other government subsidized funding programs.

PROBLEM

Most water and sewer projects for colonias are small scale projects to improve conditions in existing subdivisions located outside of environmentally sensitive areas and result in minimal adverse impacts to environmental and cultural resources. Currently, each individual CWTAP project, regardless of size, must be subjected to a full environmental review consistent with the requirements of the National Environmental Protection Act (NEPA). This review process is much more extensive, time consuming, and expensive than the state environmental review process which is applied to EDAP and other projects which do not utilize federal funding. Even though the vast majority of the reviews, both federal and state, result in findings of no significant impact (FNSIs), the requirement for project-specific NEPA level environmental reviews of proposed projects in this three county region mandate that project proponents hire expensive professionals to compile, review, and analyze the same basic resource data and information over, and over.

PROVIDER

The TWDB desires to retain the services of an environmental consultant or consulting group that has: (i) demonstrated understanding of the review processes required by NEPA; (ii) knowledge of the full range of environmental laws and authorities applicable to colonia water and sewer projects; (iii) familiarity with the environment, resources and concerned citizens groups and organizations of the three county project area; (iv) familiarity with the kinds and locations of available environmental information on the three-county study area; and, (v) the ability to work in close cooperation with the Texas Natural Resources Information System (TNRIS) program and the Border Project Management Division of TWDB. The chosen consultant will also be required to actively assist with interagency coordination and public participation activities throughout the project.

PROJECT

It is expected that the product of this project will be a comprehensive body of information on the human environment in the study area. It should form the basis for a reliable, cost-effective review system that can focus on efficient analysis of project-specific social, economic, and environmental issues posed by the water supply and sewerage system projects proposed for the project area rather than a duplicative analysis of general environmental issues. It is anticipated that such properly designed programmatic review procedure will be readily accessible, easily updated, eliminate the need for project-specific

EIDs, and streamline the review and coordination procedures for TWDB and interested agencies without reducing the effectiveness or compromising the purpose of individual project reviews under NEPA.

The goal of these services is the preparation of a comprehensive environmental Baseline Data Report and a Regional Environmental Information Document which will form the basis for a regional programmatic environmental review system for the three county area. This review system will be used by TWDB to prepare an Environmental Assessment for the EDAP activities in the three county region. It is expected to support the issuance of a programmatic Finding of No Significant Impact which will confirm the appropriateness of using a regional review system for the project area and provide the parameters and procedures for consistent NEPA reviews focused on impacts of specific colonia water infrastructure projects in the three county area.

PROPOSALS

Prospective respondents to this RFP notice may obtain a copy of the complete RFP and other instructional information about the project by contacting Gary Laneman or Danny Fox of the TWDB Border Project Management Division at (512) 463-8062 or (512) 463-8516, respectively.

Minority and woman-owned business enterprises are encouraged to submit proposals for providing these services. TWDB reserves the right to accept or reject any and all proposals and to request additional or clarifying information from any respondent without notice to other respondents.

Proposals in response to the RFP are due no later than December 31, 1998, and must be received by the Border Project Management Division, Texas Water Development Board, 1700 N. Congress Ave., P.O. Box 13231, Austin, Texas 78711, no later than 5:00 p.m. on that date.

TRD-9817987

Gail L. Allan

Director, Administration and Northern Legal Services
Texas Water Development Board

Filed: November 25, 1998

Texas Workforce Commission

Requests for Proposals

SCHOOL-TO-CAREERS STATEWIDE LABOR RECRUITMENT

The Texas Workforce Commission invites proposals to recruit labor organizations into the School-to-Careers initiative and provide School-to-Careers services to schools, the business and labor communities, and the public.

A. AUTHORIZATION OF FUNDING

Public Law 103-239 School-to-Work Opportunities Act of 1994 authorizes funds for this project. TWC is the lead agency in Texas for School-to-Careers/School-to-Work.

B. STATEWIDE LABOR RECRUITMENT OBJECTIVES

The purpose of the grant is to establish a network of labor organizations, School-to-Careers partnerships, local workforce development boards, educational entities, and employers in areas served by regional School-to-Careers partnerships, and to develop a capacity for sustaining that network beyond the funded period. Resulting School-to-Careers work plan activities involving labor organizations should emerge from partnerships engaged in this network.

C. PROJECT DESCRIPTION

The selected applicant(s) will perform the following:

1. Conduct network start-up meetings in each of at least 20 of 27 partnership areas with School-to-Careers partnership staff, officers, and labor organization members involved in partnership activities, as well as other locally identified participants.
2. Generate written partnership workplan activities for at least 20 of 27 partnerships involving network participants and labor organizations in the School-to-Careers initiative.
3. Develop mechanisms in at least 20 of 27 partnership areas to ensure sustainability of network activities after funding expires.
4. Following state School-to-Careers office approval, make one or more presentations to School-to-Careers staff at conference(s) as scheduled by the state School-to-Careers office.

D. ELIGIBLE APPLICANTS

Eligible applicants are statewide union and non-union based labor organizations.

E. AVAILABLE FUNDING

Funding of up to \$100,000 is available for the period January 30, 1999-January 31, 2000, with the possibility of a three-month extension and \$25,000 in additional funds for the period February-April 2000.

F. FUNDING RESTRICTIONS

Project funds have a 10% administrative cost cap. Expressly forbidden are using funds to pay either mentor or student wages. The applicant(s) selected must provide assurances that they will use allotted funds in accordance with PL 103-239 and use necessary fiscal control and fund accounting controls for the proper disbursement of and accounting for these funds. Prior permission must be secured from TWC before any part of the project can be subcontracted and/or changes can be made in activities to be performed, project personnel, and/or budgeted expenditures as authorized in the contract.

G. LENGTH OF CONTRACT

The project period is January 30, 1999 through January 31, 2000.

H. REQUESTING THE APPLICATION

Interested entities may obtain a copy of the complete RFP by contacting James Cooper, Program Specialist in the School-to-Careers office of the Texas Workforce Commission, Room 326-T, 101 East 15th Street, Austin TX 78778-0001; faxing a written request to 512/463-6689; or emailing a request to james.cooper@twc.state.tx.us.

I. SELECTION CRITERIA

Applicants will be reviewed for eligibility by TWC. Eligible applicants' proposals will be evaluated and graded by TWC. Applicants will be evaluated on criteria including proposed budget, demonstrated labor experience, and ability to complete statewide deliverables.

J. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

Applicants will be reviewed and graded on a competitive basis by TWC. Detailed evaluation criteria will be provided in the application packet. Incomplete applications are subject to rejection and disqualification by TWC. Review of proposals will be completed by January 11, 1999. Funding decisions will be announced by January 11, 1999. Negotiations with contractors will be completed by January 25, 1999.

K. DUE DATE AND AGENCY CONTACT

The deadline for receipt of proposals is 5:00 pm, December 28, 1999, in the School-to-Careers office of the TWC. No faxed proposals will be accepted. Proposals must include hardcopies as well as software versions on floppy diskette formatted for IBM PC: ASCII and WordPerfect files are acceptable, but Microsoft Word is preferred. For clarifying information, submit written requests by mail, fax, or email to James Cooper, Program Specialist, School-to-Careers, Texas Workforce Commission, Room 326T, 101 East 15th Street, Austin TX 78778-0001; fax 512/463-6689, or email james.cooper@twc.state.tx.us.

L. TWC'S OBLIGATIONS

TWC reserves the right to vary all provisions of this Request for Proposal prior to the execution of a contract when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC reserves the right to reject any and all proposals. TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds from the US Department of Labor. If adequate funds are not available to make payment under the terms of this grant, TWC will terminate this RFP or resulting contract and will not be liable for failure to make payments. The Texas Workforce Commission is an equal opportunity employer/program.

Contract # 4098ST

TRD-9817975

J. Randel (Jerry) Hill
General Counsel

Texas Workforce Commission

Filed: November 25, 1998

SCHOOL-TO-CAREERS LOCAL LABOR LINKAGE MODEL

The Texas Workforce Commission invites proposals to enhance a local labor linkage model program, develop it into a transferable model, and to disseminate information on this model to all School-to-Careers partnerships in Texas.

A. AUTHORIZATION OF FUNDING

Public Law 103-239 School-to-Work Opportunities Act of 1994 authorizes funds for this project. TWC is the lead agency in Texas for School-to-Careers/School-to-Work.

B. LOCAL LABOR LINKAGE MODEL OBJECTIVES

The purpose of this RFP is to enhance an existing program connecting a local labor organization(s), a School-to-Careers partnership, a local workforce development board, educational entities, and employers in an area served by a regional School-to-Careers partnership; to develop the program into a transferable model; and then to disseminate information on this model to all School-to-Careers partnerships and local workforce development boards in Texas.

C. PROJECT DESCRIPTION

The selected applicant(s) will perform the following:

1. Within three months of contract initiation, complete and report a needs analysis identifying School-to-Careers components in an existing local program, with an emphasis on those components that need strengthening. This model should already be an existing program connecting a labor organization(s), a School-to-Careers partnership, a local workforce development board, educational entities, and employers in an area served by a regional School-to-Careers partnership.
2. Within six months of contract initiation, implement recommendations from the program needs analysis conducted under #1 above.

Where immediate action is not possible, institute procedures and establish schedules for actual implementation.

3. Within nine months of contract initiation, prepare a written guide to developing a School-to-Careers partnership-labor organization program modeled on the components identified above and demonstrating the strengths recognized as important for each component.

4. Following state School-to-Careers office approval, disseminate the guide in print and electronic format to all local workforce development boards and School-to-Careers partnerships and make one or more presentations to School-to-Careers staff at conference(s) as scheduled by the state School-to-Careers office.

D. ELIGIBLE APPLICANTS

Eligible applicants are local labor organizations (a branch or affiliate of a statewide or national union or non-union labor organization) with offices physically located within a workforce development area as defined in Section 2308.252, Government Code.

E. AVAILABLE FUNDING

Funding of up to \$50,000 is available for a 12-month period beginning approximately February 1999.

F. FUNDING RESTRICTIONS

Project funds have a 10% administrative cost cap. Expressly forbidden are using funds to pay either mentor or student wages. The applicant(s) selected must provide assurances that they will use allotted funds in accordance with PL 103-239 and use necessary fiscal control and fund accounting controls for the proper disbursement and accounting for these funds. Prior permission must be secured from TWC before any part of the project can be subcontracted and/or changes can be made in activities to be performed, project personnel, and/or budgeted expenditures as authorized in the contract.

G. LENGTH OF CONTRACT

The project period is twelve months long, beginning in February 1999.

H. REQUESTING THE APPLICATION

Interested entities may obtain a copy of the complete RFP by contacting James Cooper, Program Specialist in the School-to-Careers office of the Texas Workforce Commission, Room 326-T, 101 East 15th Street, Austin TX 78778-0001; faxing a written request to 512/463-6689; or emailing a request to james.cooper@twc.state.tx.us.

I. SELECTION CRITERIA

Applicants will be reviewed for eligibility by TWC. Eligible applicants' proposals will be evaluated and graded by TWC. Proposals will

be evaluated on criteria including a proposed budget, demonstrated program linkages between the labor organization and participating entities in the area, and the ability to complete deliverables.

J. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

Applicants will be reviewed and graded on a competitive basis by TWC. Detailed evaluation criteria will be provided in the application packet. Incomplete applications are subject to rejection and disqualification by TWC. Review of proposals will be completed by January 11, 1999. Funding decisions will be announced by January 11, 1999. Negotiations with contractors will be completed by January 25, 1999.

K. DUE DATE AND AGENCY CONTACT

The deadline for receipt of proposals is 5:00 pm, December 28, 1998 in the School-to-Careers office of the TWC. No faxed proposals will be accepted. Proposals must include hardcopies as well as software versions on floppy diskette formatted for IBM PC: ASCII and WordPerfect files are acceptable, but Microsoft Word is preferred. For clarifying information, submit written requests by mail, fax, or email to James Cooper, Program Specialist, School-to-Careers, Texas Workforce Commission, Room 326T, 101 East 15th Street, Austin TX 78778-0001; fax 512/463-6689, or email james.cooper@twc.state.tx.us.

L. TWC'S OBLIGATIONS

TWC reserves the right to vary all provisions of this Request for Proposal prior to the execution of a contract when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC reserves the right to reject any and all proposals. TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds from the US Department of Labor. If adequate funds are not available to make payment under the terms of this grant, TWC will terminate this RFP or resulting contract and will not be liable for failure to make payments. The Texas Workforce Commission is an equal opportunity employer/program.

Contract # 4098LO

TRD-9817976

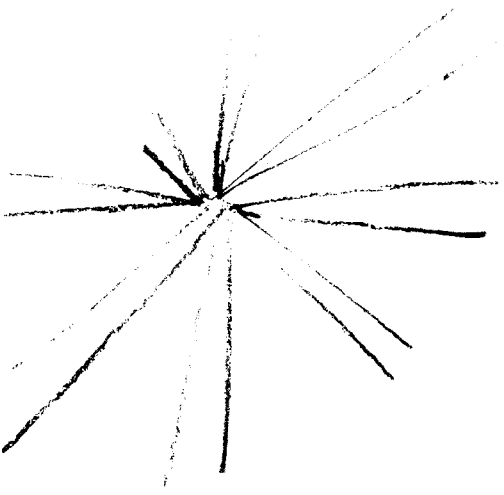
J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

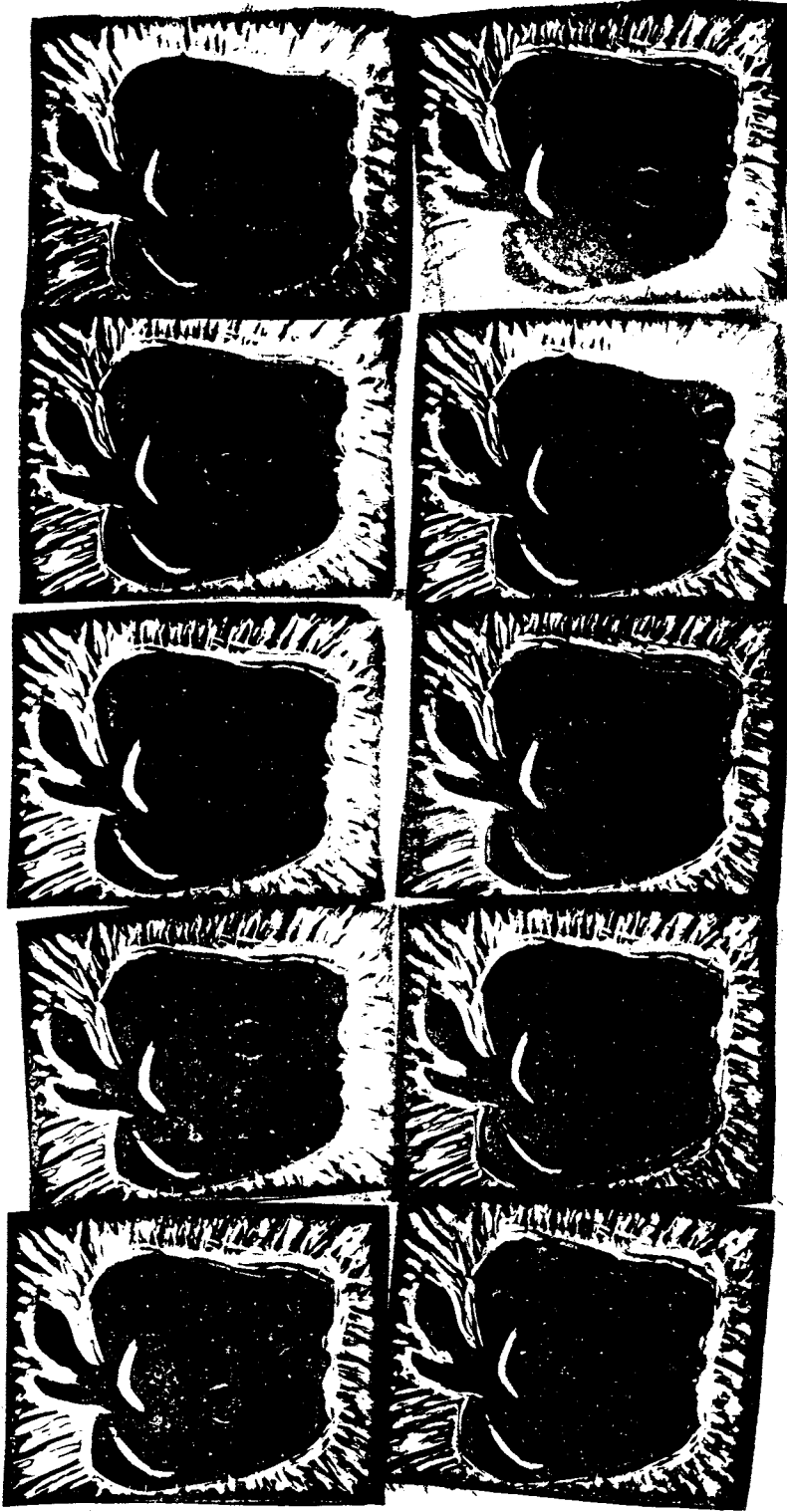
Filed: November 25, 1998

◆ ◆ ◆



Name: Magdalena Guerra
Grade: 5
School: Roma Intermediate





Name: Felix Sanchez

Grade: 5

School: Gillett Intermediate

Felix Sanchez

Name: Rafael Saavedra
Grade: 5
School: Roma Intermediate



November - December 1998 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents and meeting notices. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	Rules: 12 Noon	Other Documents: 12 Noon
45 Friday, November 6	Monday, October 26	Wednesday, October 28
46 Friday, November 13	Monday, November 2	Wednesday, November 4
47 Friday, November 20	Monday, November 9	*Tuesday, November 10
48 Friday, November 27	Monday, November 16	Wednesday, November 18
49 Friday, December 4	Monday, November 23	Wednesday, November 25
50 Friday, December 11	Monday, November 30	Wednesday, December 2
51 Friday, December 18	Monday, December 7	Wednesday, December 9
52 Friday, December 25	Monday, December 14	Wednesday, December 16

January - September 1999 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	Rules: 12 Noon	Other Documents: 12 Noon
1 Friday, January 1	Monday, December 21	Wednesday, December 23
2 Friday, January 8	Monday, December 28	Wednesday, December 30
3 Friday, January 15 <i>Annual Index</i>	Monday, January 4	Wednesday, January 6
4 Friday, January 22	Monday, January 11	Wednesday, January 13
5 Friday, January 29	*Friday, January 15	Wednesday, January 20
6 Friday, February 5	Monday, January 25	Wednesday, January 27
7 Friday, February 12	Monday, February 1	Wednesday, February 3
8 Friday, February 19	Monday, February 8	Wednesday, February 10
9 Friday, February 26	*Friday, February 12	Wednesday, February 17
10 Friday, March 5	Monday, February 22	Wednesday, February 24
11 Friday, March 12	Monday, March 1	Wednesday, March 3
12 Friday, March 19	Monday, March 8	Wednesday, March 10
13 Friday, March 26	Monday, March 15	Wednesday, March 17
14 Friday, April 2	Monday, March 22	Wednesday, March 24
15 Friday, April 9 <i>First Quarterly Index</i>	Monday, March 29	Wednesday, March 31
16 Friday, April 16	Monday, April 5	Wednesday, April 7
17 Friday, April 23	Monday, April 12	Wednesday, April 14
18 Friday, April 30	Monday, April 19	Wednesday, April 21
19 Friday, May 7	Monday, April 26	Wednesday, April 28

Issue date	Rules: 12 Noon	Other Documents: 12 Noon
20 Friday, May 14	Monday, May 3	Wednesday, May 5
21 Friday, May 21	Monday, May 10	Wednesday, May 12
22 Friday, May 28	Monday, May 17	Wednesday, May 19
23 Friday, June 4	Monday, May 24	Wednesday, May 26
24 Friday, June 11	<i>*Friday, May 28</i>	Wednesday, June 2
25 Friday, June 18	Monday, June 7	Wednesday, June 9
26 Friday, June 25	Monday, June 14	Wednesday, June 16
27 Friday, July 2	Monday, June 21	Wednesday, June 23
28 Friday, July 9 <i>Second Quarterly Index</i>	Monday, June 28	Wednesday, June 30
29 Friday, July 16	Monday, July 5	Wednesday, July 7
30 Friday, July 23	Monday, July 12	Wednesday, July 14
31 Friday, July 30	Monday, July 19	Wednesday, July 21
32 Friday, August 6	Monday, July 26	Wednesday, July 28
33 Friday, August 13	Monday, August 2	Wednesday, August 4
34 Friday, August 20	Monday, August 9	Wednesday, August 11
35 Friday, August 27	Monday, August 16	Wednesday, August 18
36 Friday, September 3	Monday, August 23	Wednesday, August 25
37 Friday, September 10	Monday, August 30	Wednesday, September 1
38 Friday, September 17	<i>*Friday, September 3</i>	Wednesday, September 8
39 Friday, September 24	Monday, September 13	Wednesday, September 15

How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

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

Proposed Rules - sections proposed for adoption.

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

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

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

Open Meetings - notices of open meetings.

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

Review of Agency Rules - notices of state agency rules review.

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 23 (1998) is cited as follows: 23 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

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

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the

Texas Register is available online through a dialup bulletin board and as ASCII files on diskette. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

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

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

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

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

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How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 9, April 10, July 10, and October 9, 1998). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

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

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